

# GovCon101: The Defense Federal Acquisition Regulation Supplement

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Chair, Procurement Round Table

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# HOST – Dave Drabkin



- Independent consultant with 46 years of federal government contracting experience in both the public and private sector.
- Chair, Procurement Round Table
- Chairman of The Advisory Panel on Streamlining and Codifying Acquisition Regulations (Section 809 Panel), <https://discover.dtic.mil/section-809-panel/>
- Member:
  - Service Acquisition Reform Act (SARA) Panel
  - Multiple Award Schedule (MAS) Panels and DoD Program Manager for FASA Implementation
- Prior Positions:
  - Corporate Director, Contracts, Northrop
  - Senior Procurement Executive/Deputy Chief Acquisition Officer, GSA
  - Deputy Program Manager, Pentagon Renovation Program
  - Assistant Deputy Under Secretary (Acquisition Reform)
  - Deputy Chief Counsel, DCMD West
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  - ...

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# What You'll Learn

- FAR System
  - FAR Signatories
  - FAR Council Structure
  - Order of Precedence
- Director, Defense Pricing and Contracts
  - Policies
  - Deviations
  - Defense Federal Acquisition Regulation Supplement (DFARS)
- Role of the Defense Acquisition Regulatory Council (DARC)
  - Membership
  - Process
  - Case Tracking
  - Public Participation
- Structure
  - Prescriptions
  - Provisions
  - Clauses
  - Procedures, Guidance, and Information (PGI)

# FAR SYSTEM

- Office of Federal Procurement Policy Act of 1974
  - OFPP Administrator
- Federal Acquisition Regulation (FAR) Signatories
- FAR Council Structure
- Order of Precedence
- FAR
  - 1 April 1984
  - <https://www.acquisition.gov/browse/index/far>
  - All changes to the FAR/DFARS from January 2019 to 1 Apr 84, [Section 809 Panel Genealogy \(osd.mil\)](#)
- Federal contract provisions are not self-executing

# FAR SIGNATORIES

- Secretary of Defense
  - Signatory – John Tenaglia, Director, Defense Pricing and Contracts
- Administrator of the General Services Administration
  - Signatory - Jeff Koses, Senior Procurement Executive
- Administrator National Aeronautics and Space Administration
  - Signatory - Karla Smith Jackson, Senior Procurement Executive, Deputy Chief Acquisition Officer and Assistant Administrator for Procurement

FAR  
Council

CAAC|DARC

FAR TEAMS

# Director, Defense Pricing and Contracts

- Policies
- Deviations
- Defense Federal Acquisition Regulation Supplement (DFARS)
- Website: [OUUSD A&S - ASD\(A\) - Defense Pricing and Contracting \(osd.mil\)](https://www.osd.mil/procurement/contracts/)

# Role of the Defense Acquisition Regulatory Council (DARC)

- Membership, [DAU Glossary: Defense Acquisition Regulations Council](#)
- Process
- Case Tracking
- Public Participation
- Website: [Defense Acquisition Regulations System \(osd.mil\)](#)



# DFARS Structure

- <https://www.acq.osd.mil/dpap/dars/dfarspgi/current/index.html>
- Provisions and Clauses
- Forms
- Procedures, Guidance, and Information (PGI) – Not part of the DFARS, but . . .

# Procedures, Guidance, and Information (PGI)

- The PGI contains relevant procedures, guidance, and information that do not meet the criteria for inclusion in the DFARS.
- The PGI are issued as a DFARS companion resource.
- Unclassified, non-confidential memoranda, guidance, and other DPC procurement-related policy documents can be found in the appropriate PGI subpart.
- The PGI is located at: <https://www.acq.osd.mil/dpap/dars/dfarspgi/current/index.html>

# Provisions

- Provisions are included in solicitations.
- Provisions identify “rules of engagement” for submitting a proposal.
- Many provisions are incorporated by reference into the RFP.

# Clauses

- Clauses are included in contracts.
- Clauses make up the terms and conditions of the contract
- Many clauses are incorporated by reference in the resulting contract.
- Often the government incorporates by reference clauses which may not apply to the particular contract.
- “Self-deleting” clauses?

# Unique DFARS Provisions and Clauses

- Let's take a look at some of the unique DoD Provisions and Clauses Pull up the DFARS or open to DFARS Part 252
  - 252.201-7000 Contracting Officer's Representative.
  - 252.203-7000 Requirements Relating to Compensation of Former DoD Officials.
  - 252.204-7006 Billing Instructions.
  - 252.204-7008 Compliance with Safeguarding Covered Defense Information Controls.
  - 252.204-7012 Safeguarding Covered Defense Information and Cyber Incident Reporting
  - 252.204-7016 Covered Defense Telecommunications Equipment or Services— Representation.
  - 252.206-7000 Domestic Source Restriction

# Unique DFARS Provisions and Clauses (con't)

- 252.209-7002 Disclosure of Ownership or Control by a Foreign Government
- 252.209-7004 Subcontracting with Firms that are Owned or Controlled by the Government of a Country that is a State Sponsor of Terrorism
- 252.209-7006 Limitations on Contractors Acting as Lead System Integrators
- 252.209-7008 Notice of Prohibition Relating to Organizational Conflict of Interest—Major Defense Acquisition Program
- 252.213-7000 Notice to Prospective Suppliers on Use of Supplier Performance Risk System in Past Performance Evaluations.

# Unique DFARS Provisions and Clauses (con't)

- 252.215-7002 Cost Estimating System Requirements.
- 252.215-7008 Only One Offer
- 252.215-7009 Proposal Adequacy Checklist.
- 252.215-7010 Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data.
- 252.215-7011 Requirements for Submission of Proposals to the Administrative Contracting Officer and Contract Auditor.
- 252.215-7013 Supplies and Services Provided by Nontraditional Defense Contractors
- 252.216–7004 Award Fee Reduction or Denial for Jeopardizing the Health or Safety of Government Personnel.

# Unique DFARS Provisions and Clauses (con't)

- 252.217-7001 Surge Option
- 252.217-7007 Payments.
- 252.219-7003 Small Business Subcontracting Plan (DoD Contracts).
- 252.222-7002 Compliance with Local Labor Laws (Overseas), et seq
- 252.223-7004 Drug-Free Work Force.
- 252.228 Various Hazard Issues
- 252.232-7004 DoD Progress Payment Rates
- 252.232-7006 Wide Area WorkFlow Payment Instructions.
- 252.233-7001 Choice of Law (Overseas).



# Unique DFARS Provisions and Clauses (con't)

- 252.234-7001 Notice of Earned Value Management System
- 252.237-7010 Prohibition on Interrogation of Detainees by Contractor Personnel.
- 252.242-7004 Material Management and Accounting System.
- 252.242-7006 Accounting System Administration.
- 252.244-7001 Contractor Purchasing System Administration.
- 252.245-7003 Contractor Property Management System Administration.
- 252.251-7000 Ordering From Government Supply Sources.

# Forms

- DoD has a list of unique forms governing its contracts
- 253.303 Agency forms. DoD forms are available at [DoD Forms Management \(whs.mil\)](https://whs.mil)

# 252.217-7007 Payments

- As prescribed in 217.7104(a), use the following clause: PAYMENTS (DEC 1991)
- (a) “Progress payments,” as used in this clause, means payments made before completion of work in progress under a job order.
- (b) Upon submission by the Contractor of invoices in the form and number of copies directed by the Contracting Officer, and as approved by the Contracting Officer, the Government will make progress payments as work progresses under the job order. (1) Generally, the Contractor may submit invoices on a semi-monthly basis, unless expenditures justify a more frequent submission. (2) The Government need not make progress payments for invoices aggregating less than \$5,000. Defense Federal Acquisition Regulation Supplement Part 252—Solicitation Provisions and Contract Clauses 1998 EDITION 252.217-8 (3) The Contracting Officer shall approve progress payments based on the value, computed on the price of the job order, of labor and materials incorporated in the work, materials suitably stored at the site of the work, and preparatory work completed, less the aggregate of any previous payments. (4) Upon request, the Contractor will furnish the Contracting Officer any reports concerning expenditures on the work to date that the Contracting Officer may require.
- (c) The Government will retain until final completion and acceptance of all work covered by the job order, an amount estimated or approved by the Contracting Officer under paragraph (b) of this clause. The amount retained will be in accordance with the rate authorized by Congress for Naval vessel repair contracts at the time of job order award.
- (d) The Contracting Officer may direct that progress payments be based on the price of the job order as adjusted as a result of change orders under the Changes clause of the Master Agreement. If the Contracting Officer does not so direct— (1) Payments of any increases shall be made from time to time after the amount of the increase is determined under the Changes clause of the Master Agreement; and (2) Reductions resulting from decreases shall be made for the purposes of subsequent progress payments as soon as the amounts are determined under the Changes clause of the Master Agreement.
- (e) Upon completion of the work under a job order and final inspection and acceptance, and upon submission of invoices in such form and with such copies as the Contracting Officer may prescribe, the Contractor shall be paid for the price of the job order, as adjusted pursuant to the Changes clause of the Master Agreement, less any performance reserves deemed necessary by the Contracting Officer, and less the amount of any previous payments.
- (f) All materials, equipment, or any other property or work in process covered by the progress payments made by the Government, upon the making of those progress payments, shall become the sole property of the Government, and are subject to the provisions of the title clause of the Master Agreement. (End of clause)

# 252.215-7002 Cost Estimating Systems Requirements

- As prescribed in 215.408(1), use the following clause: COST ESTIMATING SYSTEM REQUIREMENTS (DEC 2012)
- (a) Definitions. “Acceptable estimating system” means an estimating system that complies with the system criteria in paragraph (d) of this clause, and provides for a system that—
  - (1) Is maintained, reliable, and consistently applied;
  - (2) Produces verifiable, supportable, documented, and timely cost estimates that are an acceptable basis for negotiation of fair and reasonable prices;
  - (3) Is consistent with and integrated with the Contractor’s related management systems; and
  - (4) Is subject to applicable financial control systems.
- “Estimating system” means the Contractor's policies, procedures, and practices for budgeting and planning controls, and generating estimates of costs and other data included in proposals submitted to customers in the expectation of receiving contract awards. Estimating system includes the Contractor’s—
  - (1) Organizational structure;
  - (2) Established lines of authority, duties, and responsibilities;
  - (3) Internal controls and managerial reviews;
  - (4) Flow of work, coordination, and communication; and
  - (5) Budgeting, planning, estimating methods, techniques, accumulation of historical costs, and other analyses used to generate cost estimates.
- “Significant deficiency” means a shortcoming in the system that materially affects the ability of officials of the Department of Defense to rely upon data and information produced by the system that is needed for management purposes.

# 252.234-7001 – Earned Value Management System

- As prescribed in 234.203(1), use the following provision: NOTICE OF EARNED VALUE MANAGEMENT SYSTEM (APR 2008)
- (a) If the offeror submits a proposal in the amount of \$50,000,000 or more—
  - (1) The offeror shall provide documentation that the Cognizant Federal Agency (CFA) has determined that the proposed Earned Value Management System (EVMS) complies with the EVMS guidelines in the American National Standards Institute/Electronic Industries Alliance Standard 748, Earned Value Management Systems (ANSI/EIA-748) (current version at time of solicitation). The Government reserves the right to perform reviews of the EVMS when deemed necessary to verify compliance.
  - (2) If the offeror proposes to use a system that has not been determined to be in compliance with the requirements of paragraph (a)(1) of this provision, the offeror shall submit a comprehensive plan for compliance with the guidelines in ANSI/EIA-748.

# 252.242-7004 Material Management and Accounting System

- As prescribed in 242.7204, use the following clause: MATERIAL MANAGEMENT AND ACCOUNTING SYSTEM (MAY 2011)
- (a) Definitions. As used in this clause—
  - (1) “Material management and accounting system (MMAS)” means the Contractor's system or systems for planning, controlling, and accounting for the acquisition, use, issuing, and disposition of material. Material management and accounting systems may be manual or automated. They may be stand-alone systems or they may be integrated with planning, engineering, estimating, purchasing, inventory, accounting, or other systems.
  - (2) “Valid time-phased requirements” means material that is— (i) Needed to fulfill the production plan, including reasonable quantities for scrap, shrinkage, yield, etc.; and (ii) Charged/billed to contracts or other cost objectives in a manner consistent with the need to fulfill the production plan.
  - (3) “Contractor” means a business unit as defined in section 31.001 of the Federal Acquisition Regulation (FAR).
  - (4) “Acceptable material management and accounting system” means a MMAS that generally complies with the system criteria in paragraph (d) of this clause.
  - (5) “Significant deficiency” means a shortcoming in the system that materially affects the ability of officials of the Department of Defense to rely upon information produced by the system that is needed for management purposes

# 252.242-7006 – Accounting System Administration

- As prescribed in 242.7503, use the following clause: ACCOUNTING SYSTEM ADMINISTRATION (FEB 2012)
- (a) Definitions. As used in this clause—
  - (1) “Acceptable accounting system” means a system that complies with the system criteria in paragraph (c) of this clause to provide reasonable assurance that—
    - (i) Applicable laws and regulations are complied with;
    - (ii) The accounting system and cost data are reliable;
    - (iii) Risk of misallocations and mischarges are minimized; and
    - (iv) Contract allocations and charges are consistent with billing procedures

# 252.244-7001 – Contractor Purchasing System Administration

- Basic. As prescribed in 244.305-71 and 244.305-71(a), use the following clause: CONTRACTOR PURCHASING SYSTEM ADMINISTRATION-BASIC (MAY 2014) (a) Definitions. As used in this clause—
- “Acceptable purchasing system” means a purchasing system that complies with the system criteria in paragraph (c) of this clause.
- “Purchasing system” means the Contractor’s system or systems for purchasing and subcontracting, including make-or-buy decisions, the selection of vendors, analysis of quoted prices, negotiation of prices with vendors, placing and administering of orders, and expediting delivery of materials.
- “Significant deficiency” means a shortcoming in the system that materially affects the ability of officials of the Department of Defense to rely upon information produced by the system that is needed for management purposes.
- (b) General. The Contractor shall establish and maintain an acceptable purchasing system. Failure to maintain an acceptable purchasing system, as defined in this clause, may result in disapproval of the system by the Contracting Officer and/or withholding of payments



# 252.245-7003 – Contractor Property Management System Administration

- As prescribed in 245.107(5), insert the following clause: CONTRACTOR PROPERTY MANAGEMENT SYSTEM ADMINISTRATION (APR 2012)
- (a) Definitions. As used in this clause— “Acceptable property management system” means a property system that complies with the system criteria in paragraph (c) of this clause.
- “Property management system” means the Contractor’s system or systems for managing and controlling Government property.
- “Significant deficiency” means a shortcoming in the system that materially affects the ability of officials of the Department of Defense to rely upon information produced by the system that is needed for management purposes.
- (b) General. The Contractor shall establish and maintain an acceptable property management system. Failure to maintain an acceptable property management system, as defined in this clause, may result in disapproval of the system by the Contracting Officer and/or withholding of payments.
- (c) System criteria. The Contractor’s property management system shall be in accordance with paragraph (f) of the contract clause at Federal Acquisition Regulation 52.245-1.
- (d) Significant deficiencies. (1) The Contracting Officer will provide an initial determination to the Contractor, in writing, of any significant deficiencies. The initial determination will describe the deficiency in sufficient detail to allow the Contractor to understand the deficiency.