



SESSION GUIDE  
SEASON 2023, EPISODE SIX  
FAR PARTS 4 AND 24:  
ADMINISTRATIVE MATTERS AND FOIA

## I. Introduction

Some people may say that this chapter pushes the limits of fun. We say that's hogwash! In fact, not only is a topic like "administrative matters" considered FUN by contracts geeks like us, but it is also one of the most important topics in the day-to-day activities of a Government contracting officer. More specifically, **Part 4** tells the story of a contract document from "birth to death." For example, it addresses how a contract is "born" (i.e., how does it get signed and become legally effective (**Part 4.1**)), where does it go right after birth (i.e., to whom do contracting officers send contracts after execution (**Part 4.2**)), how are its "vital statistics" announced throughout its lifetime (i.e., how and when do contracting officers use Federal Procurement Database (FPDS) to publish contract information (**Part 4.6**)), where and how long it should be protected (**Part 4.7** provides instruction as to where and how long the Government and Government Contractors must retain contract and contract related information), and when it should finally be "put to rest" (i.e., when and how should the contract be closed out can be found at **Part 4.8**). **Part 24** explains the rules that Government shall follow when a non-governmental entity may wish to see an executed Government contract.

## II. Contract Administration

Contract administration, which we learn about in **Part 4**, is a bit of a catch-all term that refers to the fiddly little things that go on behind the scenes on the agency side of an acquisition. Paperwork and related tasks certainly can get tiresome, and may not seem all that important in isolation, but they are truly essential to the smooth (and legal) operation of a Government contract. Agencies will be in for a bad time if they don't follow the requirements in **Part 4**! There are a lot of Subparts in **Part 4**. Since we don't want to get too far into the weeds, we'll give you a brief snapshot of a selection of Subparts, along with some questions and exercises to help you understand the general concepts underlying **Part 4** a little better. As always, keep the Guiding Principles of the FAR in mind as you go through **Part 4**! They will be particularly relevant as we move through this Part.

### A. The Formal Requirements of a Government Contract

**Subpart 4.1** discusses who has the authority to approve and sign a federal government contract. **FAR 4.101** echoes the guidance set forth at **FAR 1.602-1** and reminds us that **only** the contracting officer has the authority to approve and sign contracts on behalf of the Government. The special rules that address contractor signature authority are set forth at **FAR 4.102**

### *Exercise 1 –When and How Do I “Execute” a Contract?*

When must contracting officers “normally” sign a federal government “contract”? Provide the FAR citation that supports your answer.

Partnerships are a unique type of legal entity and they must follow special rules that must be followed in the contracting process. What type of documentation must a contracting officer request and receive from a partnership prior to approving and signing a contract with that special legal entity.

### **B. Safeguarding Classified Information**

Sometimes a solicitation requires the Government to provide classified information to contractors. While this occurs most frequently in defense contracts (subject to the DFARS), civilian agency procurements may also involve classified data. **Subpart 4.4** governs procedures for ensuring this data is protected and complies with rules promulgated by the National Industrial Security Program (NISP). Contractors who are seeking a contract that involves classified data will likely have to acquire both facility and personnel clearances. For detailed instructions on how to qualify for facility or personnel clearances, consult the National Industrial Security Program Operation Manual (NISPOM).

*Question 1 – FAR 4.402* requires that a certain form be filled out by a contractor and subcontract prior to entering into a contract or subcontract that will require access to “Confidential”, “Secret”, “Top Secret” information. What is the name of that special form?

### C. Transparency: Federal Procurement Data System and Record and File Retention

Transparency in federal procurement is not just a means of ensuring accountability for tax dollars. It also ensures that agencies can make informed acquisition decisions and that contractors can easily access public data. All unclassified, appropriation-funded, executive agency contracts exceeding the micro-purchase threshold must be reported and stored in the Federal Procurement Data System – Next Generation website (“FPDS-NG”). Agencies are required to complete a contracting action report (CAR) within at least three days of contract award. The FAR deals with these issues in **Subpart 4.6**.

#### *Exercise 2 – Excuse me Sir, May I Take Your “Order”?*

We talked about “indefinite delivery/indefinite quantity contracts” during our last episode. **FAR 4.6** requires that contracting officers report specific information related to these special contracts – which they call “indefinite delivery vehicles.” What five specific FAR clauses are **only** found in an indefinite delivery contract vehicle?

The FPDS-NG database is used daily by government officials to help them in their day-to-day contract formation and administration duties. Explain why this same database may also be helpful for contractors interested in selling their goods and services to the Government. [Hint: this answer isn’t in **Part 4**, so you’ll have to think creatively based on your own experience and the concepts we’ve already discussed in previous chapters of this workbook!]

### D. Records Retention for Contractors

When performing contracts containing the Audit and Records-Negotiation clause (**52.215-2**), contractors are required to maintain meticulous records. Government contractors are subject to rigorous auditing, and if an allegation of fraud emerges, Inspectors General will look at the absence of required records with a skeptical eye. **Subpart 4.7** deals with how long contractors should keep in their files certain types of records created during and in support of a Government contract, such as financial and accounting records, pay administration records, and acquisition and supply records. Records to be retained include those involving financial and cost accounting, pay administration, and the acquisition and supply chain. You’ll notice that under each of these categories are additional categories that have different document retention periods.

*Question 2* – **FAR 4.705** sets forth specific record retention periods that must be followed by contractors performing under a contract that includes **FAR 52.215-2**. True or False? Accounts payable records may be destroyed after four (4) years from “the end of the fiscal year in which the entry was made to support a charge or allocation of cost to a Government contract or subcontract.” Explain your answer. [Hint: check out **4.703** and **4.704**]

### **E. Records Retention for the Government**

The Government must also follow rules governing how it maintains and disposes of contract records. It seems clear why it should. **Subpart 4.8** notes that the Government’s contracting actions are regularly evaluated (and sometimes challenged), which can happen in an IG investigation, a protest, or litigation. Subpart **4.804** also contains the principal FAR guidance concerning contract closeout.

*Question 3* – Identify five (5) items that normally are retained in the Government’s contract files.

*Question 4* – When should the Government “close out” a firm-fixed price contract? What circumstance may cause this deadline to be delayed.

### **F. Transparency Part Deux: Contract Finances, Representations, and Vendor Data**

The next few Subparts of **Part 4** cover requirements involving the System for Award Management (SAM) (**4.11**), representations and certifications in the system (**4.12**), and the various disclosure requirements for executive compensation and first-tier subcontract awards (**4.14**).

*Question 5* – What is the stated purpose of SAM? [Hint: check out **4.1100**]

Among other information, SAM includes an excluded vendors list, where we can search for debarred contractors (both companies and individuals). Contracting officers should check SAM prior to considering a source for award, and prime contractors should check SAM prior to engaging a teaming partner or subcontractor.

### *Exercise 3 – Back to the Guidelines!!*

Which Federal Acquisition System Guiding Principles are supported by the Government's development and use of SAM in the federal procurement process? [Hint: this answer isn't explicitly in the FAR, so you'll have to draw on what you've already learned to answer!]

## **Special Contractor Reporting Requirements**

**Subaward Reporting.** FAR 4.14 contains two special prime contractor reporting requirements that the Government has argued are essential to better understand where their money is spent; either through the reimbursement of direct first tier subcontractor expenditures or costs related to executive compensation. Prime Contractors awarded a federal contract or order that is subject to FAR clause **52.204-10** (Reporting Executive Compensation and First-Tier Subcontract Awards) are required to file a *Federal Funding Accountability and Transparency Act* (FFATA) subaward report by the end of the month following the month in which the prime contractor awards any subcontract greater than \$30,000. Agencies are required to review the contractor's first-tier subcontract reports (which are reported through the Federal Subaward Reporting System ([www.fsrs.gov](http://www.fsrs.gov)) on a quarterly basis to ensure the information reported is consistent with contract information. After its review, the agencies must inform the contractor of any "inconsistencies" with the contract information and require that the contractor correct the report or provide a reasonable explanation as to why it believes the reported information is correct. After initial award, continued reporting on the same subcontracts is not required unless one of the reported data elements changes during the performance of the subcontract. See FAR 52.204-10(f).

**Executive Compensation.** Unlike subaward reports, the FAR requires that most contractors performing under a contract containing FAR clause **52.204-10** are required to disclose the compensation of each of the five most highly compensated executive for its preceding fiscal year as part of their annual registration requirement in SAM.

*Question 6 – Under what circumstances may a contractor not be required to disclose executive compensation in SAM on an annual basis. [Hint: Check out FAR 52.204-10.*



## G. How “Safe” is Your Information System?

Our discussion of **Part 4** would be incomplete without a brief interlude regarding the basics of safeguarding contractor information systems in **Subpart 4.19**. As the world becomes increasingly dependent on electronic systems, the potential for major cybersecurity breaches in those systems grows along with that dependence. Thus, the Government seeks to protect itself and its information on the contractor level using this Subpart and its related clause.

So, who (or what) does **Subpart 4.19** apply to? In **4.1901**, we find that it applies to “covered contractor information systems”—that is, to any information system (e.g., a set of servers) owned or operated by a contractor that processes, stores, or transmits Federal contract information. That sounds prohibitively broad on its face and likely affects all government contractors; especially when you look at the definition of “Federal contract information” (which is “information, not intended for public release, that is provided by or generated for the Government under a contract to develop or deliver a product or service to the Government, but not including information provided by the Government to the public (such as that on public Web sites) or simple transactional information, such as that necessary to process payments.”) In other words, based upon the plain language of this provision, the Government must ensure that any non-public documentation that a contractor creates or receives under a FAR-covered contract (other than simple administrative matters, like requests for payment) should be protected by an information system compliant with specific requirements that can be found at **52.204-21**.

*Question 7* – When must prime contractors flow down the requirements established at **FAR 52.204-21**? How far into the supply chain do they reach?

## H. A (Very) Quick Note on a Brand-New Subpart

This talk of cybersecurity brings us to an interesting new subpart. You might remember that in 2018, there was a bit of a kerfuffle over a company called Kaspersky Lab. In what may be one of the quickest additions to the FAR, we got **Subpart 4.20** out of the situation, as dictated by **Section 2634 of Division A of the NDAA for FY 2018**. Essentially, this subpart bars contractors from using any Kaspersky Lab product to develop anything that will be delivered to the Government because of the security concerns raised by said kerfuffle. **4.2002**. This new subpart has had, and will likely continue to have, a pretty far-reaching effect on contractors, since Kaspersky provides a suite of commonly used antivirus and cybersecurity software. Contractors should be aware of what software they’re using and ensure that they are compliant with this new subpart.

In 2020, another Subpart was added at **Subpart 4.21**. Like the restrictions on using products from Kaspersky Lab, restrictions were added relating to certain telecommunications companies with

connections to The People's Republic of China. The restriction applies to certain types of telecommunications equipment and components from certain covered companies (e.g., Huawei Technologies and ZTE Corporation). Contractors should become familiar with these restrictions, and ensure they are not using any prohibited telecommunications equipment.

### III. Privacy and the Freedom of Information Act

**FAR Part 24** identifies a tension between transparency and Government interest. While the Freedom of Information Act (FOIA) clearly promotes transparency and openness it also sets forth multiple exceptions to that general rule that can be found at subpart 24.203 and are discussed in great detail in the Department of Justice's [detailed Freedom of Information Act guide](#).

*Exercise 4 – It's Mine! My Own! My... Protected Information*

Who can submit a FOIA request? [Hint: check out **5 U.S.C. § 552(a)** and **FAR 24.201**]

True or False? All proposals submitted to the Government are subject to disclosure under FOIA. Explain your answer. [Hint: check out **24.202**]

**FAR Part 24** also discusses how the Government must protect personal private information that may be disclosed to contractors during the performance of a Government contract. While the Privacy Act deals primarily with Government databases, subpart **24.102** applies the Privacy Act to contractors who are involved in contracts related to "the design, development, or operation of a system of records on individuals on behalf of the agency." For those contracts, the contractor employees may be treated like agency employees and can be criminally prosecuted for violating the Act.

*Question 8 –* In the wake of numerous data breaches involving disclosure of personal private information, the Government promulgated a new "Privacy Training" clause that must be incorporated in certain Government contracts. What variety of contracts require inclusion of this new clause? When did the FAR clause become legally effective? [Hint: check out **24.302**, as well as the clause itself at **52.224-3**]





### Discussion Questions

1. To whom must a contracting officer provide copies of the contract or modifications once a contract is executed? [Hint: check out **4.201**]
2. True or False? The Government is permitted to accept electronic signatures of a Government contract. Explain your answer by citing to the section within **FAR Part 4** that addresses this issue.
3. How did *Food Marketing Institute v. Argue Leader Media*, change FOIA? (Hint: check out our reference materials!)
4. Under what circumstances may a government contractor employee be subject to criminal penalties for a violation of the Privacy Act of 1974? [Hint: Check out **FAR 24.102**]
5. Name a type of service that is excluded from the telecommunications restrictions set forth at **4.21**?
6. How might a current or prospective contractor use FOIA requests to their advantage? [Hint: this is an open question! Give it some thought.]

7. **FAR Part 4** is chockful of information related to the safeguarding of information. **The FAR question:**  
What is the name of the document that sets forth the procedures that must be followed by contractors to “safeguard classified information within industry.”

## Answer Key

### *Exercise 1 –*

As a general rule and as noted in FAR 4.101, the contracting officer will sign a contract **AFTER** it has been signed by the contractor.

The contracting officer should obtain a list of all partners within the partnership that have the authority to sign the contract. In lieu of the entire list, a contracting officer is also permitted to obtain an affidavit from the partnership's legal counsel that states and verifies that the person signing the contract (i) is a partner in the partnership accepting the contract and (ii) has the authority to sign and accept the terms of the contract on behalf of the partnership.

*Answer 1* – A DD 254 must be signed by contractors and subcontractors prior to performing under a classified contract with the U.S. Government. The DD 254 will identify the classification level of information that is expected to be created and/or shared, and where the information is expected to be created and stored during the term of the contract. Note that only contractors/subcontractors who have access to an approved Sensitive Compartmented Information Facility ("SCIF") are permitted to create and or store classified information outside of a Government secured facility.

### *Exercise 2 –*

52.216-18 Ordering; 52.216-19 Order Limitations; 52.216-20 Definite Quantity; 52.216-21 Requirements; 52.216-22 Indefinite Quantity

Using this guide, the Contractor will know what the Contracting Officer is looking for or the limitations of the Contracting Officer. It will help the Contractor when tailoring their offer to the Government.

*Answer 2* – True: **FAR Subpart 4.705-1(e)** states the retention time period for account payable records. (4 years), additionally, **4.704 (a)** states the calculation method to be from the end of the contractor's fiscal year in which an entry is made charging or allocating a cost to a Government contract/subcontract.

*Answer 3* – Purchase request, J&A, D&F, List of sources solicited, government estimate of price, and cost/price proposals.

*Answer 4* – Within 6 months after the date that the contracting officer receives evidence of physical completion. If contract is in litigation or under appeal or if termination actions have not been completed (if applicable).

*Answer 5* – To increase visibility of vendor sources for specific supplies and services and to establish a common source of vendor data for the Government

*Exercise 3 –*

Maximize use of commercial products and services (reps and certs)

Using contractors with successful past performance or ability to perform

Promoting competition (seeing all sources available)

Fulfill public policy objectives (reps and certs)

*Answer 6 –* If the contract received less than 80% or more in gross annual revenues from Federal contracts (etc), received less than \$25,000,000 or more in annual gross revenues from Federal contracts (etc) and the public has access to the information through the SEC or IRS.

*Answer 7 –* Contractor shall include the clause in subcontracts other than for COTS items, in which the subcontractor may have Federal contract information residing in or transiting through its information system.

*Exercise 4 –*

Any member of the public is permitted to file a request for information under the Freedom of Information Act.

False.

*Answer 8 –* Contracts for information technology which require security of IT and/or for the design, development, or operation of a system of records using commercial IT services or support services. Jan. 2017.

### **Discussion Questions Answer Key**

1. A copy must be provided to the contractor and paying office, when assigned to another office for admin.; 1 copy of the contract, mod, copy of distribution list and any changes to that office; 1 copy to each accounting and finance office whose funds are cited in the contract and when not assigned for admin but under CAS; 1 copy to the ACO; 1 copy to audit agency; and copies to organizations performing contract admin support.
2. True 4.502(d).
3. It set a new standard for determining when commercial or financial information obtained from a 3rd party can be considered confidential.
4. When an agency contracts for the design, development, or operation of a system of records on individuals on behalf of the agency to accomplish an agency function.
5. A service that connects to the facilities of a 3rd party (backhaul, roaming or interconnection arrangements).
6. It could help with BD/proposal approaches to future procurements access to what was contracted for under what terms at what price could be valuable information.
7. DoD Manual 5220.22 Volume 2, National Industrial Security Program: Industrial Security Procedures for Government Activities.

## APPENDIX

All of the following materials are linked below to PCI's website or to an online link.

### [CG4788 - Contract File Checklist](#)

A checklist of items to be included, as appropriate, in each contract file. The list is not all-inclusive, but serves as a guide to the documents and the order in which they should be filed and tabbed. The Federal Acquisition Regulation and other regulatory materials should be checked to insure that all required actions are accomplished and documents in the contract file.

### [DOJ Guidance on FOIA Exemption 4](#)

Department of Justice guidance concerning interpretation of Exemption 4 of the Freedom of Information Act after the Supreme Court's decision in *Food Marketing Institute v. Argus Leader Media* in June 2019. The opinion addresses the meaning of the word "confidential" and the guide discusses how agencies should apply the exemption going forward.

### [Food Marketing Institute v. Argus Leader Media](#)

The latest decision issued by the U.S. Supreme Court that addresses the statutory requirements needed to protect information under the Freedom of Information Act.

### [FOIA Improvement Act 2016](#)

The full text of the Freedom of Information Act in a form that shows all of the amendments to the statute made by the FOIA Improvement Act of 2016.

### [FPDS-NG User Manual](#)

Federal Procurement Data System- Next General User guide. Website:  
<https://www.fpds.gov/fpdsng/cms/index.php/en/>

### [GAO SAM Report](#)

Government Accountability Office's report to Congressional committees on Federal Subcontracting from December 2014 concerning the feasibility of linking small business subcontractors to prime contracts using procurement systems in place.

### [OIP General Guidance FOIA Improvement Act 2016](#)

Office of Information Policy of the Department of Justice's guidance concerning new requirements for Agency Annual FOIA Reports under the 2016 FOIA Amendments.

### [OMB Guidance on SubAward Executive Compensation Reporting](#)

Office of Management and Budget memorandum for senior accountable officials from August 2010 concerning the open government directive on federal spending transparency and subaward and compensation data reporting.

### [SAM Federal User Guide](#)

System for Award Management Federal User Guide updated November 2019.

### [SAM Non-Federal User Guide](#)

System for Award Management Non-Federal User Guide updated January 2020.



**FUN WITH THE FAR**  
**Episode 6**  
**FAR Parts 4 & 24**  
**Summary Outline**

**I. Introduction**

**II. FAR PART 4**

**A. General Observations**

**B. Contract Execution/Distribution**

**C. Safeguarding Classified Information**

**D. Contract Reporting (FPDS)**

**E. Contract Record Retention**

**1. Government**

**2. Contractor**

**F. System for Award Management**

**G. Executive Compensation/First Tier Subcontracting Awards**

**H. Safeguarding Information Systems/Kaspersky**

**III. FAR PART 24**

**A. General Observations**

**B. The Freedom of Information Act**

**C. Privacy**

**IV. Closing Remarks**