



SESSION GUIDE
SEASON 2023, EPISODE FOUR
FAR PARTS 7, 10, AND 11:
ACQUISITION PLANNING, MARKET
RESEARCH, DESCRIBING AGENCY NEEDS

I. Introduction

Now we know how competition works. But how does the Government figure out which competitive procedures to use? Before awarding a contract, the Government engages in a lengthy planning process to determine its needs and the best way to satisfy them. Think about buying/financing a new vehicle. Whether you buy or lease a minivan or a four-wheel-drive truck will depend on your current financial capability and whether you regularly transport passengers or haul cargo. Analogously, the Department of Defense occasionally procures complicated information technology systems with robust security systems; especially those that may create, transmit or store highly sensitive data. It also procures toilet paper and lawn mowing services for its facilities. The overall content of **FAR Parts 7, 10, and 11** emphasize that the Government's ability to properly plan, clearly articulates its need, and identify the appropriate contracting technique that will determine the overall success of the procurement and eventual contract performance.

II. Acquisition Planning

Part 7 introduces us to the basic concepts surrounding acquisition planning. It covers the acquisition plans themselves in **Subpart 7.1**. In the remainder of the Part, we find four specific facets of acquisition planning: purchase of supplies in "economic quantities" (**7.2**), contractor vs. Government performance (**7.3**), equipment lease or purchase (**7.4**), and inherently governmental functions (**7.5**). So when is acquisition planning important? **7.102(a)** tells us that it's *always* important! In fact, agencies must plan acquisitions and conduct market research for *all* acquisitions, no matter how big or small. (We'll talk about market research later in this chapter.) Additionally, **7.102(b)** tells us that the planning process must include everyone responsible for any significant portions of the acquisition. The point of acquisition planning is to make sure the Government meets its needs in an effective, economical, and timely fashion, so it only makes sense that the FAR would require this level of participation.

A. Acquisition Plans in General

We come to the general procedures for acquisition planning in **7.104**. This section tells us about the mechanics of crafting an acquisition plan. These mechanics include who should be involved, when the planning should begin, and what form the plan should take. **7.104** also tells us how various acquisition goals incorporate into acquisition planning. For example, **7.104(d)** lays out the procedures for coordinating the planning process with small business specialists.

The actual contents of written acquisition plans are detailed in **7.105**. Written acquisition plans are pretty comprehensive; in fact, there are 22 different topical areas that a written acquisition plan should address in its plan of action—and the plan of action is only one portion of the written acquisition plan! **7.105(b)**.

Question 1 – The FAR Council informs Government buyers that they must identify and assess technical, cost and schedule risks in an acquisition plan. Identify specifically where in FAR Part 7 you can find that guidance. Explain how the Government may attempt to mitigate such known risks during the procurement process. [Hint: Check out **FAR 16.103**]

FAR Part 7 also addresses additional requirements needed to address special circumstances that don't always occur in every acquisition. These circumstances are major systems (**7.106**), bundling/consolidation (**7.107**), and telecommuting (**7.108**). The extra requirements for major systems and telecommuting are fairly common-sense, and neither of their sections are especially long. By far the weightiest additional requirements lie in bundling, which **7.107** divides into three categories from broad to narrow: consolidation (**7.107-2**), bundling (**7.107-3**), and substantial bundling (**7.107-4**).

Consolidation is the broadest category. **2.101** defines it as “a solicitation for a single contract, a multiple-award contract, a task order, or a delivery order to satisfy (i) two or more requirements of the Federal agency... that have been performed under two or more separate contracts, each of which was lower in cost than the total cost of the contract for which offers are solicited; or (ii) requirements of the Federal agency for construction projects to be performed at two or more discrete sites.” In other words, consolidation is when the Government slaps work that formerly was performed under several different contracts into one new solicitation. Consolidation is only appropriate when the Government will receive a greater benefit from using a single solicitation than it would from using multiple solicitations, and is also subject to small business considerations. **7.107-2(a)**.

Bundling is a more specific variety of consolidation. Basically, it is consolidation “that is likely to be unsuitable for award to a small business concern” due to various factors, such as aggregate dollar value of anticipated award and complexity of the elements of contract performance. **2.101**. Because of the potential impact on small business participation, agencies have to justify the use of bundling in writing. **7.107-3(a)**. They also must quantify the specific benefits they will receive, based upon market research they have conducted. **7.107-3(b)**.

Finally, substantial bundling is the most specific subset of consolidation. **7.107-4(a)(1)** defines it as “any bundling that results in a contract or task or delivery order with an estimated value of (i) \$8 million or more for the Department of Defense; (ii) \$6 million or more for NASA, the GSA, and the DoE; or (iii) \$2.5 million or more for all other agencies.” Note that these thresholds apply to the cumulative estimated dollar value of the entire contract, including options. **7.107-4(a)(2)**. The baseline bundling requirements apply to substantial bundling, and agencies must further document their bundling strategy with a high degree of specificity. **7.107-4(b)**.

B. Specific Considerations for Specific Situations

Remember the four issues we mentioned above that are in **7.2** through **7.5**? As you’ve probably guessed, those issues play a major role in many (but not all) acquisition planning scenarios. For the most part, the FAR simply makes quick reference to those situations and provides a few pointers for dealing with them. For example, the guidance surrounding purchase of supplies in economic quantities in **7.2** is fairly brief and is mostly concerned with contract clauses. (We should note that “economic quantities” boils down to whether the Government should purchase particular supplies in bulk. It’s like when you’re grocery shopping and have to determine whether it makes more sense for you to buy the Costco-size pack of soda or the Harris Teeter-size one.) The guidance on whether to lease or purchase equipment in **7.4** is similarly brief.

However, the FAR pays special attention to one area: inherently governmental functions. Both **7.3** and **7.5** deal with this issue from different angles. **7.3** gives broad guidelines for when the Government should or should not restrict competition because of inherently governmental function issues, and **7.5** specifically applies the concept of inherently governmental functions to service contracts. But what is an inherently governmental function? The FAR ultimately draws its definition from OMB Circular A-76 (rev. 2003), which we have included in your resource documents that accompany this chapter. Broadly, an inherently governmental function, for the purposes of government procurement, is “a function that is so intimately related to the public interest as to mandate performance by Government employees.” This definition, which we can find in **2.101**, goes on to give several specific examples.

The reason for this special attention is twofold. First, and probably most commonly noted in government contracting, is the problem of allowing a private, non-Government employee to act on behalf of the Government and thereby bind the Government to his decision. Second is a constitutional consideration; the Government restricts certain actions, such as police services, to Government agents because delegating these functions to private employees may result in a serious violation of an individual’s constitutional rights. The FAR notes both of these issues in **2.101**, and further expounds upon them in **7.503**.

Exercise 1 – Procurement functions. The FAR identifies certain Federal procurement activities as “inherently governmental functions”. There is an eight-item list at **7.503(c)(12)**. However, **7.503(d)** describes procurement-related functions that are not inherently governmental functions.

Hypothetical: You have just reviewed a draft solicitation that requires a contractor to work on a source selection evaluation board during the procurement of a very important IT system. Explain

how you would draft this requirement to avoid any issue that the Government is requesting the performance of an “inherently government function”. Identify what steps the Government should take to avoid any appearance of a violation of any procurement integrity rules as well. [Hint: Look back at the Episode 2 Session Guide and **FAR 3.104**].

III. Market Research

When you’re looking to purchase a TV, you probably don’t just walk into a TV store and buy the first one you see, without looking at any other TVs. Instead, you research the different options available, and different places to shop, and figure out which TV will work the best for you and where to buy it. Will it fit in your TV cabinet? Is it compatible with your cable box? How expensive is it? Will the store provide a warranty or service contract? The Government does something similar. **FAR Part 10** lays out the policies and procedures prescribing the market research the Government must conduct before it takes a procurement-related action.

A. Market Research Policies and Procedures

The market research policies and procedures described in the FAR are pretty straightforward, so we will keep this section brief. Simply put, the goals of market research are to 1) make sure the Government has a “legitimate need” for a good or service, and 2) figure out the best way to fulfill that need. **10.001(a)**. Note that this doesn’t necessarily mean that agencies have to undertake the same level of market research for every single proposed acquisition. **10.001(a)(2)** lays out the appropriate levels of research for various categories of agency action, such as development of new requirements documents or solicitation of offers for acquisitions that will likely fall above the simplified acquisition threshold. **10.001(a)(3)** tells us how agencies should use the results of the market research they conduct.

Question 2 – Where can you find the eight things the Government must assess/determine after performing its market research? How does one of these determinations relate to the “Guiding Principles of the Acquisition System” we discussed in the Episode 1 Session Guide?

So how does market research actually work? It starts off with “a description of the Government’s needs stated in terms sufficient to allow conduct of market research.” **10.002(a)**. Put in slightly more conversational language, the Government needs to know enough specifics regarding what it needs that market research will actually turn up useful information. If an agency says something like “we’re going to need things for people to sit on,” that isn’t too helpful for market research. Does the agency need benches? Office chairs? Sofas? That level of specificity is what **10.002(a)** is getting at.

Once the agency has suitably described its need, it conducts market research. The first goal here is to figure out if commercial products, commercial services, or nondevelopmental items exist that would meet the Government’s needs, or could be modified to meet those needs. **10.002(b)**. Remember, the FAR places a great deal of emphasis on commercial products and commercial services because of how efficient they are. Why design a whole new office chair from scratch—a very expensive and time-consuming endeavor—when you could just buy one from Office Depot? The level of research necessary for various types of procurement, and the techniques to use, are in **10.002(b)** as well. Agencies should document the results of any market research “in a manner appropriate to the size and complexity of the acquisition.” **10.002(e)**. So, for example, the documentation of market research for an acquisition below the simplified acquisition threshold will be very different from the documentation of market research for a major system acquisition.

Question 3 – What is the current simplified acquisition threshold?

IV. Describing Agency Needs

We keep talking about how agencies must describe their needs. But how do they actually do that? For this issue, we spring off **Part 10** into **Part 11**. These two Parts function hand-in-hand; the Government must conduct market research so the Government will know how to describe what it is looking for to potential contractors, but the Government must also be able to generally describe its need before conducting market research in the first place! **Part 11** primarily deals with describing agency needs after the agency has already conducted market research, but its principles can be applied before market research as well.

Remember the Guiding Principles of the FAR back in **1.102**? They are amplified in **11.002**, which sets forth the policy to apply in describing agency needs. In fact, the FAR devotes the entirety of **Part 11** to describing agency needs in the context of the Guiding Principles. It is one thing to describe a widget, and another to ensure that the method of procuring the widget will be in line with all the Guiding Principles of the FAR. This is the role of **FAR Part 11**.

A. General Concepts

Part 11 kicks off its discussion of the procedures surrounding description of agency needs in **Subpart 11.1** with selection and development of requirements documents. A requirements document is essentially what it sounds like; it's a document an agency puts together that details what the agency requires. Agencies can create requirements documents in a plethora of ways. They can reuse existing documents, cannibalize from several existing documents, or create entirely new documents. **11.101(a)**. Additional, more specific requirements document-related guidance is in the rest of **Subpart 11.1**.

The focus on requirements documents continues into **Subpart 11.2**, which details how to use and maintain requirements documents. It is important to note here that agencies do not need to necessarily restrict themselves to requirements documents drafted within their own ranks. In fact, they are encouraged to use standardized documents; for example, the GSA maintains an Index of Federal Specifications, and several other agencies also maintain similar sets of requirements documents. **11.201(a)**. The rest of **11.2** contains guidance surrounding the contract clauses to use and maintenance of requirements documents.

Two additional general issues crop up in **11.3** and **11.4**, respectively: what materials should be used in a product, and performance and delivery schedules. The gist of the requirements in **11.3** is that agencies generally are prohibited from expressing a preference for "virgin" materials. In other words, agencies should use recycled material unless there is some compelling reason not to. **11.302(a)**. **Subpart 11.4** establishes the requirement for agencies to clearly state timelines for performance or delivery for "essential contract elements." **11.401(a)**. This is important for a variety of reasons, but **11.401(a)** cites three major ones. Factors to consider when establishing performance or delivery schedules include urgency of need, transportation time, capabilities of small business concerns, and related issues. **11.402(a) and (b)**.

Question 4 – The FAR Council identifies 9 factors that must be considered when establishing a contract delivery or performance schedule. Identify a factor that you believe might result in (i) a very short schedule and (ii) a very lengthy schedule. Explain why for each.

B. Special Circumstances

There are two major special issues we will discuss here: liquidated damages and priorities and allocations. Neither of these issues come up particularly frequently, at least not relative to the other issues we discussed in the above section. Performance and delivery schedules, for example, come up all the time! However, liquidated damages and priorities and allocations are still important, and ignorance of these issues could result in dire consequences.

Subpart 11.5 is full of lawyer-ese. Phrases like "mitigate liquidated damages" don't really appear in normal communications. So, what does all this mean? Liquidated damages are a specified amount the contractor must pay the Government. They are basically a substitute for actual damages that the

Government will incur (which may be very difficult to calculate) if the contractor falls short in performing the contract, typically by failing to deliver on time. Liquidated damages are usually used for contracts with a hard deadline, and often take the form of a per-day fee representing the estimated loss to the Government from the contractor's delayed delivery. Sometimes liquidated damages are supplemented by the amount the Government must pay to find another contractor to complete the work (which are called "reprocurement costs").

In short, liquidated damages provide a little extra insurance for the Government in case the contractor fails to perform. We should note, though, that liquidated damages are not intended to be punitive. The FAR says that liquidated damages "are not negative performance incentives" and that they should be "used to compensate the Government for probable damages." To that end, COs should "mitigate" liquidated damages by either seeking quick performance from the delinquent contractor, or by terminating the contract and repurchasing the contract from a different contractor.

Note, however, that the Government shouldn't use a liquidated damages clause in every contract. The FAR actually has some very specific guidelines that govern when a liquidated damages clause is and is not appropriate. We can find those guidelines in **11.501(a)**.

Question 5 – FAR 11.501(c) states that "If the contract contains a liquidated damages clause and the contracting officer is considering terminating the contract for default, the contracting officer should seek expeditiously to obtain performance or terminate the contract." What do you think is the purpose of this important rule?

Finally, we leave you with a brief note on priorities and allocations. **Subpart 11.6** implements the Defense Priorities and Allocations System (DPAS), which is a system for identifying contracts, subcontracts, or purchase orders that are particularly important and take priority for performance. Understanding these priorities is particularly important for contractors that do a mix of commercial and government work, since their commercial contracts may be delayed by higher-priority government obligations.

The Secretary of Commerce has empowered "delegate agencies" to rate certain contracts in accordance with DPAS. The rating system ensures that contractors know which contracts are most urgent, and that the Government can obtain expedited performance on its most urgent contracts.

DPAS has two ratings, or levels of preference: DO and DX. DO-rated contracts take priority over unrated contracts and have equal priority with all other DO-rated contracts; DX-rated contracts take priority over DO-rated contracts and unrated contracts, and have equal priority with all other DX-rated contracts. A simple way to remember this is "X over O, O over No."

Question 6 – Identify the two statutes identified in **FAR Subpart 11.6** that provide the legal basis for the Defense Priorities and Allocations System.

Discussion Questions

1. True or False? The contracting officer is required to be the government employee responsible for developing and maintaining a written acquisition plan? Explain your answer. **[Hint: Check out FAR 7.104]**

2. What specific information must be provided in the acquisition plan for service contracts or orders? **[Hint: Check out FAR 7.105]**

3. What four factors may affect the extent of the Government's market research? **[Hint: Check out FAR 10.002]**

4. True or False? Upon award of a large value non-commercial contract (e.g., exceeding \$5.5M), prime contractors are required to perform market research for subcontracting opportunities. Explain your answer.

5. FAR Part 11 explains that the use of "brand name or equal" purchase descriptions are appropriate under certain procurements. How must the procured item be described in solicitation that in this type of procurement? **[Hint: Check out FAR 11.104].**

6. What must a contracting officer include in the “liquidated damages” rate in a construction contract? **[Hint: Check out FAR 11.502(b)].**

7. The Department of Defense identifies that “consolidation” of contract requirements is different from “bundling” and therefore does not run afoul of the bundling rules set forth at FAR Part 7. What is the difference between “consolidation” and “bundling”? **[Hint: Check out the original source materials identified in this Session Guide].**

8. FAR Part 7 includes a lot of guidance how and when a Government buyer may properly “bundle” its requirements. Identify the five benefits the FAR Council has stated that may result from proper “bundling”.

Answer Key

Answer 1 – 7.105(a) The plan must address all technical, business, management, and other significant considerations that will control the acquisition. FAR 7.105(a)(7) informs that the acquisition plan must always identify and assess technical, cost, and schedule risks in every procurement. FAR 16.103 will be discussed further and addresses how the Government may attempt to mitigate known risks including, choosing the “contract type” which is probably the most effective way for the Gov’t to mitigate such known risks.

Exercise 1 – The key is to request that the offerors provide only “advisory”, “assistance”, or “support” services to the evaluation board. Note also that FAR 7.503(d)(8) states that “contractors providing technical evaluations of contract proposals” is NOT an inherently governmental function. So, limiting the SOW to “review and evaluation of technical proposals” would also be a proper way to address the issue. Lastly, any procurement of this type of service should contain a procurement integrity related nondisclosure agreement as well as an “Organized Conflict of Interest” provision which would prohibit the awardee from submitting a proposal for the work that it will be evaluating.

Answer 2 – FAR 10.001(a)(3) identifies the eight assessments/ determinations that should be performed after the conclusion of the Government’s “market research.” The Government market research will help the Government fulfill the guiding principle, to use contractors who have a track record of successful past performance or who demonstrate a current superior ability to perform, relating to 10.001(a)(3)(i), as well as “maximizing the use of commercial products and services” and “fulfill public policy objects.”

Answer 3 – The current “simplified acquisition threshold” is \$250,000 for most procurements. There are some special circumstances of which to be aware.

Answer 4 – Examples: urgency of need, reduction time, availability of product, etc. Depending on the circumstances these factors could result in a very short or very lengthy schedule.

Answer 5 – The purpose of this rule is based upon the principle that the Government has an implied obligation/ duty to mitigate its damages when dealing with a contractor who is in default. Causing a contractor to pay multiple rounds of liquidated damages and then later seeking termination for default damages will often be seen as excessive and a violation of that duty.

Answer 6 – The Defense Production Act and the Stafford Act provide the legal foundation for the U.S. Government’s Defense Priorities and Allocations System. The Stafford Act will be discussed in more detail as it relates to “emergency acquisitions” during our conversation about FAR Part 18.

Discussion Questions Answer Key

1. The acquisition planner does not have to be the assigned procurement contracting officer and can be another member of the Government's "acquisition team." Note, however, that coordination/consultation with the contracting officer is a mandatory requirement during the development of the acquisition plan. See **FAR 7.104(c)**.
2. During the planning of any "services" type contract the Government must address the use of performance-based acquisition methods. This will be discussed further in the future during our discussion of FAR Part 37.
3. The extent of the Government's market research often is affected by such factors as urgency, estimated dollar value, complexity, and past experience.
4. True. **FAR 19.702**. Any contractor receiving a contract with a value greater than the simplified acquisition threshold must agree in the contract that small business, VOSB, SDVOSB, HUBZone, 8a, and WOSB concerns will have the maximum practicable opportunity to participate. Although this obligation is always included in such large value contracts in the form of **FAR clause 52.210-1**, many prime contractors first learn of it only after a government audit of their purchasing system.
5. Items procured on a "brand name or equal" basis must be described in that manner; including a general description of those salient physical, functional, or performance characteristics of the brand name item that an "equal" item must meet to be acceptable for award. See **FAR 11.104(b)**.
6. For a construction contract, the liquidated damages rate should include the estimated daily cost of Government inspection and superintendence, an amount for other expected expenses associated with delayed completion. See **FAR 11.502(b)**.
7. Consolidation is a solicitation for a single contract, a multiple-award contract, a task order, or a delivery order to satisfy – (i) two or more requirements of the Federal agency for supplies or services that have been provided to or performed for the Federal agency under two or more separate contracts, each of which was lower in cost than the total cost of the contract for which offers are solicited. Bundling refers to a subset of consolidation. Bundling is a specific type that results in a requirement that is likely to be unsuitable for award to small business as prime contractor due to (i) the diversity, size, or specialized nature of the elements of the performance specified; (ii) the aggregate dollar value of the anticipated reward, (iii) the geographical dispersion of the contract performance sites, or (iv) any combination of the factors.
8. The five benefits the FAR Council has stated that may result from proper bundling are found in **FAR 7.107-3(c)** and include: (1) cost savings, (2) price reduction, (3) quality improvements that will save time or improve or enhance performance or efficiency, (4) reduction in acquisition cycle times, or (5) better terms and conditions.

Appendix of Resources

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

[GSA Schedule Order Checklist \(October 15, 2015\)](#)

A checklist prepared by the General Services Administration for use to assist contracting personnel in completing the actions necessary to properly issue and administer orders using GSA Schedules Program. The document contains two checklists, Checklist A for products, services not requiring a statement of work (SOW) and Checklist B for services requiring a SOW.

[Liquidated Damages – Federal Transit Administration](#)

U.S. Department of Transportation frequently asked questions and answers regarding liquidated damages last revised December 2017. The document includes the definition of liquidated damages, how to incorporate a liquidated damages clause in solicitation, helpful links and more.

[Contract Consolidation Bundling DoD 2017](#)

Department of Defense 2017 training power point on Pre and Post award acquisition requirements. This guide includes best practices and scenarios; bundling and consolidation; etc.

[NOAA Market Research Report Template](#) and [Template Above SAT](#)

A memorandum constructed in accordance with FAR 10.000 which describes the policies and procedures for conducting market research in order to arrive at the most suitable approach to acquiring, distributing, and supporting supplies and services.

[OFPP Contract Bundling White Paper \(October 2002\)](#)

OMB's Office of Federal Procurement Policy white paper regarding contract bundling, a strategy for increasing federal contracting opportunities for small business released on October 2002. The strategy presented in the white paper suggests methods for unbundling federal contracts to support small businesses in procurement.

[OMB Circular A-76 \(Revised 2003\)](#)

OMB Circular to the heads of Executive Departments and Establishments concerning the performance of commercial activities. The circular establishes federal policy for the competition of commercial activities including attachments with information regarding the inventory process, public-private competition, calculating public-private competition costs, and more.

[USAID Acquisition Plan Template](#)

U.S. Agency for International Development's acquisition plan template revised February 2018. The template includes important FAR provisions that are applicable to each section and more.

[FAR Part 7: Acquisition Planning](#)

[FAR Part 10: Market Research](#)

[FAR Part 11: Describing Agency Needs](#)

FUN WITH THE FAR
Episode 4
FAR Parts 7, 10, & 11
Summary Outline

I. Introduction

II. FAR PART 7

A. General Observations

B. Agency Responsibilities: Acquisition Plan

1. When should Planning Begin?

2. Who is Responsible for Building the Plan?

3. What Must be in the Plan?

C. Inherently Governmental Functions

III. FAR PART 10

A. When Must Agencies Conduct Market Research?

B. Why Must Agencies Conduct Market Research?

C. What Techniques can Agencies Use to Conduct Market Research?

IV. FAR Part 11

A. How Must Agencies Describe their Requirements? Requirements Documents

B. Rules for Delivery and Performance Schedules

C. Liquidated Damages & Priority Ratings

V. Closing Remarks