



PUBLIC
CONTRACTING
INSTITUTE

WORDS MATTER!!

(FAR Part 2 and Beyond)

Instructor:

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Agenda

- Contract Law -- Rules of Interpretation
- FAR PART 2 Contract Interpretation Rules
- Words that Matter – In Solicitation/Contract Provisions
- Words that Matter – In Statements of Work

Contract Law -- Rules of Interpretation

- Give each word and phrase its “plain meaning” (dictionary/common use/term of art)
 - Unless it is otherwise defined in the contract or if doing so would undermine the parties’ intent at the time they entered the contract
- The specific shall always govern over the general

Contract Law -- Rules of Interpretation

- Construe the Contract “as a whole” so that no word or provision becomes “meaningless”
- ***Contra Proferentum*** – Ambiguous contract terms are construed against the party drafting the contract
 - Patent Ambiguity
 - Disclaimer in contract

FAR PART 2 Contract Interpretation Rules

1. A word or term defined in FAR Part 2 has the same meaning throughout the FAR, unless
 - The context in which the word is used clearly requires a different meaning, or
 - Another FAR part, subpart, or section provides a different definition/meaning
 - “United States”
 - “Affiliate”
 - “Source Selection Information”

FAR PART 2 Contract Interpretation Rules

2. A different definition/meaning set forth in another FAR part, subpart, or section shall be used only for that part, subpart or section

FAR PART 2 Contract Interpretation Rules

FAR 52.202-1 Definitions (NOV 2013)

When a solicitation provision or contract clause uses a word or term that is defined in the FAR, the word or term has the same meaning as the definition in FAR 2.101, in effect at the time the solicitation was issued, unless . . .

FAR PART 2 Contract Interpretation Rules

- (a) The solicitation, or amended solicitation provides a different definition;
- (b) The contracting parties agree to a different definition;
- (c) The part, subpart, or section of the FAR where the provision or clause is prescribed provides a different meaning, or
- (d) The word or term is defined in FAR Part 31 for use in the Cost Principles and procedures

Words that Matter – In FAR Provisions

- “Day”
- “Contracting Officer” vs. “COR”
- “Shall/Must” vs. “Should” vs. “May”
- “Best Value” vs. “Low Cost”
- “Claim” v. “REA”
- “Option”
- “Unlimited Rights” vs. “Limited Rights” vs. “Restricted Rights”

Words that Matter – In the Statement of Work

- Shall/Will/May/Could/Should
- “At the sole discretion of . . .”
- “Immediate”/”Prompt”
- “Normal business hours”
- Including but not limited to . . .
- “Reasonable efforts”/”Best efforts”
- “No less than . . ./No greater than . . .”
- “No later than [date/event]”
- “Provided that . . .”

Words that Matter – In the Statement of Work

- “To the extent required by law . . .”
- “Conditioned upon, . . .”
- “Notwithstanding, anything set forth above/below”