



Introduction to the Federal Acquisition Regulation (FAR)



A basic introduction to the regulations governing the federal acquisition process



Learning Objectives

- At the end of this module, you will be able to:
 - Identify what is in the Federal Acquisition Regulation (FAR).
 - Understand how to use the FAR.
 - Be prepared to follow the rules and regulations governing small businesses. Doing so may prevent costly errors and legal problems.

The logo of the Federal Deposit Insurance Corporation (FDIC) is visible in the top left corner. It features a circular emblem with the text "FEDERAL DEPOSIT INSURANCE CORPORATION" around the perimeter and the year "1933" in the center. The emblem also includes a scale of justice and a shield.

About FDIC Small Business Resource Effort

- The Federal Deposit Insurance Corporation (FDIC) recognizes the important contributions made by small, veteran, and minority and women-owned businesses to our economy. For that reason, we strive to provide small businesses with opportunities to contract with the FDIC. In furtherance of this goal, the FDIC has initiated the FDIC Small Business Resource Effort to assist the small vendors that provide products, services, and solutions to the FDIC.
- The objective of the Small Business Resource Effort is to provide information and the tools small vendors need to become better positioned to compete for contracts and subcontracts at the FDIC. To achieve this objective, the Small Business Resource Effort references outside resources critical for qualified vendors, leverages technology to provide education according to perceived needs, and offers connectivity through resourcing, accessibility, counseling, coaching, and guidance where applicable.
- This product was developed by the FDIC Office of Minority and Women Inclusion (OMWI). OMWI has responsibility for oversight of the Small Business Resource Effort.



Executive Summary

- In order to do business with the federal government, you need to have a basic knowledge of what is in the Federal Acquisition Regulation (FAR) and how to use it.
- The FAR is a substantial and complex set of rules governing the federal government's purchasing process.
- The relevant parts for small businesses include Part 19, Small Business Programs, and Part 52, which lists the standard terms and conditions contained in a government contract.



FAR: Background

- The Federal Acquisition Regulation (FAR), which had its beginnings in the Armed Services Procurement Regulation established in 1947, is a substantial and complex set of rules governing the federal government's purchasing process.
- The FAR was codified in Title 48 of the Code of Federal Regulations (CFR) in 1984 to create a uniform structure for many federal agencies.
- The FAR is issued and maintained jointly by the Secretary of Defense, Administrator of General Services and the Administrator, National Aeronautics and Space Administration. Procurement Executives in DOD, GSA and NASA are authorized to make revisions.
- Its purpose is to ensure purchasing procedures are standard, consistent, and conducted in a fair and impartial manner.
- The FAR has recently gone through a significant rewrite to reflect and implement changes made by recent laws.



FAR: Scope

- The FAR applies to most agencies in the Executive Branch. The Legislative and Judicial branches are not required to comply with the FAR, but tend to follow it in spirit and content.
- Executive Branch agencies issue supplemental regulations that include purchasing rules unique to these agencies. Examples include:
 - Department of Defense: Defense Federal Acquisition Regulations Supplement (DFARS)
 - Navy: Navy Marine Corps Acquisition Regulation Supplement (NMCARS)
- Some “quasi-governmental” agencies, such as the United States Postal Service and the Federal Deposit Insurance Corporation, are exempt from using the FAR.




FAR: Division of Acquisition Process

- The FAR is divided into 53 parts, each part dealing with a separate aspect of the acquisition process.
 - The first six parts cover general government acquisition matters.
 - The next six parts cover aspects of acquisition planning.
 - The rest of the FAR covers other topics, such as simplified acquisition thresholds, large dollar value buys, labor laws, contract administration, applicable clauses, and forms.
- The relevant parts for small businesses include Part 19, Small Business Programs, and Part 52, which contains the standard terms and conditions contained in a government contract.



FAR Acquisition Methods: Sealed Bidding (FAR 14)

- Sealed bidding is characterized by a rigid adherence to formal procedures that aim to provide all bidders an equal opportunity.
- Once a federal agency decides to proceed with an acquisition, it must solicit sealed bids if:
 1. time permits the solicitation, submission and evaluation of sealed bids;
 2. the award will be made on the basis of price and other price-related factors;
 3. it is not necessary to conduct discussions with the responding offerors about their bids; and
 4. there is a reasonable expectation of receiving more than one sealed bid.
- The FAR requires an affirmative finding of responsibility prior to awarding the contract to the lowest bidder, i.e., the prospective awardee must have the ability and capacity to perform the contract.
- The agency must award to the responsible bidder who submits the lowest responsive bid (price).



FAR Acquisition Methods: Contracting by Negotiation (FAR 15)

- Contracting by negotiation, or competitive and non-competitive negotiation, allows more flexibility in awarding the contract. Unlike sealed bidding, the Contracting Officer (CO) may engage in discussions with offerors and may also consider non-cost factors, such as managerial experience, technical approach, and/or past performance when evaluating the proposals.
- The negotiating process begins with a Request for Proposal (RFP), which states the agency's need, anticipated terms and conditions of the contract, required information for the contractor to include, and factors that the agency will consider in evaluating the proposal and awarding the contract.
- The CO analyzes the final offers against the RFP evaluation procedures, and selects the offeror whose proposal is most advantageous to the government.



FAR: Terms and Conditions *(1 of 5)*

- Government contracts contain standard terms and conditions, called “clauses.” Many of the clauses are by regulation non-negotiable. In fact, federal contracting case law provides that a mandatory contract clause that affects fundamental acquisition policy will be read into the contract even where the government inadvertently omitted it.
- Although some terms and conditions counterparts are found in the commercial arena, many government contract clauses have no commercial equivalents.
- Prominent clauses unique to standard government contracts are:
 1. **Termination for Cause;**
 2. **Termination for the Government’s Convenience;**
 3. **Contract Changes;**
 4. **Payments;**
 5. **Specifications; and**
 6. **Inspection and Testing.**



FAR: Terms and Conditions *(2 of 5)*

■ **Termination for Default Clause**

- This clause permits the government to terminate a contract for default where the contractor breaches the contract, i.e., fails to:
 - deliver the supplies or perform the services within the time specified in the contract;
 - make progress, thereby endangering performance of the contract; or
 - perform any other material provision in the contract.
- It also entitles the government to re-procure the supplies or services required under the terminated contract, and charge the excess costs to the terminated contractor.
- Payment will only be received for items accepted by the government at the contract's price.



FAR: Terms and Conditions *(3 of 5)*

- **Termination for Convenience Clause**

- This clause permits the government to terminate the contract, at any time, without cause, when it is in “the government’s best interest.”
- Termination for convenience may not be due to any fault on the part of the contractor, but protects the government's interests by allowing it to cancel contracts for products that become obsolete or unnecessary.
- The government will make a compensation settlement for work performed, including a reasonable allowance for profit.

- **Contract Changes Clause**

- This clause enables the government to make unilateral changes to the contract during performance, so long as those changes fall within the contract’s scope.
- The government cannot use a change order to change the general nature of the contract.
- An equitable adjustment in price and delivery schedule is given if changes are ordered.



FAR: Terms and Conditions *(4 of 5)*

■ **Payments Clause**

- Prompt payment is the primary obligation of the government.
- The contract will specify the payment terms and invoicing requirements, i.e., smaller fixed-price contracts pay the total lump sum at the end of the contract, while larger contracts may allow you to invoice monthly for partial or progress payments. You must repay progress payments if the work is not performed.
- You can submit a request for interest payments if the government does not pay promptly.

■ **Specifications Clause**

- The federal government contract will contain precise specifications. You are contractually bound to deliver the product or service described in the specifications. Failure to deliver a product meeting these terms may result in termination of your contract by default.
- Never bid on a contract unless you have read and understood all of the specifications. Re-read the specifications before you start work on the contract.



FAR: Terms and Conditions *(5 of 5)*

- **Inspection and Testing Clause**

- The government may inspect and test the items you deliver to determine if they conform to contract requirements and specifications.
- The government will not accept a contractor's product unless it passes inspection.
- The type and extent of inspection and testing depend largely on what is being procured and should be stated in the contract.



FAR: Cost Principles Contracts

- **FAR Cost Principles (FAR 31)**

- FAR Part 31 defines when and to what extent costs can be recovered under a government contract.
- Before the contractor may recover a particular cost it must be (a) allowable, (b) allocable, and (c) reasonable.
- Pursuant to a standard FAR clause, the government can recover any costs initially paid to the contractor but ultimately found not allowable, reasonable, or allocable to the contract.

- **Government Audit Rights (FAR 52.215-2)**

- Under certain circumstances, the government has the right to audit a contractor's price proposal prior to negotiations.
- The government may also audit pertinent records, books, and other data of the contractor at any time up to three years after final contract payment.



FAR: Socio-economic Programs

- **Equal Opportunity and Affirmative Action (FAR 22.8)**

The contractor must not discriminate against any employee or applicant because of race, color, religion, sex, or national origin. Contractors or subcontractors must also take affirmative action to ensure that applicants and employees are treated without regard to race, color, religion, sex, or national origin. (Contracts worth more than \$10,000)

- **Subcontracting Plan (FAR 19.7)**

The contractor is required to submit a written subcontracting plan to the government. The subcontracting plan outlines the detailed efforts the contractor will make to ensure that small businesses, small disadvantaged businesses, women-owned small businesses, and businesses located in historically underutilized business zones, will have an equal opportunity to compete for subcontracts. (Contracts more than \$650,000 or \$1.5 million for construction with subcontracting opportunities)

- **Drug-Free Workplace Requirements (FAR 23.5)**

The contractor must meet certain requirements designed to keep the work place free of illegal drugs. (Contracts worth over \$100,000)



FAR: Commercial Items Acquisitions (FAR 12)

- Congress passed the Federal Acquisition Streamlining Act of 1994, Pub. L. No. 103-355, in part to capture for the federal government some of the benefits and efficiencies of commercial contracting.
- “Commercial Items” include:
 1. items, other than real property, that have been sold, leased, or licensed to the general public; or offered for sale, lease or license to the general public; and
 2. services of a type offered and sold in the commercial marketplace based on established catalog or market prices for specific tasks performed under standard commercial terms and conditions.
- The commercial item clauses are intended to mirror the terms and conditions found in the commercial marketplace, significantly reducing the burden associated with government contracting.



FAR: Supplements

- Each government agency may issue an agency acquisition supplement to the FAR, but these supplements may not conflict with or supersede relevant FAR provisions. Supplements must be read in conjunction with the FAR.
- When preparing a proposal or quote, remember to look at the relevant supplement, in addition to the FAR, to make sure added requirements don't apply. It is important to ask the agency office which regulation governs their acquisition procedures.
- One of the best-known examples of an agency supplement is the **Defense Federal Acquisition Regulation Supplement (DFARS)**, which is used by the Department of Defense (DoD).



FAR: Updates & Circulars

- You can buy a copy of the FAR in hard copy from the Government Printing Office (GPO), read it on the Internet, or buy it from a third party like CCH, Tax and Accounting.
- When a FAR is amended or a new FAR is adopted, the GSA releases a Federal Acquisition Circular (FAC), which is published in the Federal Register and prepared as replacement pages for the GSA loose-leaf.
- The loose-leaf circulars and the Internet version at [acquisition.gov/far](https://www.acquisition.gov/far) are updated shortly after FAR rules are published in the Federal Register.
- Circulars dating back to 1995 are posted on [acquisition.gov/far](https://www.acquisition.gov/far).



Key Takeaways from This Module

- You do not have to be a FAR expert to bid on and win a government contract, but you should take the time to understand the provisions in your contract that reference the FAR to avoid costly mistakes.
- The rules of doing business with the federal government are different from the commercial arena.
- Relevant parts of the FAR for small businesses include Part 19, Small Business Programs, and Part 52, which contains the standard terms and conditions contained in a government contract.
- There are a few “quasi-government” agencies that are exempt from FAR.



Sources and Citations

- Acquisition.gov, *Federal Acquisition Regulation (FAR)*
- BusinessUSA.gov, *GST*
- LexisNexis, *Zimmerman’s Research Guide—FAR*
- Small Business Administration, *FAR*
- Aaron R. Jones, ProSidian Consulting, LLC, *Introduction to the FAR*
- Shirleen Payne, ProSidian Consulting, LLC, *Introduction to the FAR*
- Business Owner’s Toolkit, *The Rulebook and Bible: The FAR*
- FindLaw, *Federal Government Contract Overview*
- Somerset County Technology Center, *Doing Business with the Federal Government: An Introduction*