



Understanding Basic Government Rules



Familiarize yourself with several laws to improve your ability to work with the Federal Government



Learning Objectives

- At the end of this module, you will be able to:
 - Identify critical regulations involved in contracting with the federal government.



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

- Federal Common Law governs how the private sector does business with the federal government.
- The procedures and rules for federal government contractors can be markedly different from commercial practice, and if not understood, can result in not landing a contract or the inability to execute it properly.
- You can minimize problems if you take the time to gain some basic knowledge of these procedures and rules, and learn how the process works.



Federal Common Law

- Federal government contracts are governed by what is known as the Federal Common Law. This body of law is completely separate and distinct from the body of law familiar to most businesses, namely the Uniform Commercial Code (UCC).
- The powers given to the federal government are set forth in the Constitution. The federal government exercises its powers through legislation and regulations issued as prescribed in legislation.
- Although the approach to the commercial and government market is similar, the procedures and rules of doing business in the government arena are different.
- The prime contract (i.e., the contract between the government and its contractors) is governed by the Federal Common Law, while the contracts between the prime contractor and its subcontractors are governed by the UCC of the respective states.



The Government's Rights

- Because the government is a sovereign entity and uses public funds, it has rights that commercial businesses do not have.
 - **Termination for Cause or Convenience:** The government has the right to cancel the contract if the need for the product or service no longer exists. The contractor is entitled to reimbursement for costs incurred.
 - **Contract Changes:** The government has the right to unilaterally revise the contract, so long as changes are within the contract parameters. The contractor is entitled to an equitable cost adjustment, but must comply with the changes.
 - **Specifications, Inspection and Testing:** The government can impose extensive audit and surveillance requirements under the terms of a contract. However, extensive and stringent requirements are usually imposed only on higher priced contracts (i.e., contracts of \$100,000 or more in value).
 - **Payments Clause:** This clause ensures the government pays promptly. Depending on contract size, payment may be made in one lump sum at the end of the contract. The contract will specify payment terms.



Agents of the Government: Contracting Officer

- The federal government conducts its business through authorized agents called Contracting Officers (COs).
- Responsibilities include:
 - COs are appointed by a written Certificate of Appointment.
 - Only COs have the authority to legally bind the government and to enter into, administer, and terminate (if necessary) contracts for the Government.
 - COs have only the authority delegated by law and agency procedures. Any action taken by a CO that exceeds the CO's actual delegated authority is not binding on the government, even if both the CO and the contractor desire the action and the action benefits the government.
 - The contractor is presumed to know the scope of the CO's authority, and cannot rely on any action of COs when they exceed their authority.



Agents of the Government: Contracting Officer's Representative

- Contracting Officer's Representative (COR) is an individual (military or civilian) designated and authorized in writing by the Contracting Officer to perform specific technical or administrative functions on contracts or orders.
- COR includes any individual performing these types of functions on contracts regardless of the term used to describe their position, specialty or assignment (e.g., alternate CORs, assistant CORs, Contracting Officers' Technical Representatives (COTRs), task order monitors, task order managers, performance assessment monitors, etc.).
- CORs serve a critical and vital role in assuring contractors meet the performance requirements of the contract in terms of quality, quantity, schedule and of course cost/price. Only contracting officers have the authority to delegate these functions and assign a COR, a COR is not authorized to further delegate any responsibility.



Learning the Rules of the Road

- All of the Federal Common Laws are publicly available and can be explained in further detail by an agency's Contracting Officer or Office of Small Business Utilization. However, even the experts do not know all the rules in detail.
- Begin to look for certain rules and develop a basic understanding of how the laws, rules, and policies interrelate.
- Review the Federal Register, the official daily publication for rules, proposed rules, and notices of federal agencies and organizations. After rules are published as "final" in the Federal Register, they are included in the Code of Federal Regulations (CFR), which "codifies" them.
- For more information regarding the Federal Register, go to [federalregister.gov/index/2013](https://www.federalregister.gov/index/2013).



Laws that Affect Government Contracting: The Early Years

PUBLIC LAW	RESULT
Purveyor of Public Affairs Act of 1795	Allowed the government to buy needed supplies and materials to perform government functions.
Civil Sundry Appropriations Act of 1861	Continued the principle of advertised procurements for the next 86 years.
Sherman Antitrust Act of 1890	Protected small companies and their labor force from large business.
Eight-Hour Work Law of 1892	Set the eight-hour workday.
Armed Services Procurement Act of 1947	Continued the sealed bid as the preferred method of procurement, placed procurement rules in one location and gave us the Armed Services Procurement Regulation, which was the beginnings of today's rulebook, the FAR.



Laws that Affect Government Contracting: Modern Updates

PUBLIC LAW	RESULT
The Davis-Bacon Act of 1931	Set the minimum wage on the construction site at the local prevailing wage.
Buy American Act of 1933	Required the government to buy only American products.
Walsh-Healey Public Contracts Act of 1936 (note that this law was drastically changed in 1994)	Required a supplier to certify that it was the manufacturer or a regular dealer. This was an attempt to do away with the "broker."
Small Business Act of 1953	Established the Small Business Administration.
Berry Amendment of 1941, (later modified in 1994, 2002 and 2006)	Mandated that the Department of Defense buys certain items from U.S. or qualifying countries.
Truth in Negotiation Act of 1962	Required both prime and subcontractors on contracts over \$500,000 to certify the cost data submitted under the solicitation.



Laws that Affect Government Contracting: Recent Reform

PUBLIC LAW	RESULT
Public Law 95-507, Amendment to the Small Business Act (1978)	Formalized the Small Business Subcontracting Plan requirement in contracts over \$500,000 to large businesses. Set goals for large prime contractors.
Federal Acquisition Streamlining Act of 1994 (FASA)	Repealed or substantially modified more than 225 statutes and pushed the contracting process into the 21 st century. Among other things, it simplified the federal procurement process, reduced paperwork burdens, and transformed the simplified acquisition process to electronic commerce.
Federal Acquisition Reform Act of 1996 (FARA) or (Clinger-Cohen Act)	Before FASA could be fully implemented, this Act became law and corrected some deficiencies in the earlier legislation and made more changes.



Federal Acquisition Streamlining Act of 1994 (FASA) *(Slide 1 of 2)*

- Changed the small purchase level from \$25,000 and under to between \$3,000 and \$100,000, and provided that all these purchases can enjoy "simplified acquisition procedures," (SAP) which in effect reserves many of these purchases for small businesses. The main purposes of SAP are to:
 - Reduce administrative costs,
 - Create fewer approval levels, and
 - Improve contract opportunities for small, small disadvantaged, small service-disabled-veteran, and small women-owned businesses.
- Mandated that the government use electronic means to issue and award small purchases. Resulted in the government attempting to go “paperless” for contracts under \$100,000.



Federal Acquisition Streamlining Act of 1994 (FASA) *(Slide 2 of 2)*

- Encouraged government buying offices to use credit cards on all procurements under \$3,000. The impact on small businesses is:
 - minimal paperwork, and
 - a real opportunity for any business that accepts credit cards to increase its business.
- Established commercial items as the preferred products for the government to buy if they meet the government need.
- Ensured that most government specifications and standards will be used only with contracts greater than \$100,000.



Federal Acquisition Regulations (FAR)

- The FAR is found at Title 48 of the CFR and is one of the most important regulatory documents for doing business with the federal government.
- The FAR was established to codify uniform policies for acquisition of supplies and services by executive agencies.
- The FAR is further defined by individual Agency Supplements that interpret FAR rules consistent with agency policies and procedures.
- Each government agency may issue supplements to the FAR, but these supplements may not conflict with or supersede relevant FAR provisions. Supplements must be read in conjunction with the FAR.
- Relevant parts of 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.
- Some “quasi-governmental” agencies, such as the US Postal Service and the FDIC, are exempt from using the FAR.



Government Purchasing Thresholds

TYPE OF CONTRACT	THRESHOLD*
Micro-purchases (credit cards)	For contracts up to \$3,000
Simplified Acquisition Procedures (SAP)	For contracts for of \$3,000 to \$150,000
Simplified Commercial	For contracts of \$150,000 to \$5,000,000
Commercial Off the Shelf (COTS)	No dollar limits, any dollar size contract
Commercial Items	For contracts over \$3,000
Sealed Bids/Negotiations	FAR Parts 14 & 15 apply to contracts \$100,000 and up

*Above thresholds may not reflect the FDIC's policies, procedures, and regulations.



Additional Rules and Statutes

RULES	REQUIREMENTS
Federal Acquisition Regulations (FAR)	Provides most of the rules for government contracts.
Defense Federal Acquisition Regulation (DFAR)	Applies to Defense contracting activities.
Competition in Contracting Act (CICA)	Intended to increase full and fair competition in government procurements.
Contracts Disputes Act (CDA)	Creates a legal framework for resolving disputes between a contractor and a procuring agency relating to the performance of most government contracts.
Procurement Integrity Act	Prohibits the release of source selection and contractor bid or proposal information.
False Statements Act	Prohibits contractors and individuals from "knowingly and willfully" making false statements which might support a fraudulent claim or which might "pervert or corrupt the authorized functions of the government agency to which the statement was made."
Anti-Kickback Act	Prohibits contractors and subcontractors from soliciting, accepting, or attempting to solicit or accept any kickbacks from their subcontractors.



Key Takeaways from This Module

- Because the federal government is a sovereign entity and uses public funds, it has rights that commercial businesses do not have.
- Government laws, rules, and policies work together as a framework for contracting.
- Knowing government laws and rules will help you better regulate your small business and be in compliance. Take the time to understand the laws and rules before you begin working with government agencies.



Sources and Citations

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