

Introduction to Contracting

Introduction. If you want to buy a new house, a car, or a personal computer, you enter into an agreement with the seller. The agreement will describe the item you are purchasing and its cost. Sometimes, a delivery date is included in the agreement. For large purchases, the transaction is described in a written contract requiring signatures in order for you to get the product. An example is buying a house or car. For those purchases, you are required to sign a contract. Commercial contract law prescribes a legally binding contract. Alternatively, when you order food at a restaurant, you are not required to sign a contract prior to receiving and eating the food. However, there is an unwritten but enforceable implied contract that requires you to pay for your food.

There is a new strategic focus throughout the Government, with agencies identifying and aligning to their core missions. As agencies strive to be more effective and customer-oriented, the strategic roles of acquisition are at the forefront. The acquisition professional, (contracting officer) in the role of the business advisor, is instrumental in making sound business decisions whether it be purchasing supplies or services, or spearheading a complex major systems acquisition.

Prior to the Federal acquisition Streamlining Act ([FASA](#)) of 1994, the award and administration of Government contracts was based on following and enforcing a set rigid rules and regulations. Government acquisition personnel took pride in knowing what the rules were and informing others on how to follow those rules. FASA introduced and encouraged commercial contracting rather than Government unique (non-commercial) acquisitions and simplified the process.

Contracting personnel are still relied upon to interpret and understand specific rules and regulations. However, in order for the Government to receive the [best value](#), which may or may not be the lowest price, contracting professionals, must also have the knowledge and capability to develop effective strategies for accessing the commercial marketplace and achieving the best business solutions. The result will be a system that works better and costs less.

When the Army purchases goods and services from the private sector, Federal law requires that the Government prepare and sign a contract in order to formally document the agreement. In addition to adhering to commercial contract law, the Army is subject to requirements imposed by Federal law, the Federal Acquisition Regulation ([FAR](#)), the Defense Federal Acquisition Regulation Supplement ([DFARS](#)), the Army Federal Acquisition Regulation Supplement ([AFARS](#)) and DoD acquisition policies.

Links have been inserted throughout the text to enable you to quickly access definitions. It will help if you first click on the View portion of the toolbar, select Toolbars, and then select Web. To access a link or definition, move the cursor over the underlined expression, press and hold the Control key as you click the left mouse button. You will note that a green arrow appears on the far left of the Web toolbar. After you have accessed and read the definition of a term, you may click on the green arrow to

return to the exact place in your text from where you accessed the hyperlink. This feature is being incorporated into other readings.

Learning Objectives:

1. Describe the roles and responsibilities of the acquisition team and a contracting officer as a business advisor.
2. Discuss the responsibilities of the contracting officer.
3. Describe procurement integrity requirements.
4. State the roles and responsibilities of the branches of Government within the procurement process.
5. Identify the statues, regulations, court and administrative rulings, and other guidance that define the procurement system.
6. Trace the Department of Defense budget cycle.
7. Recognize the constitutional and statutory authority for contracting.
8. Explain how the FAR and DFARS are organized, administered, and updated.
9. Identify the major categories of contracts outlined in the FAR.
10. Recognize the methods of procurement authorized for Government contracting.

The role and responsibilities of the acquisition team

Acquisition Team (FAR 1.102-4)

The [Acquisition Team](#) is included as an integral part of the [Guiding Principles](#) for the Federal Acquisition System. The Acquisition Team consists of all Government representatives of the technical, supply, and procurement communities, and also the customers they serve.

- Each member of the Acquisition Team is expected to exercise personal initiative and sound business judgment in providing the best value product or service to meet the customer's needs in a timely manner.
- The team members are identified beginning with the customer and ending with the contractor of the product or service. Individual team members will participate in the acquisition process at the appropriate time, sharing their specific knowledge. This team effort ensures the customer's requirement is satisfied in both an efficient and economical manner.
- Members of the team must be empowered to make acquisition decisions within their areas of responsibility, including selection, negotiation, and administration of contracts consistent with the guiding principles.
- Authority to make decisions and the accountability for the decisions made will be delegated to the lowest level within the System, consistent with law.
- Must be prepared to perform the functions and duties assigned. The Government is committed to provide training, professional development, and resources necessary for improving the knowledge and skills required to perform those duties or functions.

Acquisition Team Roles (FAR 1.102-4)

- Members of the team must be empowered to make acquisition decisions within their areas of responsibility, including selection, negotiation, and administration of contracts consistent with the Guiding Principles.
- Authority to make decisions and the accountability for the decisions made will be delegated to the lowest level within the System, consistent with law.
- Must be prepared to perform the functions and duties assigned. The Government is committed to provide training, professional development, and resources necessary for improving the knowledge and skills required to perform those duties or functions.
- The system will foster cooperative relationships between the Government and its contractors with its overriding responsibility to the taxpayers.
- Use FAR and agency-specific procurement policies and procedures. The FAR outlines procurement policies and procedures that are used by members of the Acquisition Team. When a policy or procedure is in the best interest of the Government and is not specifically addressed in the FAR, nor prohibited by law, Executive Order, or other regulation, Government members of the team should not assume it is prohibited.
- In the absence of direction, it should be interpreted as permitting the Team to be innovative and use sound business judgment that is otherwise consistent with law and within the limits of their authority.

The Role of the Contracting Officer

The [contracting officer](#), supported by the [contract specialist](#) is the key operational person in the Federal acquisition process. The authority and responsibilities are defined in FAR 1.602 as well as case law (i.e., decisions by the courts, Comptroller General, and Boards of Contract Appeals), agency supplemental regulations, and specific delegations of authority by the [head of the agency](#).

- The contracting officer must have the authority, to the maximum extent practicable and consistent with law, to determine the application of rules, regulations, and policies, on a specific contract.
- Contracting officers should take the lead in encouraging business process innovations and ensuring that business decisions are sound. Also, providing business advice to customers ensuring that customers are provided with all available options.

Appointing a Contracting Officer (CO)

A CO may be appointed as one of the following positions:

- **Procuring Contracting Officer (PCO):** The PCO manages the planning, soliciting, and awarding of contracts.
- **Administrative Contracting Officer (ACO):** The ACO administers a contract signed by the PCO (if assigned to do so). Contract Administration involves those

activities performed by government officials after a contract has been awarded to determine how well the government and the contractor performed to meet the requirements of the contract. It encompasses all dealings between the government and the contractor from the time the contract is awarded until the work has been completed and accepted or the contract terminated, payment has been made, and disputes have been resolved. As such, contract administration constitutes that primary part of the procurement process that assures the government gets what it paid for.

- **Termination Contracting Officer (TCO):** The TCO manages termination, disposal of property and other required functions following a termination action by a PCO.

At times, because of the volume and scope of an [agency's](#) contracting mission, a CO may fill all or any of the three functions (PCO, ACO, or ACO).

Significant Terms used in Federal Contracting (FAR2.101)

There are numerous terms used in Federal contracting that are unique. A list of words and terms is found in FAR 2.101, Definitions. Several of these unique terms are listed in table at the end of this document.

At times, because of the volume and scope of an agency's contracting mission, a contracting officer may fill the role of business advisor.

The Role of the Business Advisor or Contracting Officer

The business advisor must:

- Know and understand their customer's mission.
- Know how to obtain market information in an efficient manner.
- Know how to shape smart business deals, selecting the appropriate business strategy.
- Know their market segment, the products and services they typically procure.

Key Players in the Acquisition Process

Acquisition roles and responsibilities within an agency are a function of the agency's mission, policies, organization, and delegation of responsibilities.

Under the "law of the agency," one party, known as the principal, appoints another party, known as the agent, to enter into a business or contractual relationship with a third party. In Government contracting, the:

- Government is the principal.
- Contracting Officer (CO) is the agent.
- Contractor is the third party.

In short, this means that for a contract to be valid, it must be entered into by a CO that has the authority to do so. The Contracting Officer is the key operational person in the Federal acquisition process. The CO may also delegate authority for some decisions to other parties.

Contracting Officers' Authority

Since, as the Supreme Court stated in 1868, "the government ... has no hand to write or mouth to speak...It speaks and acts only through agents." The Government must authorize agents to obligate Government funds in contracts. These agents are contracting officers. Properly appointed contracting officers are the only persons authorized to sign contracts on behalf of the Government. The FAR defines [contracting officer](#) as "a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings." The acts of a Government contracting officer bind the Government, as long as they are within the limits of his authority. Authority generally comes in two forms: actual and [apparent authority](#); but only [actual authority](#) applies to Government contracting officers.

- COs may enter into, administer, or terminate contracts and make related determinations and findings.
- COs may bind the Government only to the extent of the authority delegated to them.

The appointing authority gives the contracting officer clearly written limitations that spell out the contracting officer's authority.

Information on the limits of the COs' authority is readily available to the public and agency personnel.

The contracting officer must ensure all requirements of the law, executive orders, and all other applicable procedures, including clearance and approvals, have been met before awarding a contract.

The Contracting Officer Representative

The CO may choose to delegate limited authority for certain contracting related decisions to designated individuals. Designated individuals are the Contracting Officer's Representative ([COR](#)) and the Contracting Officer's Technical Representative ([COTR](#)).

Contracting Officer's Representative's Authority

COs appoint CORs/COTRs and specify their authority in writing. The COTR works for or represents the requiring activity and manages the performance of the contractor from a technical perspective. COTR is often synonymous with COR.

CORs/COTRs may perform only those functions delegated to them, and neither acquisition nor non-acquisition personnel may sign or modify contracts or take any action reserved for the CO.

Contracting Officer's Representative's Duties

Typical duties include the following:

- Monitoring technical performance by reviewing progress reports, making plant visits, etc.
- Inspecting [deliverables](#) and preparing [receiving reports](#).
- Comparing progress with delivery schedules and cost objectives.
- Advising the CO of suspected problems with contract performance.
- Providing technical assistance to the CO regarding changes and modifications.

In addition to the CO and COTR, there are other key individuals who are involved in the acquisition process:

- Contractor
- Program Manager
- Quality Assurance Personnel
- Transportation Manager
- Logistics and Supply Manager
- Property Manager
- Auditor and Accountant
- Small Business Specialist
- Competition Advocate

Contractor

The contractor is as important in the federal acquisition process as the CO. The duties of the contractor are to:

Submit offers to the Government to enter into contractual agreements. Work with the CO and staff on contractual matters.

Implement the contractual requirements.

Work with the COR to obtain any technical assistance and guidance while implementing the contract.

Submit invoices on products accepted by the Government.

Resolve any disputes with the COR or CO.

Program Manager

Program Managers are essential to the acquisition process and represent the requiring organization.

The duties of the program/requirements manager are to:

- Identify the need for supplies or services to support their programs.
- Determine strategies for meeting the need (including in-house performance vs. contracting).
- Prepare and submit [Purchase Requests](#) (PR) to the CO.
- Prepare [Statement of Work.](#), [Statement of Objective](#), and [Performance Work Statements](#)
- Review technical and business management proposals from offerors.
- Participate in fact finding and negotiations.
- Rank proposals against technical and management evaluation factors.
- Perform contract administration management duties such as inspection and acceptance of deliverables.

Procurement Integrity Requirements

The acquisition process involves multiple participants both internal and external to the Government, all sharing the same goal: acquiring a quality product or service at a reasonable price/cost and in a timely manner. To achieve this goal, the acquisition team gathers information from sources within the Government, and from industry. As a member of the acquisition team, the contracting officer/business advisor has the responsibility of ensuring that all potential contractors receive impartial, fair, and equitable treatment throughout the acquisition process. It then becomes the contracting officer's responsibility to advise the Government participants of the Procurement Integrity Act (PIA) and its prohibitions

Official Restrictions and Prohibitions (FAR 3.104)

The following restrictions or prohibitions apply to the conduct of every Federal agency procurement official using competitive procedures for the acquisition of supplies or services from non-Federal sources using appropriated funds.

- Prohibition on disclosing procurement information - A person shall not knowingly disclose contractor bid or proposal information or source selection information before the award of a Federal agency procurement contract to which the information relates.
- Prohibition on obtaining information - A person shall not knowingly obtain contractor bid or proposal information or source selection information before the award of a Federal agency procurement contract to which the information relates.

Restrictions Related to Competitive Procedures

The following restriction applies in connection with every Federal agency procurement using competitive procedures, for a contract expected to exceed the [simplified acquisition threshold \(SAT\)](#). The requirements do not apply after the contract has been awarded or the procurement has been canceled.

Actions required of agency officials when contacted by offerors regarding non-Federal employment. The agency official who is [participating personally and substantially](#) in procurement for a contract in excess of the SAT shall:

- Promptly report the contact, in writing, to the official's supervisor and to the designated agency ethics official, and
- Reject the possibility of non-Federal employment; or
- Disqualify him or herself from further personal and substantial participation in that particular procurement until the agency has authorized the official to resume participation.

Post-Employment Restrictions

The following are post-employment restrictions that apply to former officials of a Federal agency, for services provided or decisions made on or after January 1, 1997.

- A former official of a Federal agency may not accept compensation from a contractor as an employee, officer, director, or consultant of the contractor within a period of one year after such official has:
 - Served as the procuring contracting officer, the source selection authority, a member of a source selection evaluation board, or the chief of a financial or technical evaluation team in a procurement where the contractor was selected for award of a contract in excess of \$10,000,000;
 - Served as the program manager, deputy program manager, or administrative contracting officer for a contract in excess of \$10,000,000; or
 - Personally made for the Federal agency a decision that obligated the Government for monies in excess of \$10,000,000.

Contractor Bid or Proposal Information (FAR 3.104-5)

The Procurement Integrity Act further addresses the disclosure, protection, and marking of contractor bid or proposal information, including source selection information.

- No person or other entity may disclose contractor bid or proposal information or source selection information to any person other than a person authorized, in accordance with applicable agency regulations or procedures, by the head of the agency, or the contracting officer, to receive such information.
- Contractor bid or proposal information and source selection information shall be protected from unauthorized disclosure.
- Individuals responsible for preparing material that may be source selection information shall mark the cover page and each page that the individual believes contains source selection information with the legend "Source Selection Information - See FAR 3.104."

Roles and Responsibilities of the Branches of Government

The Federal Constitution established the legal relationships that characterize our form of Government, with one of the most fundamental concept being the principle of separation of powers. Although the three branches of Government are independent, the intent of the Federal Constitution is that there will be cooperation between the three branches of the Government, with a system of checks and balances to prevent any abuse of power by one branch. All three branches of the Federal Government play a vital role in the acquisition process. Contracting in the Federal Government takes place within a

political framework. The interplay of the Executive, Legislative, and Judicial Branches results in the laws and regulations that guide the Federal Procurement System. These branches not only work together, but each check and balance the power of the others. This important concept in procurement law is described in this chapter as well as how this important interplay impacts the Federal procurement process. Associated with this balance of power is the budget process. Although the Executive Branch has the inherent right to contract, Congress can limit its power through laws such as the [Appropriation and Authorization Acts](#). It is in these Acts that the specific programs that the nation will pursue are articulated and funded. The framework of the budget process is described to provide the contract specialist the basis of the process and how it interrelates to the procurement process.

Executive Branch

The Executive Branch includes all the Federal agencies and is headed by the President of the United States. These directives include Office of Management and Budget Circulars, Office of Federal Procurement Policy Letters, and the President's Executive Orders. The most important regulations governing contracting are contained in The Federal Acquisition Regulation (FAR). Offices in the Executive Branch that play a critical role in contracting matters are addressed below.

The Attorney General represents the Executive Branch in matters pertaining to the constitutional aspects of acquisition legislation or in the prosecution of acquisition-related fraud.

The Office of Management and Budget (OMB). This office supports the President by recommending and monitoring programs and apportioning appropriated funds to each agency by time periods and activities. OMB also reviews proposed regulations for compliance with policy guidance.

The Office of Federal Procurement Policy (OFPP). This office, which is part of OMB, is particularly significant to those in contracting. OFPP provides leadership and direction to Federal procurement programs. The most fundamental statements of overall policy for the acquisition system are in the Office of Federal Procurement Policy Act (OFPPA) which applies to all executive agencies.

Duties of the OFPP.

Leadership

Leads in developing procurement systems for the Executive Branch.

Leads in establishing, developing and maintaining the FAR.

Leads and coordinates procurement-related legislation on behalf of the Executive Branch.

Advises the President and Congress on matters related to procurement.

Policy Making

Provides overall direction of procurement policy.

Prescribes Government wide procurement policies for implementation of the FAR.

Prescribes Government wide procurement regulations, procedures and

Reporting and Data Gathering

Supervises the collection, development, and dissemination of procurement data through the Federal Procurement Data System (FPDS).

Training

Provide for and directs the activities of the Federal Acquisition Institute (FAI).

Contracts

Develop standard contract forms and language.

Develop innovative contracting methods and procedures to be tested by selected executive agencies.

Coordinate the development of Government wide procurement systems standards.

Solicit the viewpoints of interested parties in the development of procurement policies, regulations, procedures and forms.

Develop policies to maximize the opportunities for participation in procurements by small businesses in general as well as those owned and controlled by socially and economically disadvantaged individuals and women.

Develop policies to promote achievement of goals for participation by small businesses in the Federal acquisition process.

Provide for Government wide awards to outstanding vendors and Federal acquisition personnel.

Public Involvement

Solicit the viewpoints of interested parties in the development of procurement policies, regulations, procedures and forms.

Develop policies to maximize the opportunities for participation in procurements by small businesses in general as well as those owned and controlled by socially and economically disadvantaged individuals and women.

Develop policies to promote achievement of goals for participation by small businesses in the Federal acquisition process.

Legislative Branch

The Legislative Branch includes not only the United States Senate and the United States House of Representatives, but also such entities as the [General Accounting Office \(GAO\)](#). The GAO is headed by the Comptroller General of the United States. GAO is informally referred to as the watchdog for the Congress. GAO performs several functions directly related to the acquisition process.

Oversight and investigations- GAO audits and investigates agency programs and management, focusing on fraud and mismanagement.

Protests- The Comptroller General is authorized to recommend decisions to agency heads on protests that are filed against the Government with the GAO

Congress provides [express](#) and [implied power](#) to affect the contracting process. Under this authority, Congress has the power to pass laws that are commonly referred to as Acts of Congress, and uses its power to create statutory authority to contract. It does this by passing appropriation acts, authorization acts and enabling and procedural acts to control Government contracting.

An appropriation act is a law which Congress passes allowing the executive branch to obtain money from the U.S. Treasury. Without it, the Executive Branch is not authorized to spend. Under the authorization act Congress may specifically determine which defense items will be purchased and in what quantity. An authorization act is a planning tool and part of the budgetary process. Among other things, it helps Congress determine what is needed and the amount of money necessary to fund the need.

The Congress has established a number of standing committees. Many committees create subcommittees to focus on specific issues. Because acquisition (particularly defense) represents such a large portion of the Federal budget, several committees and subcommittees such as those shown below monitor procurement matters.

Senate

Armed Services

Governmental Affairs

Small Business

House of Representatives

National Security

Government Reform and Oversight

Small Business

General Accounting Office

Senate	House of Representatives
Armed Services	National Security
Appropriations	Appropriations
Governmental Affairs	Government Reform and Oversight

Judicial Branch

The Judicial Branch tries all legal cases involving the Government. The Federal courts (U.S. Supreme Court, Court of Federal Circuit, Armed Service Court of Contract Appeals, Court of Federal Claims, and Contractor Appeal of Contract Officer's Final Decision) interpret laws passed by the Legislative Branch regarding policies, regulations, and actions of the Executive Branch. They may also render decisions pertaining to the terms and conditions of a specific contract and ensure the constitutionality of laws.

The major roles of the Judicial Branch are to:

- Give meaning to (or serve to interpret) laws passed by the Legislative Branch and policies and regulations originated by the Executive Branch.
- Render decisions pertaining to the terms and conditions of a specific contract.
- Ensure the constitutionality of the laws and interpret the laws.

Laws and Regulations

Laws

[The Contract Disputes Act](#) and [Competition in Contracting Act](#) are two of the most notable statutes that established authority for these administrative forums. The Contract Disputes Act provides for a [Board of Contract Appeals \(BCA\)](#) to resolve contract disputes between the contracting officer and the contractor. The Competition in Contracting Act provides for the Comptroller General to hear protests. Decisions of the Comptroller General are an important element of procurement-related case law, as they establish precedents and interpretations of policies that have Government-wide impact. Contract specialists often research and cite decisions of the Comptroller General on protests when making potentially controversial decisions relative to the solicitation or award of a contract.

Statutes

Many statutes prescribe policies pertaining to Federal acquisition. As an example, annual defense authorization and appropriation bills contain numerous policy statements and procedural requirements.

The most fundamental statements of overall policy are found in the Office of Federal Procurement Policy Act. It applies to all executive agencies. The act does not specify a set of acquisition goals. The act prescribes overall policies for promoting economy, efficiency, and effectiveness in the acquisition of property and services.

Laws and statutes are identified as Public Laws (P.L.) prior to codification in the United States Code (some laws of short duration continue to be referred to as Public Laws). Statutes are organized according to subject matter. There are 50 titles in the Code. For example, Title 10 deals with the Armed Services; Title 18 deals with Crimes and Criminal Procedures; and Title 31 deals with Money and Finance and includes the budget process. A public law citation begins with the number of the Congress followed by the number of the bill submitted for Congressional action. For example, [The Contract Adjustment Act](#) has the citation 85-804 where 85 denotes the Congress and 804 the bill number. When a law has been codified in the United States Code it is referred to as a statute. Under several statutes, administrative forums have been established to hear and decide claims, protests, and questions involving the interpretation of contracts. These are not typical courts with judges nominated by the President and approved by Congress, but are forums presided over by administrative law judges—hence the term, quasi-judicial

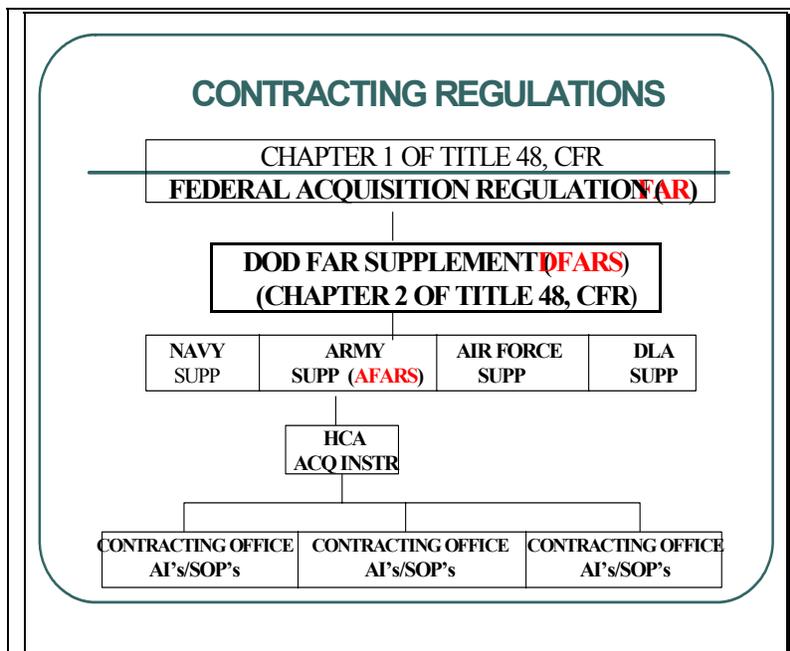
Court Involvement

Three courts hear cases related to acquisitions:

1. The United States Court of Federal Claims hears cases brought by contractors who choose to bypass the BCA.
2. The United States Court of Appeals for the Federal Circuit hears cases brought on appeal (by the contractor or the Government) from the BCA or the U.S. Court of Federal Claims.
3. The United States Supreme Court may choose to hear cases brought from the U.S. Court of Appeals.

Regulations

As mentioned previously, regulations come from a variety of sources and cover a wide range of subjects. Many of these regulations are unique to particular agencies and circumstances. In the field of contracting, policies and procedures that apply to all the agencies of the Federal Government are published as the Federal Acquisition Regulation (FAR). The Department of Defense issues a supplement to the FAR—called the Defense Federal Acquisition Regulation Supplement (DFARS)—that provides implementing guidance and addresses procurement policies unique to Defense. In addition, agencies publish their own regulations, which provide further implementing or supplementing information.



Budgeting Process Related to Contracting

The Federal budget is more than a reflection of proposals for a specific period in the future. It is an interplay between the Executive Branch comprised of its many agencies and Congress with its committees and subcommittees. Congress makes the budget decisions, while the Executive Branch is responsible for budget formulation and execution.

The Government's budget for any given [Fiscal Year \(FY\)](#) is established and executed in four basic phases:

1. Budget Formulation and Transmittal - Preparation
2. Authorization and Appropriation – Legislative considerations
3. Budget Execution and Control - Budget execution
4. Review and Audit – Review and Audit

The Federal Government operates on a fiscal year basis. The Government's fiscal year begins on October 1 and ends on September 30 of the next calendar year. Fiscal years are referred to by the year in which they end. Thus, the Federal fiscal year that starts on October 1, 2001 is the 2002 fiscal year since it ends in September 2002

Budget cycle

The Federal budget is more than a reflection of proposals for a specific period in the future. It is an interplay between the Executive Branch comprised of its many agencies and Congress with its committees and subcommittees. Congress makes the budget decisions, while the Executive Branch is responsible for budget formulation and execution.

The Federal Government operates on a Fiscal Year basis. The Government's Fiscal Year begins on October 1 and ends on September 30 of the next calendar year. Fiscal years are referred to by the year in which they end. Thus, the Federal fiscal year that starts on October 1, 1998, would be the 1999 fiscal year since it ends in September 1999.

The budget cycle operates across several calendar years and in four major stages—preparation, legislative consideration, execution and audit/evaluation. Each of these phases affects the contracting process.

Preparation

Each February, the President transmits a budget to the Congress for the fiscal year that begins on the following October 1. This transmittal is the final step in many months of collaborative fact-finding, planning, and analysis by the President, Office of Management and Budget (OMB), other Executive Office units, and Federal agencies. This process is set in motion by the issuance of budget guidelines that the President provides 19 months before the budget is prepared. For instance, guidelines for the FY 1995 budget were prescribed in the spring of 1993.

In support of the budget guidelines, managers forecast the acquisition requirements of their programs and estimate related costs for the fiscal year to come and for a number of subsequent years. In the summer before the budget is submitted, agencies prepare their budget requests. At this time, managers have another opportunity to revise their forecasts of acquisition requirements and bring them into line with the budgetary guidelines.

Agency budget requests are reviewed in detail in the fall by the OMB and presented to the President. The President submits an overall budget to the Congress in January.

Appropriations and Budget Authority

The Congress begins its formal review of the President's budget proposals in January. Congress can approve, modify, or disapprove these proposals. The result of the Congressional deliberations is a series of appropriation bills that are sent to the President and upon signature become laws. These bills provide the Federal agencies with budget authority.

The concept of budget authority requires an understanding of two terms that are basic to Federal financial management—obligations and outlays.

[Obligations](#) are legally binding commitments (e.g., contract awards) made by Federal agencies during a given period that will require outlays during the same or some future period. [Outlays](#) are checks issued or cash disbursed by the U.S. Treasury.

When appropriating funds, the Congress does not vote directly on the amount of money to be spent in the next fiscal year but rather on budget authority or the amount of obligations to be incurred. The appropriation bill gives an agency the authority to obligate the Government to outlay funds at some point in the future. The most usual method of obligating these funds is through a contract. For that reason the term obligation has special importance for the contract specialist.

Types of Appropriations

[Appropriations](#) differ by both purpose and the time period during which funds must be obligated. Since each appropriation has distinct characteristics the different appropriations are often referred to as the [color of the money](#).

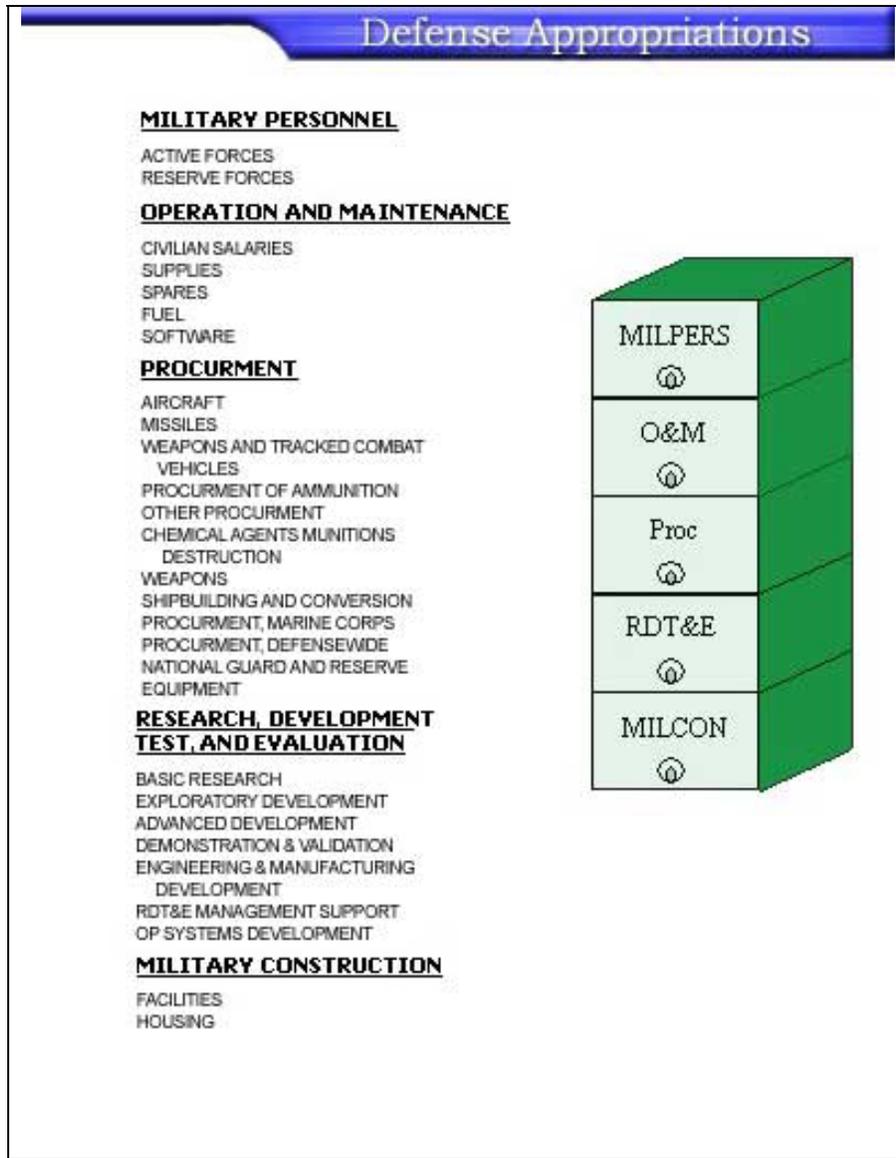


Figure 1

Purpose of Appropriations

Appropriations are organized by function. Their titles are generally descriptive of their purpose. For example, operation and maintenance appropriations provide for continuing support of Government functions. Many DoD activities have obligation authority from a number of appropriations reflecting the diversity of their mission. It is not unusual for a contract specialist to deal with a single contract that has more than one appropriation cited. For DoD the various appropriations are depicted in the figure 1.

When appropriations are not enacted by the beginning of the fiscal year, Congress enacts a [continuing resolution](#) to provide authority so agencies may continue operations to a specific date or until regular appropriations are approved. Each appropriation includes a time period in which funds must be obligated. Failure to obligate funds during

this period means that they are no longer available to the agency. There are three time periods or types of appropriations:

Annual appropriations

Sometimes referred to as fiscal year or one-year appropriations, these appropriations are available for obligation only during a specific fiscal year. Contracts funded by annual appropriations cannot obligate funds for needs of prior or future years unless statutory authorization permits or when contracts are for an end product that cannot be subdivided for performance in a separate fiscal year.

Multi-year appropriations

These appropriations become available for obligation at the beginning of the fiscal year for which they are authorized and remain available for a specified number of years. Multi-year funds are provided to acquire major systems, aircraft, ships, weapons, and long-range projects.

No-year appropriations

Sometimes referred to as **continuing appropriations**, these appropriations are available for obligation until the funds are exhausted or until the purpose for which they were made available has been accomplished. No-year funds are provided to acquire major items and projects similar to those acquired with multi-year funds.

The distinction among appropriation types is extremely important when awarding contracts. As will be discussed subsequently, the penalties for misuse of appropriated funds can be severe.

Budget Execution

After Congressional approval, appropriations bills are sent to the President for signature. Upon approval by the President, the appropriation bills become law and OMB distributes or **apportions** the funds to the agencies. This distribution process is known as apportionment. OMB apportions budget authority to each agency by time periods (usually quarters). The amount of funds apportioned to an agency determines the availability of funds for forwarding contracts.

After the requiring activity receives the funds, they initiate the contracting process which leads to a contract. The following is the typical sequence of events in the financial management process. The key financial terms are highlighted.

- The requiring office prepares a **Purchase Request (PR)** and forwards it to the organization's comptroller.
- The comptroller reviews the funds on the purchase request and **certifies they are available** in the amount requested, and in the correct fiscal year and appropriation for the work to be done.

- The comptroller makes a **commitment** that reserves these funds and forwards PR to the contracting officer.
- The contracting officer awards the contract and the comptroller records previously committed funds as **obligated**.
- Upon completion of the work the contractor submits an invoice and a check is issued which results in **expenditure**.
- Finally, when the check is cashed the U.S. Treasury makes payment and that is the **outlay**.

Review and Audit

Each agency is responsible for ensuring that their obligations and outlays conform to the authorizing and appropriations legislation. In addition, the General Accounting Office audits and investigates agency programs and management focusing on fraud and mismanagement.

Availability of funds

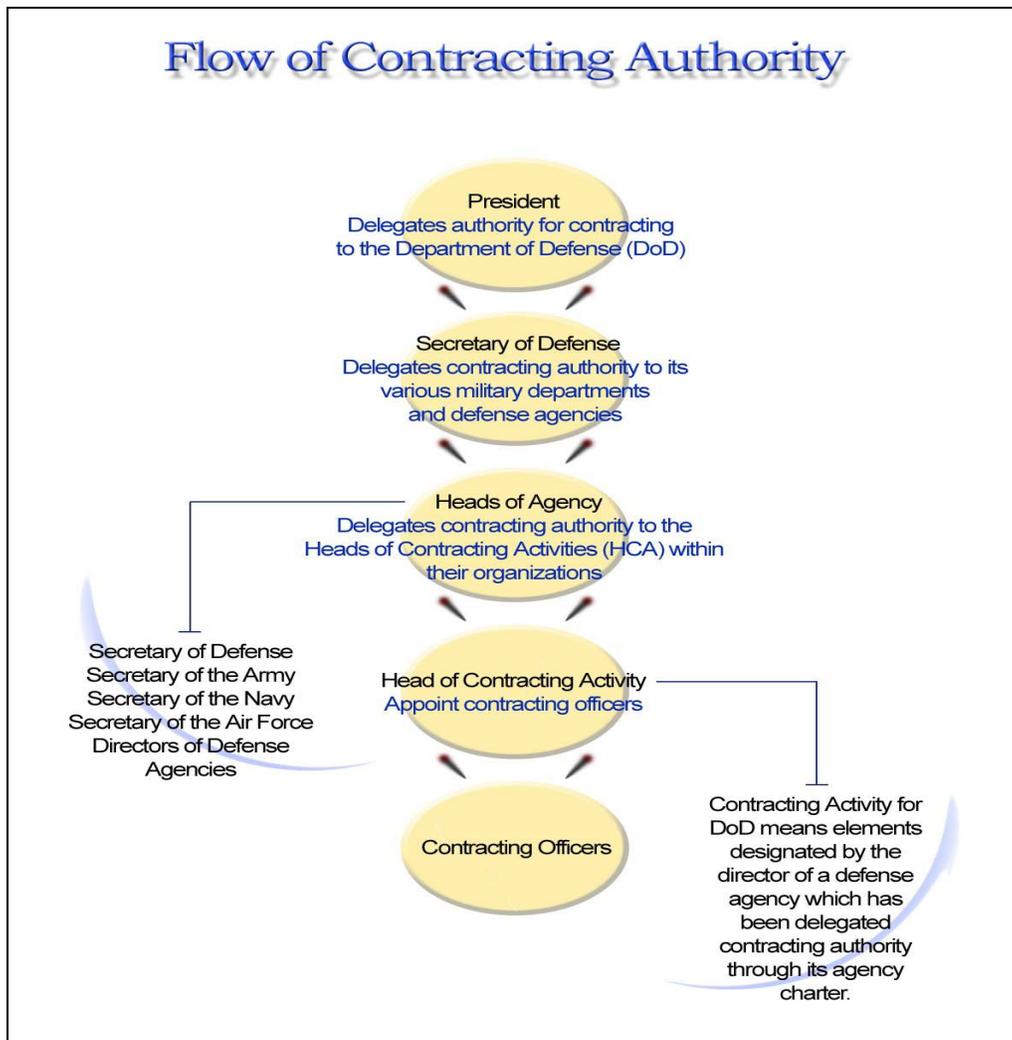
The availability of funds is of such importance that there is a specific law that prohibits obligations or expenditures in advance of or in excess of appropriations. This law is the Anti-Deficiency Act (FAR 32.702). The Act is specific about the consequences to Government employees who violate its provisions. They may be subject to suspension from duty without pay, removal from office, or a fine of up to \$5,000, and/or imprisonment of up to 2 years, depending upon the severity of the violation.

While the Anti-Deficiency act applies to all Federal Government employees, contracting officers have a particular responsibility for complying with this Act since they are the focal point for all aspects of the contracting process.

The contracting officer may not process a contractual action without written assurance from the responsible financial authority that adequate funds are available. All personnel, whose duties require them to distribute funds, certify availability of funds, and commit or obligate funds are responsible for ensuring that sufficient funds are available in the appropriate account and administrative subdivision while performing their duties. In addition, these individuals must be aware of and comply with any statutory or regulatory limitation applicable to fund availability for specified purposes. Doubts about particular uses of funds should be resolved before obligations are authorized or incurred.

Recognize the constitutional and statutory authority for contracting

Constitutional Authority: Article 1, Section 8. All laws and regulations that govern military acquisition are derived from the United States Constitution that states in Article 1, Section 8, Clause 12, that Congress shall have the power to raise and support armies and in Clause 13 to provide and maintain a navy. With the formation of the Air Force, the United States Attorney in 1948 issued an edict that the Air Force was an army within the meaning of Clause 12



Statutory Authority: Title 10, United States Code. -The Government has formulated laws that are regulatory in nature in order to implement the basic provisions of the United States Constitution. These laws have been systematically codified into 50 different titles under general topics in the United States Code (U. S. C.). Laws relating specifically to the armed forces are found in Title 10 of the Code. References to the Code are by title and section number, e.g., 10 U.S.C. § 2304.

In addition to Title 10 there are many other statutes, congressional enactments, Executive Orders, directives, Public Laws, and regulations that also govern the acquisition process.

Regulatory Authority: Federal Acquisition Regulations System.

The Federal Acquisition Regulations System codifies and publishes uniform contracting policies and procedures for all executive agencies.

The Federal Acquisition Regulations System consists of the Federal Acquisition Regulation (FAR), which is the primary document, and agency acquisition regulations that implement or supplement the FAR

Defense Federal Acquisition Regulation Supplement (DFARS) - DoD implementation and supplementation of the FAR is issued in the DFARS.

Organization of the FAR

The FAR is found in Chapter 1 of Title 48 of the Code of Federal Regulations (CFR). The FAR is divided into subchapters, parts, subparts, sections, and subsections. Each part deals with a separate aspect of acquisition.

FAR ORGANIZATION

- Organization: Parts, Subchapter, Title
 - each relates to a particular subject matter
 - Part 12=Commercial items/14 = Sealed Bidding,
- FAR numbering system:
 - Part
 - Subpart
 - Section
 - Subsection
 - Title



Numbering system of the FAR (EXHIBIT 1) (FAR 1.105-2) - The numbering system of the FAR permits the discrete identification of every paragraph. The digits to the left of the decimal point represent the part number. The numbers to the right of the decimal point and to the left of the dash represent, in order, the subpart (one or two digits), and the section (two digits). The number to the right of the dash represents the subsection. This numbering is explained at *FAR Part 1.105-2*.

Clauses and provisions (EXHIBIT 2) (FAR 52.101) - A primary goal of Government contracting is to obtain timely performance in accordance with the terms of the contract.

To this end, the FAR provides uniform policies and procedures expressed in a series of clauses and provisions. Clauses are used in both solicitations and contracts before and after award. Provisions, on the other hand, are used only in solicitations and apply only

before contract award. Clauses and provisions hold the contractor accountable for fulfilling the Government's purpose and, at the same time, provide the Government with substantial rights to monitor performance, inspect, and accept products and services. The Government has the right under these clauses to take action when performance is unsatisfactory.

Similarly, these same clauses and provisions hold the Government accountable and allow contractors to take action against the Government. These clauses and provisions are contained in Part 52 of the FAR.

FAR 52.101 describes how to use Part 52, *Solicitation Provisions and Contract Clauses*. *FAR 52.2* contains the texts of all FAR provisions and clauses. Since they appear in Subpart 52.2, they begin with 52.2. Arranged by subject matter, this subpart is in the same order as, and keyed to, the parts of the FAR. For example, provision 52.212-1 *Instructions to Offerors—Commercial Items* relates to *FAR Part 12, Acquisition of Commercial Items*. The FAR provision or clause number is then completed by a hyphen and a sequential number assigned with each section of Subpart 52.2.

Example of a clause number excerpt ([EXHIBIT 3](#)) (*FAR 52.2*)

FAR 52.301 provides a matrix to help the contract specialist determine which contract clauses and solicitation provisions are required according to the principal type or purpose of the contract. It also provides information about whether to include the clause or provision by reference.

The FAR allows contracting officers to change the language of certain, specified provisions and clauses without obtaining either a deviation or a waiver. This is particularly true of provisions and clauses prescribed by *FAR Part 12, Acquisition of Commercial Items*. However, the FAR ordinarily establishes limits on such tailoring.

FAR Definitions and Principles of the System

(*FAR 2.101, 1.102, 1.102 (d)*)

FAR 2.101 define words and terms commonly used in the FAR. The use of the words **shall** and **may** is particularly important and each has a distinctly different meaning. **Shall** is binding on contracting agencies and denotes the imperative; **may** indicates the action is discretionary. However, the words **no person may**...mean that no person is required, authorized, or permitted to do the act described.

Terms like personal initiative, sound business judgment, integrated team and professional, are used in the FAR's *Guiding Principles* at *FAR 1.102*. According to these principles, contracting people are part of a competent, well-trained profession who are expected to add value to the process and participate in integrated management teams.

In exercising sound business judgment, *FAR 1.102(d)* is specific as to what this implies:

“If a specific strategy, practice, policy or procedure is in the best interests of the Government not addressed in the FAR, and not prohibited by law (statute or case law), Executive Order, or other regulation, then the strategy, practice, policy, or procedure is a permissible exercise of authority.”

Organization of the DFARS

Introduction- The DFARS is found in Chapter 2 of Title 48 of the Code of Federal Regulations (CFR).

Numbering system of the DFARS ([EXHIBIT 4 and EXHIBIT 5](#))

The FAR requires that supplements shall be numbered and titled to correspond to the appropriate FAR number and title. Since DFARS is codified under Chapter 2 in Title 48 of the Code of Federal Regulations, its number begins with a 2.

The DFARS may either implement or supplement the FAR. **Implement** means that the information in the FAR is either expanded or interpreted in the DFARS. For example the FAR may mandate that agencies shall take a structured approach for determining profit to be given to contractors. When the DFARS gives specific guidance on the elements this structured approach should contain, it implements the FAR.

Supplement means that new information for which there is no counterpart in the FAR is added. For example, the FAR has no guidance on rating procurement requests according to priority. DoD however, because of the emergency nature of the military, assigns priorities to procurement requests. This insures that in the case of war or a national emergency, the military can acquire those items necessary to perform their mission. When the DFARS gives new information where the FAR is silent, it supplements the FAR.

The DFARS is numbered the same as its FAR counterpart whenever possible, and when implementing text this numbering system is easily followed by simply adding a 2 before the FAR cite or clause. When the DFARS supplements the FAR, the FAR numbering cannot be followed directly and a modified FAR numbering system must be followed. These are also easily detected because supplements to the FAR are denoted by the addition of the number 70 or greater for parts, subparts, sections and subsections (lower divisions such as paragraphs are denoted by the addition of the number S-70 or greater). Exhibit 4 illustrates the DFARS numbering system and Exhibit 5 illustrates the distinction between implementing and supplementing information.

Clauses and provisions ([EXHIBIT 6](#)) (*DFARS 252.1*)

DFARS 252.1 describes instructions for using provisions and clauses. DFARS provisions or clauses use a four digit sequential number in the 7000 series, e.g., 7000, 7001, 7002. This supplemental information provides guidance to be followed in addition to the DFARS implementing FAR guidance. Exhibit 6 is an excerpt from a sample clause

taken from the DFARS and the first line shows where the clause was prescribed in the DFARS. This prescription at *DFARS 201.602-70* reads:

“Use the clause at 252.201-7000, Contracting Officer’s Representative, in solicitations and contracts when appointment of a contracting officer’s representative is anticipated”.

Uniform Procurement Instrument Identification (PII) Numbers (*DFARS 204.70.*)

Policy, use the uniform PII numbering system for solicitations/contract instruments described in *204.7003* and *204.7004*

Retain the basic PII for the life of the instrument.

Administration of the FAR

The FAR is issued and maintained by two separate groups ([EXHIBIT 7](#)). Subject to the authorities discussed in FAR 1.103 revisions to the FAR will be prepared and issued through the coordinated action of two councils, the Defense Acquisition Regulations Council (DAR Council) and the Civilian Agency Acquisition Council (CAA Council). These groups are:

- **The Defense Acquisition Regulatory Council (DAR Council)** - Chaired by a representative of the Secretary of Defense, it has members representing the Army, Navy, Air Force, Defense Logistics Agency and NASA.
- **The Civilian Agency Acquisition Council (CAA Council)** - Chaired by a representative of GSA, it has representatives from 13 civilian agencies

Changes to the FAR are issued as Federal Acquisition Circulars (FACs). Numbered consecutively as issued, FACs are keyed to the last issue of the FAR (example: FAC 97–4 is the 4th issue of changes made to the 1997 edition of the FAR). Defense Acquisition Circulars (DACs) are changes to the DFARS.

Deviations and Waivers

Deviations (*FAR 1.401, DFARS 201.4*) When any solicitation provision or contract clause is inconsistent with the FAR, it is considered a *deviation*. *FAR 1.401* provides the circumstances when an action is considered a deviation and provides the following definition:

“The issuance or use of a policy, procedure, solicitation provision, contract clauses, method or practice of conducting acquisition actions of any kind at any stage of the acquisition process that is inconsistent with the FAR.”

There are two types of deviations: **individual**—those affecting only one contracting action—and **class**—those affecting more than one. [Agency heads](#) or their designees may

authorize an individual deviation. If any agency finds it will require a class deviation on a permanent basis, they propose an appropriate FAR revision.

The authority to approve deviations varies. *DFARS 201.4* states that the Director of Defense Procurement, Office of the Under Secretary of Defense (Acquisition and Technology), is the approving authority within DoD for certain individual and all class deviations.

Waivers - in general, Government officials do not have the authority to waive statutory requirements. However, Congress has provided such authority in a number of statutes. For example, heads of agencies may waive the requirements of the *Buy American Act* upon determining that the cost of compliance is unreasonable. In every case, a specific statutory authority is necessary for a waiver to be granted.

Special Categories of Contracts Described in FAR

Throughout the FAR, specific guidance is provided for purchasing products or supply-type items. In addition to providing policies and procedures for acquiring supply items, the FAR also gives detailed guidance for buying what is described as **special categories of contracting**. These special categories are listed below along with a brief description of each and the FAR chapter, which applies.

Special categories of contracting (Found in FAR Subchapter F, Parts 34-41)

A Major systems acquisitions (*FAR Part 2.101, FAR 34*) is a combination of hardware, equipment, and software that will function together to produce the capabilities to fulfill a mission need. A system is considered major if it is estimated to require an eventual total expenditure for Research, Development, Test and Evaluation of more than 115 million in FY 1990 constant dollars or for procurement of more than 540 million in FY 1990 constant dollars.

Research and development (*FAR 35*) The primary purpose of research and development contracts is the advancement of scientific and technical knowledge and the application of that knowledge to achieve agency and national goals. Unlike contracts for supplies and services, most R&D contracts are directed toward objectives for which the work or methods cannot be precisely described in advance.

Construction and architect-engineer contracts (*FAR 36*) mean the construction, alteration, or repair of buildings, structures, or other real property. Architect and engineering services are professional services, which are required to be performed by a person licensed to provide these services.

Service contracting (*FAR 37*) - These include all services where personnel are tasked to perform a function instead of furnishing a product.

Acquisition of **information technology** (*FAR 39*) Information technology means any equipment or interconnected systems of equipment that is used in the automated acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information.

Purchase **utility services** means furnishing electricity, natural, or manufactured gas, water, sewerage, thermal energy, chilled water, steam, hot water. Federal policy requires that the Federal Government obtain utility services from the most advantageous sources.

Methods of Procurement

The FAR provides guidance on selecting the appropriate method of procurement, and based upon this guidance, the choice is the responsibility of the contracting officer. This choice requires the full range of contracting skills. The requirement must be well understood and the pros and cons of the methods must be evaluated in the context of meeting this requirement while adhering to the **Guiding Principles** of the Federal Procurement System. The process must also be fair to prospective contractors.

Translating Requirements into Contracts - There are three basic methods by which requirements can be translated into contracts:

- Simplified Acquisition Procedures (SAP). Read the following for more information on **simplified acquisition procedures**.
- Sealed bidding. Read the following for more information on **sealed bidding**. Read the following for more information on **two-step sealed bidding**.
- Contracting by negotiation. Read the following for more information about **contracting by negotiation**.

Simplified acquisition procedures (SAP) (*FAR 13.3*) method of procurement were established to streamline the procurement process by reducing administrative costs and enhancing the opportunities for small and disadvantaged firms to compete for awards. SAP is limited to purchases whose estimated value does not exceed \$100,000. This is the preferred method of procurement for such purchases.

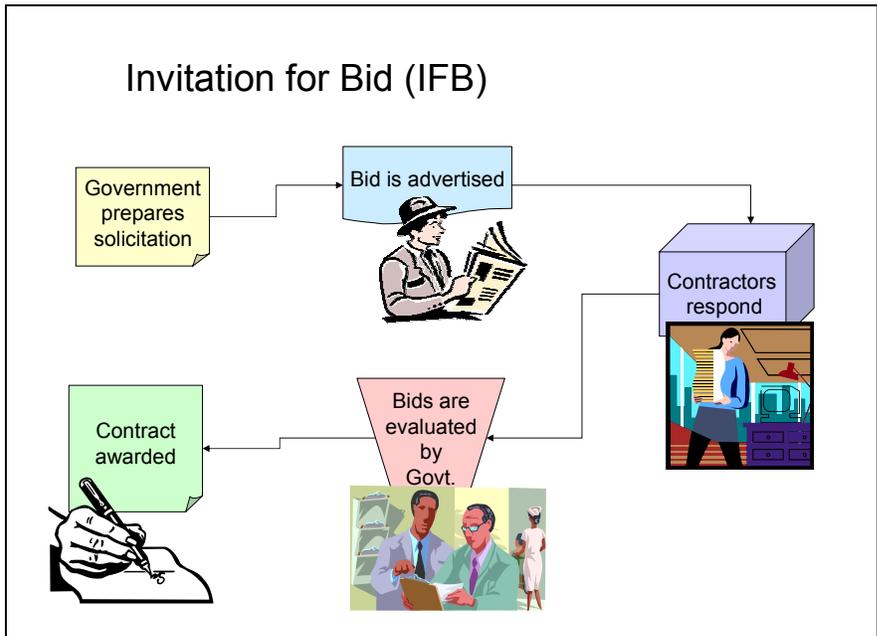
A special subset of the SAP is micro-purchases, which are purchases of \$2500 or less. Given the comparatively small size of these procurements, the procedures have been further streamlined to minimize administrative costs. The Government-wide commercial purchase card or International Merchant Purchase Authorization Card (IMPAC) is the preferred method for making micro-purchases.

Request for Quotations (RFQ) This method of solicitation is used when award will be made using simplified acquisition procedures in *FAR Part 13*. The process begins when the Government advertises the requirement formally via the RFQ. When a contractor responds to the RFQ by providing price, availability and other pertinent product information, they have provided the Government with a **quotation**. After the government considers quotations from all interested vendors, it issues an order to the one

it considers best qualified to supply the item. Issuing this order constitutes the Government’s offer to purchase the item. A legally binding agreement exists at the point when the supplier accepts the Government’s offer by signing and returning it or by substantial performance.

Sealed bidding (FAR 14.101) method of procurement employs competitive bids, public opening of bids, and award to the low responsive and responsible bidder. It is generally used for procurement of supplies and services that can be precisely described and competed only on the basis of price and price-related factors. Contracting Officers use sealed bids if the four conditions are met in *FAR 6.401 (a)*. These conditions are:

1. if 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 offers about their bids;
4. There is a reasonable expectation of receiving more than one sealed bid.



Invitation for Bids (IFB) (*FAR 14.2*) this method of solicitation is used in a sealed bidding procurement and is discussed in *FAR 14.2*. The IFB is not an offer by the Government to purchase goods and services. The prospective contractor’s bid is intended to be the offer and the Government’s award is the acceptance.

Contracting by negotiation (FAR 15) this method of procurement involves the exchange of information between the Government and industry, both prior to and after proposal submission. Contracting by negotiation allows for award on a basis other than low price. Factors such as past performance, technical excellence, management capability and cost realism may be considered. If the contracting officers have decided to use

competitive proposals rather than sealed bidding, they shall briefly explain, in writing, which of the four conditions in *FAR 6.401 (a)* have not been met.

Request for Proposal (RFP) (*FAR 15.203*) this is the major form of solicitation in negotiated procurements and is discussed in *FAR 15.402*. The RFP is not an offer, but like the IFB, requests the proposed to submit an offer. The Government may accept the offer and thereby create a binding contract. Alternatively, the Government can choose to negotiate with all offerors within the [competitive range](#) before making the award.

Two-step sealed bidding (*FAR 14.5*) this combines elements of sealed bidding and negotiation. It is designed to obtain the benefits of sealed bidding when adequate specifications are not available. The first step consists of requesting, evaluating, and discussing, if necessary, a technical proposal. No pricing is involved. The objective is to determine the acceptability of the supplies or services offered. The second step involves the submission of sealed price bids by those who submitted acceptable technical proposals in step one.

Step Two involves the submission of sealed priced bids from only those who submitted acceptable technical proposals in step one. The bids are publicly opened, then evaluated, and award is made to the lowest, responsive, responsible bidder.

Review Questions

1. Describe the roles and responsibilities of the acquisition team and a contracting officer as a business advisor. ([Answer1](#))
2. Discuss the responsibilities of the contracting officer. ([Answer2](#))
3. Describe procurement integrity requirements. ([Answer3](#))
4. State the roles and responsibilities of the branches of Government within the procurement process. ([Answer4](#))
5. Identify the statues, regulations, court and administrative rulings, and other guidance that define the procurement system. ([Answer5](#))
6. Trace the Department of Defense budget cycle. ([Answer6](#))
7. Recognize the constitutional and statutory authority for contracting. ([Answer7](#))
8. Explain how the FAR and DFARS are organized, administered, and updated. ([Answer8](#))
9. Identify the major categories of contracts outlined in the FAR. ([Answer9](#))
10. What are the three basic methods by which requirements can be translated into contracts? ([Answer10](#)):

EXHIBIT 1

Example of How the FAR is Numbered

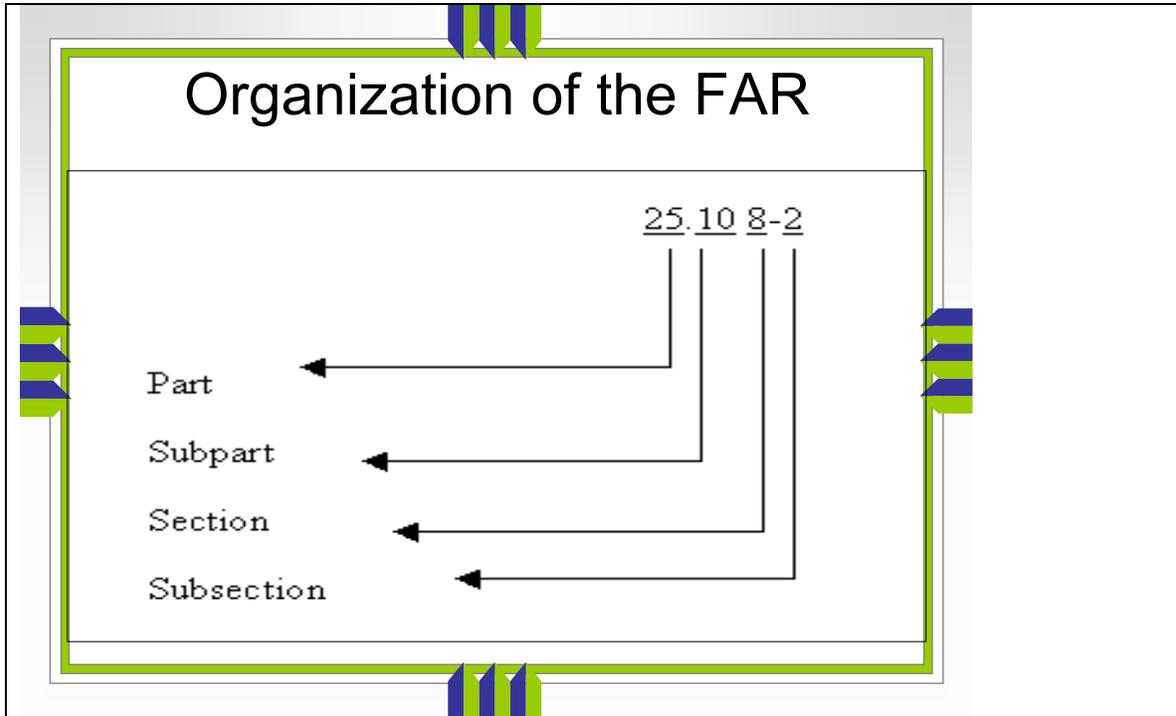


EXHIBIT 2

Numbering of FAR Clauses and Provisions

The following example illustrates the makeup of the FAR provision or clause number

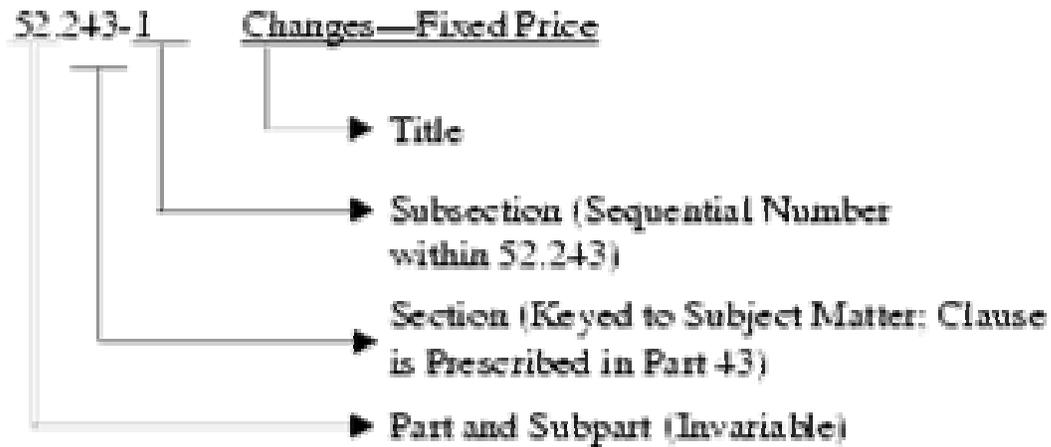


Figure 1

EXHIBIT 3

Excerpt from FAR Provision 52.212-1 Instructions to Offerors—Commercial Items

As prescribed in 12.301(b)(1), insert the following provision: Instructions to Offerors—Commercial Items (Oct 2000)

Submission of offers. Submit signed and dated offers to the office specified in this solicitation at or before the exact time specified in this solicitation. Offers may be submitted on the SF 1449, letterhead stationery, or as otherwise specified in the solicitation. As a minimum, offers must show—

- The solicitation number;
- The time specified in the solicitation for receipt of offers;
- The name, address, and telephone number of the offeror;
- A technical description of the items being offered in sufficient detail to evaluate compliance with the requirements in the solicitation. This may include product literature, or other documents, if necessary;
- Terms of any express warranty;
- Price and any discount terms;
- *Remit to* address, if different than mailing address;
- A completed copy of the representations and certifications at FAR 52.212-3;
- Acknowledgment of Solicitation Amendments;
- Past performance information, when included as an evaluation factor, to include recent and relevant contracts for the same or similar items and other references (including contract numbers, points of contact with telephone numbers and other relevant information); and ...
- Period for acceptance of offers. The offeror agrees to hold the prices in its offer firm for 30 calendar days from the date specified for receipt of offers, unless another time period is specified in an addendum to the solicitation.

(End of Provision)

EXHIBIT 4

DFARS Numbering System

FAR	Is Implemented As	Is Supplemented As
15	215	215.70
15.4	215.4	215.470
15.404	215.404	215.404-70

EXHIBIT 5

How the DFARS Supplements and Implements the FAR

FAR Cite	DFARS Cite	Comment
FAR 1.602-2 Responsibilities	DFARS 201.602-2 Responsibilities	The FAR and DFARS both contain guidance on the responsibilities of the contracting officer and both have the same number. The DFARS, however, provides further guidance for those in DoD and therefore <i>implements</i> the FAR.
<silent>	DFARS 201.602-70	The <i>70</i> indicates that the FAR is silent on the guidance given at this DFARS cite and therefore <i>supplements</i> the FAR.

EXHIBIT 6

Sample DFARS Clause

252.201-7000—Contracting Officer’s Representative

As prescribed in 201.602-70, use the following clause:

CONTRACTING OFFICER’S REPRESENTATIVE (DEC 1991)

Definition.

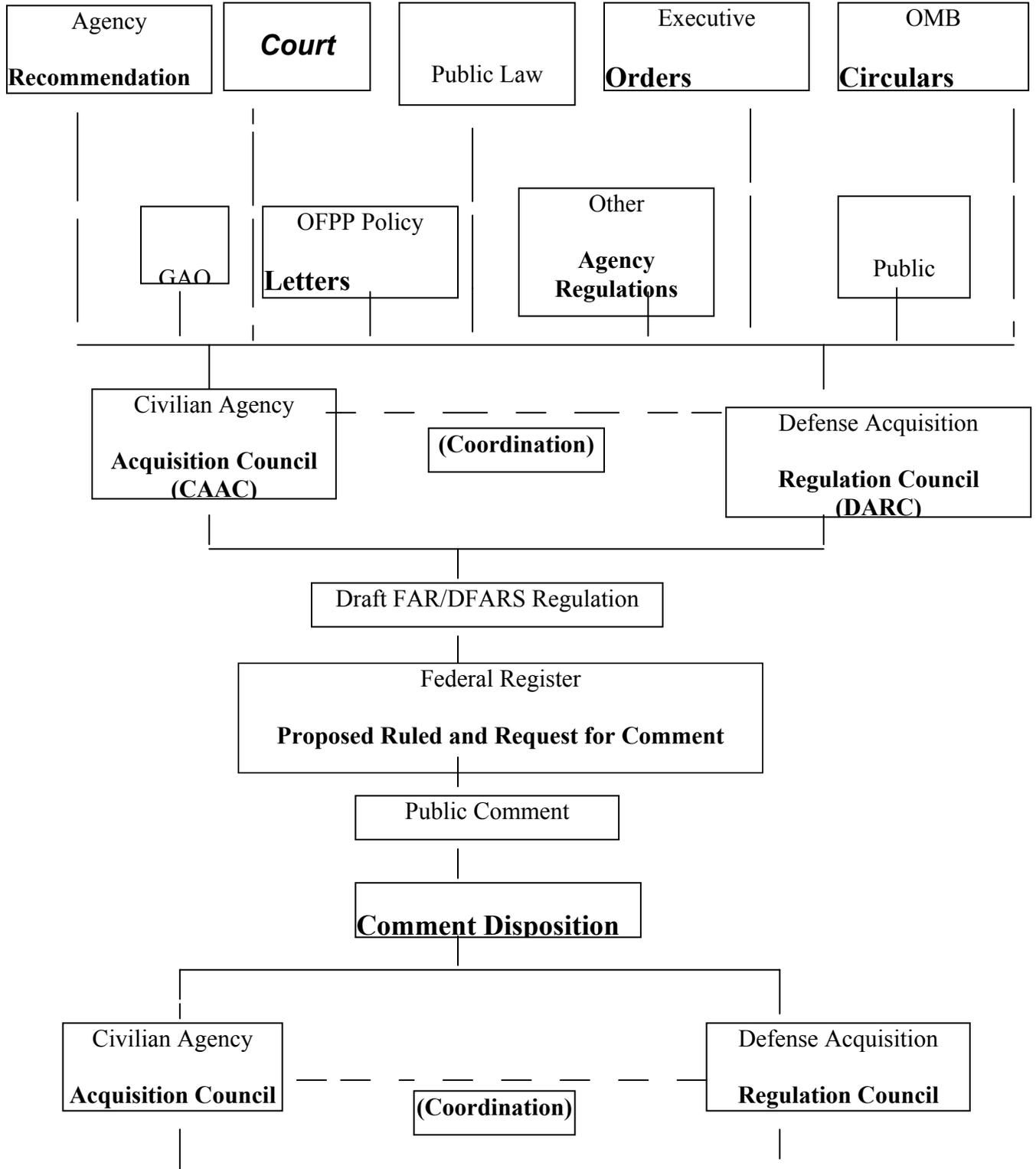
“Contracting officer’s representative” means an individual designated in accordance with subsection 201.602-2 of the Defense Federal Acquisition Regulation Supplement and authorized in writing by the contracting officer to perform specific technical or administrative functions.

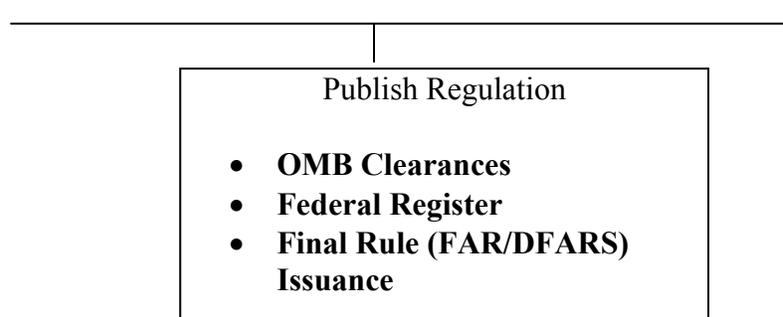
(b) If the Contracting Officer designates a contracting officer’s representative (COR), the Contractor will receive a copy of the written designation. It will specify the extent of the COR’s authority to act on behalf of the contracting officer. The COR is not authorized to make any commitments or changes that will affect price, quality, quantity, delivery, or any other term or condition of the contract.

(End of clause)

EXHIBIT 7

The Regulatory Process
Where the FAR/DFARS Come From





Glossary

Acquisition	The acquiring by contract with appropriated funds of supplies or services (including construction) by and for the use of the Federal Government through purchase or lease, whether the supplies or services are already in existence or must be created, developed, demonstrated, and evaluated. Acquisition begins at the point when agency needs are established and includes the description of requirements to satisfy agency needs, solicitation and selection of sources, award of contracts, contract financing, contract performance, contract administration, and those technical and management functions directly related to the process of fulfilling agency needs by contract.
Acquisition Planning	The process by which the efforts of all personnel responsible for an acquisition are coordinated and integrated through a comprehensive plan for fulfilling the agency need in a timely manner and at a reasonable cost. It includes developing the overall strategy for managing the acquisition
Acquisition team	Acquisition Team for a specific acquisition consists of all Government acquisition participants, customers, and contractors.
Actual Authority	Is divided into express authority and implied authority. Express authority means that a principal, in explicit written or oral language, delegates to the agent general or specific duties which the agent can perform. The best source of an agent's express authority is the appointing document itself. For Government contracting officers, the appointing document is the SF 1402, Certificate of Appointment, also called a warrant . Implied authority is sometimes referred to as "incidental" authority. It includes those details required to accomplish the tasks in the express delegation. It may depend on such things as custom and usage of the trade. Government contracting

	officers perform the various duties in their position descriptions, including "other duties as assigned", under the concept of implied authority. The duties are all incidental to the express authority granted on the warrant.
Agency	A relationship in which one person (the principal) consents to have another person (the agent) act on his behalf and subject to his control. An agent, then, is someone working on behalf of, for the benefit of, and under the control of the principal. Actions of an agent, if within the scope of his authority, are treated as acts of the principal, i.e., the principal is bound by the acts as if he himself had committed them. Giving someone a power-of-attorney is an example of creating an agency relationship
Agency head or head of the agency	The Attorney General, Administrator, Governor, Chairperson, or other chief official of an executive agency, unless otherwise indicated, including any deputy or assistant chief official of an executive agency.
Apparent Authority	Apparent authority in the commercial world is applied in the interest of fairness when a third party believes it dealt with a bona fide agent of a principal, but in fact that agent had no authority, or not enough authority, to bind the principal. Apparent authority does not apply to Government agents. Agents of the Government, including contracting officers, cannot bind the Government beyond the actual authority conferred upon them.
Appropriations	A provision of law (not necessarily in an Appropriation act) authorizing the expenditure of funds for a given purpose. A fund authorization setup by an act of the Congress which permits a department or other governmental agency to obligate the federal government to pay for goods or services. Appropriations may last for different periods of time Usually, but not always, an appropriation provides budget authority
Appropriation and Authorization Acts.	Provides an agency the authority to obligate the Government to outlay funds at some point in the future..
Army Federal Acquisition Regulation Supplement (AFARS)	Implements and supplements the Federal Acquisition Regulation (FAR) and the Department of Defense FAR Supplement (DFARS) to establish uniform policies for Army acquisition. It does not restrict the exercise of good business judgment or stifle innovation
Assignment of claims	Transfer or making over by the contractor to a bank, trust company, or other financing institution, as security for a loan to the contractor, of its right to be paid by the Government for contract performance
Best value	The expected outcome of an acquisition that, in the

	Government's estimation, provides the greatest overall benefit in response to the requirement.
Board of Contract Appeals	The Armed Services Board of Contract Appeals (ASBCA), established by charter within the department of Defense, is a single board consisting of civilian attorneys. Its function is to decide contract disputes (usually relating to contract performance or termination) under the Contract Disputes Act of 1978. Civilian agency disputes are heard by similar boards in the various agencies. These boards furnish the greatest number of procurement law decisions, and their decisions are binding unless overturned by the courts.
Bundling	Consolidating two or more requirements for supplies or services, previously provided or performed under separate smaller contracts, into a solicitation for a single contract that is likely to be unsuitable for award to a small business concern due to -- (i) The diversity, size, or specialized nature of the elements of the performance specified; (ii) The aggregate dollar value of the anticipated award; (iii) The geographical dispersion of the contract performance sites.
Change order	A written order, signed by the contracting officer, directing the contractor to make a change that the Changes clause authorizes the contracting officer to order without the contractor's consent.
Color of money	An appropriation category of funds. Each category has a different purpose and fund code.
Commerce Business Daily (CBD)	The publication of the Secretary of Commerce used to fulfill statutory requirements to publish certain public notices in paper form.
Competitive Range	Based on the ratings of each proposal against all evaluation criteria, all of the most highly rated proposals, unless the range is further reduced for purposes of efficiency. (FAR 15.306)
Competition in Contracting Act (CICA)	The Competition in Contracting Act of 1984 (CICA), at 10 U.S.C. 2304, requires the Department of Defense to obtain full and open competition in its procurements. CICA permits restricted competition, only if the acquisition is supported by a Justification and Approval (J&A). The applicable policies and procedures are prescribed in Federal Acquisition Regulation (FAR) Part 6. The overriding mandate of the Competition in Contracting Act is for "full and open competition" in government procurements obtained through the use of competitive procedures. Although exceptions are

	authorized, the Contracting Officer has a responsibility to document their decision when full and open competition is not sought.
Continuing Resolution (CR)	Legislation enacted by Congress to provide budget authority for specific ongoing activities in cases where the regular fiscal year (FY) appropriation has not been enacted by the beginning of the FY. A Continuing Resolution (CR) usually specifies a designated period and maximum rate at which the agency may incur obligations, based on the rate of the prior year, the President's budget request, or an appropriation bill passed by either or both Houses of the Congress. Normally, new programs cannot be started under a CR. Budget authority resulting from legislation introduced as a joint resolution and enacted by the Congress to provide authority for federal agencies to continue in operation until a specified date or until the regular appropriations are enacted. The Continuing Resolution usually specifies a maximum rate at which obligations may be incurred based on the rate of the prior year, the President's budget request, or an appropriation bill passed by either or both Houses of the Congress. Obligations under Continuing Resolution Authority are usually controlled by apportionment
Consent to subcontract	The contracting officer's written consent for the prime contractor to enter into a particular subcontract.
Contract	A mutually binding legal relationship obligating the seller to furnish the supplies or services (including construction) and the buyer to pay for them. It includes all types of commitments that obligate the Government to an expenditure of appropriated funds and that, except as otherwise authorized, are in writing. In addition to bilateral instruments, contracts include (but are not limited to) awards and notices of awards; job orders or task letters issued under basic ordering agreements; letter contracts; orders, such as purchase orders, under which the contract becomes effective by written acceptance or performance; and bilateral contract modifications. Contracts do not include grants and cooperative agreements covered by 31 U.S.C.6301, et seq. For discussion of various types of contracts, see part 16.
Contract Adjustment Act	The Contract Adjustment Act P.L.85-804, empowers the President to authorize agencies connected with the national defense to enter into, amend, and modify contracts without regard to certain other provisions of law when such action would facilitate the national defense. This authority gives contracting activities broad discretion

	<p>in three general areas:</p> <p>(1) amending contracts without consideration, (2) correcting mistakes, and (3) formalizing informal commitments.</p>
Contract administration office	<p>Contract administration office means an office that performs -</p> <p>(1) Assigned post award functions related to the administration of contracts; and (2) Assigned preaward functions.</p>
Contract clause or clause	<p>A term or condition used in contracts or in both solicitations and contracts, and applying after contract award or both before and after award</p>
Contract Disputes Act	<p>The Contract Disputes Act of 1978, as amended, 41 U.S.C.601-613, provides that a contractor may appeal a contracting officer's final decision to the appropriate Board of Contract Appeals or to the United States Court of Federal Claims. A contractor has ninety days from receipt of a contracting officer's final decision to file an appeal with the appropriate Board of Contract Appeals.</p>
Contract modification	<p>Any written change in the terms of a contract</p>
Contract Specialist	<p>Assists the contracting officer and advises customers on their acquisition-related roles as well as the development and implementation of strategies needed to assure that supplies and services are available when needed to meet mission requirements. Understanding Sourcing (Commercial/Government Practices)--Identify possible sources for the acquisition through effective market analysis and knowledge of suppliers. Limit competition when it is appropriate to the acquisition situation based on business strategies and market environments.</p>
Contracting	<p>Purchasing, renting, leasing, or otherwise obtaining supplies or services from nonfederal sources. Contracting includes description (but not determination) of supplies and services required, selection and solicitation of sources, preparation and award of contracts, and all phases of contract administration. It does not include making grants or cooperative agreements</p>
Contracting activity	<p>An element of an agency designated by the agency head and delegated broad authority regarding acquisition functions.</p>
Contracting office	<p>An office that awards or executes a contract for supplies or services and performs post award functions not assigned to a contract administration office</p>
Contracting officer	<p>A person with the authority to enter into, administer, and/or terminate contracts and make related</p>

	determinations and findings. The term includes certain authorized representatives of the contracting officer acting within the limits of their authority as delegated by the contracting officer. "Administrative contracting officer (ACO)" refers to a contracting officer who is administering contracts. "Termination contracting officer (TCO)" refers to a contracting officer who is settling terminated contracts.
Contracting Officer Representative(COR)/Contract Officer Technical Representative (COTR)	Also referred to as Contracting Officer Technical Representative. A person designated by the Contracting Officer to assist in the technical monitoring or administration of a contract. Procedures vary from agency to agency, but generally a COR must be designated in writing with a copy furnished the contractor and the contract administration office. The designation does not include any authority to make any commitments or changes that affect price, quality, quantity, delivery, or other terms and conditions of the contract.
Defense Federal Acquisition Regulation Supplement (DFARS)	applies to purchases and contracts by DoD contracting activities made in support of foreign military sales or North Atlantic Treaty Organization cooperative projects without regard to the nature or sources of funds obligated, unless otherwise specified in this regulation.
deliverables	What the contractor is to provide to the Government and when it is required. Deliverables are those outputs that are essential and a part of the performance requirement's summary. They are expressed in concise, easily understood, measurable terms.
Express Power	Authority expressly conferred upon an agent
Federal Acquisition Streamline Act (FASA)	This act establishes policies and procedures for acquiring "commercial" items, authorizes task order contracting, establishes "simplified acquisition procedures" for contracts at or under \$100,000, promotes electronic commerce and otherwise streamlines the acquisition process.
Federal Acquisition Regulation (FAR)	Is the primary regulation for use by all Federal Executive agencies in their acquisition of supplies and services with appropriated funds. It became effective on April 1, 1984, and is issued within applicable laws under the joint authorities of the Administrator of General Services, the Secretary of Defense, and the Administrator for the National Aeronautics and Space Administration, under the broad policy guidelines of the Administrator, Office of Federal Procurement Policy, Office of Management and Budget. The FAR precludes agency acquisition regulations that unnecessarily repeat, paraphrase, or

	otherwise restate the FAR, limits agency acquisition regulations to those necessary to implement FAR policies and procedures within an agency, and provides for coordination, simplicity, and uniformity in the Federal acquisition process. It also provides for agency and public participation in developing the FAR and agency acquisition regulation
Fiscal Year	The accounting period for which annual financial statements are regularly prepared, generally a period of 12 months, 52 weeks, or 53 weeks. (FAR 31.001)
General Accounting Office (GAO)	Is the investigative arm of Congress. GAO exists to support the Congress in meeting its Constitutional responsibilities and to help improve the performance and ensure the accountability of the federal government for the American people. GAO examines the use of public funds, evaluates federal programs and activities, and provides analyses, options, recommendations, and other assistance to help the Congress make effective oversight, policy, and funding decisions.
Guiding Principles	Encourages you to be innovative. If a business practice or procedure is in the best interest of the Government and is not addressed in the FAR, nor prohibited by law, Executive order, or other regulation, you may assume it is permitted. Take a few minutes to review the FAR guiding principles located at FAR 1.102
Implied Authority	In Government contracting, an agent can perform additional duties even if such duties are not specifically stated in the written authority. In other words, the agent has implied authority to do what must be done in order to accomplish the purpose of the expressed authority.
Limited Authority	When large organizations are involved, most negotiators have limited authority. For example, Government negotiator authority is limited by the funds available and any required management approvals
Obligation	A duty to make a future payment of money. The duty is incurred as soon as an order is placed, or a contract is awarded for the delivery of goods and the performance of services. The placement of an order is sufficient. An obligation "legally" encumbers a specified sum of money which will require outlay(s) or expenditures in the future.
Outlays	The disbursement of cash to liquidate a federal obligation, usually as a result of cashing a U.S. government check. Expenditure.
Participating Personally and Substantially	Active and significant involvement of the individual in any of the following activities directly related to that

	<p>procurement:</p> <ul style="list-style-type: none"> ○ Drafting, reviewing, or approving the specification or statement of work for the procurement. ○ Preparing or developing the solicitation. ○ Evaluating bids or proposals, or selecting a source. ○ Negotiating price or terms and conditions of the contract. ○ Reviewing and approving the award of the contract.
Performance Work Statement (PWS)	<p>A PWS is the description of what the Government intends to buy, regardless of the outcome of the cost comparison. The PWS provides the requirements, performance measures and standards, workload and conditions of performance. It is a method for acquiring what is required and placing the responsibility for how it is accomplished on the Service Provider. The Government's Management Plan and related costs, and Contractor/ISSA technical and cost proposals will all be based upon the PWS.</p>
Planning Programming and Budgeting system (PPBS)	<p>The objective of the PPBS is to provide the optimal mix of forces, equipment, and support, which can be achieved within fiscal constraints. The function of the PPBS is to develop a plan for DoD, formulate a program to implement the plan, and price the program to produce the DoD budget request, which is forwarded to the President for approval. The DoD budget then becomes part of the President's Budget (PB) which is submitted to Congress.</p>
Purchase Request (PR)	<p>Is a form or a document that is submitted to the contracting officer to initiate a requisition for the purchase of services or supplies. This form will include: Amount of money allotted and accounting classification number for the requirement. The Requirement or the Statement of Work (SOW). Signatures from officials authorized and required to sign the form. See also Procurement Request</p>
Ratification	<p>An unauthorized commitment is an agreement that is not binding solely because the Government representative who made it lacked the authority to do so. For example, a Government research scientist without authority orders a new item of test equipment. If the purchase fits under the ratification requirements of the Federal Acquisition Regulation, and if the scientist prepares an explanation package for the Commander, and if the Commander approves, a ratifying official can choose to enter into a contract after the fact, thus legalizing the transaction. When the ratifying official chooses not to legalize the</p>

		transaction, the employee who entered into the unauthorized commitment may be personally liable.
Receiving Report		Written evidence that indicates Government acceptance of supplies delivered or services performed. Receiving reports must meet the requirements of FAR 32.905.
Responsibility		The potential contractor has the technical and financial capabilities to perform the contract. This principle applies to all proposed contracts. The contracting officer makes a determination of responsibility before award using any and all information available to make that determination. The information may be on hand, readily available, or obtainable from commercial sources. If information is lacking or is insufficient, the contracting officer will request Defense Contract Management Agency (DCMA) to perform a pre-award survey, an evaluation of the capability of the prospective contractor. Signing the contract constitutes a determination by the contracting officer that the prospective contractor is responsible with respect to that contract. When the contracting officer makes a determination of non-responsibility, he does so in writing.
Responsive		The bidder's offer meets the requirements of the Invitation For Bid (IFB) exactly. A bid received in response to an IFB must stand-alone and comply with all the terms and conditions of the solicitation. That is, it must respond perfectly to the instructions in the IFB. If a bidder changes any term or condition in an IFB, or does not agree with all the requirements, his bid, if otherwise low, will be found to be non-responsive and will no longer be considered for award. Failure to price a line item, crossing out a contract clause, changing the delivery date, or changing the quantity could all result in a bid being found non-responsive. The issue of responsiveness is relevant only to the sealed bidding method of contracting.
Simplified Threshold	Acquisition	"Simplified acquisition threshold" means \$100,000, except that in the case of any contract to be awarded and performed, or purchase to be made, outside the United States in support of a contingency operation, the term means \$200,000. Simplified Acquisition Procedures (SAP) are streamlined techniques and guiding principles designed to reduce the administrative burden of awarding the lower dollar value procurements that account for the vast majority of DoD Acquisition. They allow informal quoting and competition procedures, encourage accepting oral quotes vice written quotations, prefer comparing quoted prices vice conducting negotiations, and provide

	streamlined clauses to support the award document.
Statement of Objective (SOO)	May be utilized to convey the required outcome of contract performance, with the contractor subsequently preparing the SOW from the SOO.
Statement of Work	Statement of Work is also referred to as a work statement. A document that defines service contract requirements in clear, concise language identifying specific work to be accomplished. It must be individually tailored to consider the period of performance, deliverable items, if any, and the desired degree of performance. In the case of task order contracts, the statement of work for the basic contract need only define the scope of the overall contract. Individual task orders must define specific task requirements. (FAR 37.602-1)