

# AcqVault.com

AF Acquisition Research

---

## FAR Companion

Generated June 01, 2026

256 documents indexed

This document is compiled from official U.S. government acquisition regulation sources and indexed by AcqVault.com for the Air Force contracting community. Visit [acqvault.com](https://acqvault.com) for the most current version.

## PART 1

---

### FAR Companion

Status: Unknov

FAR Companion

Version 2.0

October 30, 2025

Federal Acquisition Regulation (FAR) Companion

Table of Contents

Version Change Log ..... 4

About the FAR Companion ..... 4

---

### FC 1.000 Gathering feedback to improve procurement outcomes.

Status: Unknov

FC 1.000 Gathering feedback to improve procurement outcomes.

Collecting voluntary feedback on the acquisition process supports continuous learning, better results, and improved outcomes over time. Just as important is sharing what's been learned to improve processes across the Federal acquisition workforce. Agencies should gather feedback on the acquisition process of their procurements to help identify what went well and where improvements are needed. This feedback may be obtained using approaches including, but not limited to surveys (e.g., Acquisition360), team retrospectives, and conversations with offerors and contractors. The information can be used by the acquisition team, the agency, or governmentwide, as appropriate, to enhance the acquisition system.

---

### FC 1.102(a)(6) Communicating with industry.

Status: Unknov

FC 1.102(a)(6) Communicating with industry.

The Federal acquisition workforce is permitted and encouraged to engage in responsible and constructive exchanges with industry throughout the acquisition lifecycle, consistent with existing laws and regulations. Fairness and impartiality guide our interactions with offerors and contractors, recognizing that fairness does not necessarily mean identical treatment.

### Part 2 - Definitions of Words and Terms

---

## PART 2

### FAR Companion Purpose .....

FAR Companion Purpose .....	5
Disclaimer .....	6
How to Navigate the FAR Companion .....	6
<b>Part 1 - Federal Acquisition Regulations System .....</b>	<b>7</b>
<b>Part 2 - Definitions of Words and Terms.....</b>	<b>7</b>
<b>Part 3 - Improper Business Practices and Personal Conflicts of Interest .....</b>	<b>8</b>
<b>Part 4 - Administration and Information Matters .....</b>	<b>8</b>
<b>Part 5 - Publicizing Contract Actions .....</b>	<b>12</b>
<b>Part 6 - Competition Requirements .....</b>	<b>14</b>
<b>Part 7 - Acquisition Planning .....</b>	<b>15</b>
<b>Part 8 - Required Sources of Supplies and Services .....</b>	<b>18</b>
<b>Part 9 - Contractor Qualifications .....</b>	<b>23</b>
<b>Part 10 - Market Research .....</b>	<b>25</b>
<b>Part 11 - Describing Agency Needs .....</b>	<b>27</b>
<b>Part 12 - Acquisition of Commercial Products and Commercial Services .....</b>	<b>30</b>
<b>Part 13 - Simplified Procedures for Noncommercial Acquisitions .....</b>	<b>33</b>
<b>Part 14 - Sealed Bidding .....</b>	<b>33</b>
<b>Part 15 - Contracting by Negotiation .....</b>	<b>35</b>
<b>Part 16 - Types of Contracts .....</b>	<b>40</b>
<b>Part 17 - Special Contracting Methods .....</b>	<b>50</b>
<b>Part 18 - Emergency Acquisitions .....</b>	<b>53</b>
<b>Part 19 - Small Business .....</b>	<b>53</b>
<b>Part 20 - Reserved .....</b>	<b>57</b>
<b>Part 21 - Reserved .....</b>	<b>57</b>
<b>Part 22 - Application of Labor Laws to Government Acquisitions .....</b>	<b>58</b>
<b>Part 23 - Sustainable Acquisition, Material Safety, and Pollution Prevention .....</b>	<b>65</b>
<b>Part 24 - Protection of Privacy and Freedom of Information .....</b>	<b>66</b>
<b>Part 25 - Foreign Acquisition .....</b>	<b>66</b>
<b>Part 26 - Other Socioeconomic Programs .....</b>	<b>75</b>
<b>Part 27 - Patents, Data, and Copyrights .....</b>	<b>77</b>
<b>Part 28 - Bonds and Insurance .....</b>	<b>81</b>
<b>Part 29 - Taxes .....</b>	<b>81</b>
<b>Part 30 - Cost Accounting Standards Administration .....</b>	<b>81</b>
<b>Part 31 - Contract Cost Principles and Procedures .....</b>	<b>82</b>

2

Federal Acquisition Regulation (FAR) Companion

Status: Unknow

**Part 32 - Contract Financing .....82**  
**Part 33 - Protests, Disputes, and Appeals .....84**  
**Part 34 - Major System Acquisition .....85**  
**Part 35 - Research and Development Contracting .....85**  
**Part 36 - Construction and Architect-Engineer Contracts .....90**  
**Part 37 - Service Contracting .....94**  
**Part 38 - Reserved .....97**  
**Part 39 - Acquisition of Information and Communication Technology .....97**  
**Part 40 - Information Security and Supply Chain Security ..... 102**  
**Part 41 - Acquisition of Utility Services ..... 104**  
**Part 42 - Contract Administration and Audit Services ..... 104**  
**Part 43 - Contract Modifications ..... 108**  
**Part 44 - Subcontracting Policies and Procedures ..... 108**  
**Part 45 - Government Property ..... 110**  
**Part 46 - Quality Assurance ..... 111**  
**Part 47 - Transportation ..... 111**  
**Part 48 - Value Engineering ..... 115**  
**Part 49 - Termination of Contracts ..... 116**  
**Part 50 - Extraordinary Contractual Actions and the SAFETY Act ..... 117**  
**Part 51 - Reserved ..... 117**  
**Part 52 - Solicitation Provisions and Contract Clauses ..... 117**  
**Part 53 - Forms ..... 118**

3

Federal Acquisition Regulation (FAR) Companion

Version Change Log

Version Date Release Type Key Changes

**1.0 09/04/2025 Major Initial release of FAR Companion (FC) parts 1, 4, 5,**  
6, 8, 9, 10, 11, 12, 18, 26, 28, 29, 31, 33, 34, 35,  
36, 38, 39, 40, 43, 46, 49, 50, and 51.

**2.0 10/30/2025 Major Initial release of FAR Companion (FC) parts 2, 3, 7,**  
13, 14, 15, 16, 17, 19, 20, 21, 22, 23, 24, 25, 27,  
30, 32, 37, 41, 42, 44, 45, 47, 48, 52, and 53;  
update to FC 8.104 pertaining to ?required use?

contracts and providing more information and  
resources on Category Management, including beta  
version content of the Category Management  
Buying Guide; update to FC 8.401 pertaining to  
evaluation factors; updates to FC 8.401(b) and FC

**12.301 removing references to debriefings; new**  
annotation under FC 8.401(b) related to sole source  
justification content for FSS orders; new annotation  
under FC 12.001 related to contracting methods for

commercial construction; update to FC 11.204 to clarify brand name or equal as distinct from brand name justifications under FAR 6.104; updates to thresholds referenced due to the October 1, 2025 inflation adjustment rule; various citation corrections throughout; and changed "Reserved" to "No additional guidance" when the FAR Companion does not provide any practice recommendations for that associated FAR part.

#### About the FAR Companion

The Federal Acquisition Regulatory Council (FAR Council) is restoring common sense to Federal buying by eliminating rules from the Federal Acquisition Regulation (FAR) that are neither statutory nor essential to sound procurement. This management action, which is directed by Executive Order 14275 and OMB Memorandum M-25-26, is expected to result in the removal of well over 1,000 mandates from the FAR, allowing buyers to use their business judgment to determine when many governmentwide procurement policies and practices are suitable and how they are best implemented.

The FAR Council has developed this FAR Companion to help acquisition officials exercise their discretion. The FAR Companion provides context, additional information, and practical advice for planning, awarding, managing, and closing out contracts, consistent with the FAR's core buying principles.

The FAR Companion is designed to enhance the efficiency and effectiveness of federal buying by:

4

#### Federal Acquisition Regulation (FAR) Companion

"consolidating practitioner insights in one place from a variety of helpful sources (such as innovation and vendor engagement strategies, handbooks, training materials, and management memoranda) saving buyers time in finding and leveraging best practices;

"preserving a number of policies and "how to" procedures formerly mandated in the pre-streamlined FAR that continue to reflect good stewardship but are more appropriately applied with discretion as part of problem-solving and are not a "one-size-fits-all" mandate;

"building the confidence of the acquisition workforce to take managed risks, by providing advice "not direction" and avoiding compliance requirements that create a fear of protests; and

"creating an agile and efficient governmentwide resource to highlight and evolve proven acquisition practices and reduce the amount of guidance needed from agencies.

Chief Acquisition Officers (CAOs) and senior procurement executives (SPEs) should ensure the acquisition workforce becomes familiar with the FAR Companion and understands the FAR Companion is non-regulatory, contains no mandates, and is not intended to serve as the basis for protests or legal action.

Members of the acquisition workforce and other acquisition stakeholders are strongly encouraged to work with their CAOs, SPEs, Heads of Contracting Activities, and acquisition innovation advocates to recommend improvements to the FAR Companion, with particular emphasis on agency developed best-practices that may be suitable for sharing more broadly

across the government. OFPP will work with agencies to reduce the proliferation of disparate agency-level guidance and tools that duplicate coverage in the FAR Companion. The FAR Companion will work in concert with the FAR, agency supplements and the Category Management Buying Guide (which will highlight sector-specific buying tips for navigating governmentwide contracts) as the foundation for the new Strategic Acquisition Guidance framework. These resources ? along with Practitioner Albums (tested learning tools for getting better contract outcomes), continued investment in workforce development, coaching support, collaborative learning experiences, and technology-enabled tools ? will ease the transition from rigid compliance to judgment-based procurement practices and enable mission success through more timely, less costly, and more competitive buying that modern federal acquisition demands.

---

## **FC 2.1 Definitions.**

*Status: Unknown*

### FC 2.1 Definitions.

The FAR model deviations resulted in changes to definitions of words and terms. Definitions were either revised, removed, or transferred as part of the model deviations for parts 5, 12, 13, and 23. All other definitions in part 2 remain unchanged. Agencies are not required to issue a separate deviation for FAR part 2 because these changes to definitions were made as part of the already issued model deviations.

7

#### Federal Acquisition Regulation (FAR) Companion

To support usability, the FAR Overhaul site now hosts the full text of Part 2, and includes unchanged definitions plus the following changes-

The following defined terms in 2.101 were revised:

- ? Biobased product
- ? Commercial product
- ? Commercial service
- ? Commercially available off-the-shelf item, or COTS item
- ? Governmentwide point of entry (GPE)
- ? Micro-purchase
- ? Nondevelopmental item
- ? Offer
- ? Offeror
- ? Purchase order
- ? United States

The following defined terms in FAR 2.101 were removed:

- ? Environmentally preferable
- ? Sustainable acquisition
- ? Waste reduction

The following defined terms were transferred from FAR 2.101 to FAR part 23 and, in some cases, revised (see Part 23 Model Deviation):

- ? Energy-efficient product
- ? Energy-efficient standby power device (now ?low standby power device)

? Energy savings performance contract

? Sustainable products and services (now ?sustainable products?)

? Pollution prevention

The following defined term was transferred from FAR part 13 to FAR 2.101:

? Governmentwide commercial purchase card

### **Part 3 - Improper Business Practices and Personal Conflicts of Interest**

No additional guidance.

### **Part 4 - Administration and Information Matters**

---

## PART 3

---

### FAR Companion Purpose

Status: Unknown

#### FAR Companion Purpose

This FAR Companion, structured to complement the streamlined FAR, implements FAR

#### **1.101(a)(3) to share best practices that empower acquisition professionals to:**

- ? maximize the flexibilities of the FAR,
- ? apply sound judgment,
- ? balance risk, and
- ? effectively and efficiently deliver the mission.

5

#### Federal Acquisition Regulation (FAR) Companion

The FAR Companion, which will evolve, is intended to share the foundation of discretionary practice that complements the FAR.

Novel approaches and innovative applications that comply with the FAR, even if not specifically referenced in the FAR Companion, are permissible and encouraged. Acquisition professionals are encouraged to share their tested practices and new approaches by contacting SAGTesting@gsa.gov or submitting them to the Periodic Table of Acquisition Innovations

(PTAI). The PTAI is a centralized repository of agency tested strategies and novel practices with artifacts for acquisition teams to use and exercise sound business judgment. The tool is designed to increase workforce and industry awareness of business techniques to encourage further testing, adoption, and adaptation consistent with the FAR, applicable law, and agency policy.

#### Disclaimer

The FAR Companion constitutes guidance and commentary intended to assist practitioners in understanding the FAR and related procurement principles. This guide does not constitute mandatory compliance requirements. Adherence or non-adherence to the advice, instructions, explanations, or interpretations provided within the guide is not intended to carry legal authority nor intended to serve as the basis for protests or legal actions. Consistent with FAR part

#### **1.102(a)(7), the contracting officer must have the authority, to the maximum extent practicable**

and consistent with law, to determine how and when to apply rules, regulations, and policies on a specific contract.

#### How to Navigate the FAR Companion

##### Organization Structure

The FAR Companion mirrors the structure of the Federal Acquisition Regulation (FAR) to make finding guidance intuitive and straightforward.

#### **1. FAR Companion Parts Match the FAR**

- ? Each FAR Companion part corresponds directly to a FAR part.
- ? This parallel structure helps you quickly locate relevant guidance.

#### **2. Annotations Within Each Part**

- ? Each FAR Companion part contains annotations that provide:
- ? Key principles.

- ? Proven practices.
- ? Explanatory material.
- ? Implementation guidance.

6

Federal Acquisition Regulation (FAR) Companion

### **3. Citation System**

- ? Each FAR Companion annotation has a numbered citation (e.g., FC 12.3, FC 31.204) that matches the FAR citation (e.g., part, subpart, section, subsection).
- ? The FAR Companion citation tells you which FAR citation the annotation supports.
- ? Multiple FAR Companion annotations may reference the same FAR citation.
- ? FC XX.000 citations apply to the entire FAR part. Think of these annotations as big-picture guidance for the whole FAR part.

Quick Navigation Tips

- 1. Know your FAR reference: Start with the section of the FAR you're working with.**
  - 2. Find the matching FAR Companion citation(s): Look for the same citation(s) in the**
-

## PART 4

---

### FAR Companion (FC).

Status: Unknov

FAR Companion (FC).

**3. Check for FC XX.000 guidance first: Review any overarching guidance for context.**

**4. Look for specific guidance: Find annotations with citations matching your FAR section.**

#### Part 1 - Federal Acquisition Regulations System

---

### FC 4.101 Contents of contract files.

Status: Unknov

FC 4.101 Contents of contract files.

Contract files serve as the official repository for all documents related to an acquisition, ensuring regulatory compliance, supporting audit requirements and providing a complete administration record of acquisition activities from presolicitation through contract closeout. Contract files should be complete yet tailored to the specific acquisition. Each office with responsibilities for a contract should establish procedures to ensure timely filing of required documents and maintain appropriate cross-references between files when documents are maintained in different locations (e.g., different shared drives or electronic contract filing systems).

8

Federal Acquisition Regulation (FAR) Companion

The contracting office maintains the most comprehensive file, containing all documents related to the acquisition decision-making process and contract award. This file serves as the primary record of the government's acquisition actions and rationale.

Example documentation that may be included in the contract file, as appropriate:

**1. Purchase request, acquisition planning information, and other presolicitation documents**

**2. Justifications and approvals, determinations and findings, and associated documents**

**3. Evidence of availability of funds**

**4. Copy of or reference to posting notice of proposed acquisition**

**5. The list of sources solicited, and a list of any firms or persons whose requests for copies**

of the solicitation were denied, together with the reasons for denial

**6. Set-aside decision including the type and extent of market research conducted**

**7. Government estimate of contract price**

**8. A copy of the solicitation and all amendments**

**9. Security requirements and evidence of required clearances**

**10. A copy of each offer or quotation and records of determinations concerning late offers or**

quotations. Unsuccessful offers or quotations may be maintained separately if cross-referenced to the contract file. The only portions of the unsuccessful offer or quotation that should be maintained are the completed solicitation (e.g., sections A, B, K and any other part the offeror or quoter has altered or annotated), technical and management

proposals, and cost/price proposals.

**11. Preaward survey reports or reference to previous preaward survey reports relied upon**

**12. Source selection or evaluation documentation**

**13. Contracting officer's determination of the contractor's responsibility**

**14. Small Business Administration Certificate of Competency**

**15. Records of contractor's compliance with labor policies including equal employment opportunity policies**

**16. Data and information related to the contracting officer's determination of a fair and reasonable price**

**17. Packaging and transportation data**

**18. Cost or price analysis**

**19. Audit reports or reasons for waiver**

**20. Record of negotiation**

**21. Justification for type of contract**

**22. Authority for deviations from regulation, statutory requirements, or other restrictions**

**23. Required approvals of award**

**24. Notice of award**

**25. The original signed contract or award, all contract modifications, and supporting documents**

**26. Copy of or reference to posting notice of award**

**27. Notice to unsuccessful quoters or offerors and record of any debriefing**

**28. Acquisition management reports**

**29. Bid, performance, payment, or other bond documents, or a reference thereto, and notices to sureties**

**30. Postaward conference documentation**

9

Federal Acquisition Regulation (FAR) Companion

**31. Notice to proceed, stop orders, and any overtime premium approvals granted at the time of award**

**32. Documents requesting and authorizing modification in the normal assignment of contract administration functions and responsibility**

**33. Approvals or disapprovals of requests for waivers or deviations from contract requirements**

**34. Rejected engineering change proposals**

**35. Royalty, invention, and copyright reports or reference thereto**

**36. Contract completion documents**

**37. Documentation regarding termination actions for which the contracting office is responsible**

**38. Any additional documents on which action was taken or that reflect actions by the contracting office pertinent to the contract**

**39. A current chronological list identifying the awarding and successor contracting officers, with inclusive dates of responsibility**

#### **40. When limiting competition or awarding on a sole source basis to small business**

concerns, documentation of the type and extent of market research and that the NAICS code assigned to the acquisition is for an industry that SBA has designated

The contract administration office maintains records focused on postaward contract management and performance oversight. This file supports the day-to-day administration of the contract after award. Cross-reference to documents that are located elsewhere in the contract file rather than duplication of documentation is appropriate.

Example documentation that may be included in the contract administration file or contract administration section of the contract file, as appropriate:

- 1. Copy of the contract and all modifications, together with official record copies of** supporting documents executed by the contract administration office
- 2. Any document modifying the normal assignment of contract administration functions and** responsibility
- 3. Security requirements**
- 4. Certified cost or pricing data, Certificates of Current Cost or Pricing Data, or data other** than certified cost or pricing data; cost or price analysis; and other documentation supporting contractual actions executed by the contract administration office
- 5. Preaward survey information**
- 6. Purchasing system information**
- 7. Consent to subcontract or purchase**
- 8. Performance and payment bonds and surety information**
- 9. Postaward conference records**
- 10. Orders issued under the contract**
- 11. Notice to proceed and stop orders**
- 12. Insurance policies or certificates of insurance or references to them**
- 13. Documents supporting advance or progress payments**
- 14. Progressing, expediting, and production surveillance records**
- 15. Quality assurance records**

10

Federal Acquisition Regulation (FAR) Companion

- 16. Property administration records**
- 17. Documentation regarding termination actions for which the contract administration office** is responsible
- 18. Any additional documents on which action was taken or that reflect actions by the** contract administration office pertinent to the contract

#### **19. Contract completion documents**

The paying office maintains a focused file containing documents necessary for processing payments and maintaining financial records related to the contract. Cross-reference to documents that are located elsewhere in the contract file rather than duplication of documentation is appropriate.

Example documentation that may be included in the payments and financial records file or payments and financial records section of the contract file, as appropriate:

- 1. Copy of the contract and any modifications**

**2. Bills, invoices, vouchers, and supporting documents**

**3. Record of payments or receipts**

**4. Other pertinent documents**

---

**FC 4.301(b) Contract reporting in centralized assisted acquisitions.**

Status: Unknown

FC 4.301(b) Contract reporting in centralized assisted acquisitions.

Agencies awarding assisted acquisitions handle required contract reporting, including appropriately allocating small-business goals credited among the multiple requesting agencies when requirements are combined on a single contract or order using demand aggregation method.

---

**FC 4.308 Low-risk contract closeout.**

Status: Unknown

FC 4.308 Low-risk contract closeout.

A large contract closeout backlog not only poses a significant burden to various acquisition and financial systems but also impedes an agency's ability to effectively manage its annual financial statement audit.

The quick-closeout procedure in FAR 42.507 provides relief for certain cost-type contracts involving indirect rates, but not for other contract types. To supplement this, at least one agency has promulgated rules to use low-risk closeout procedures for specific types of expired contracts to streamline the closeout process, reducing the backlog of open contracts with unliquidated funds or undelivered orders.

Key aspects of low-risk closeout procedures included:

? Risk Assessment: Identifying low-risk contracts based on specific criteria, including contract type, expiration date, and lack of recent payment activity.

? Public Posting: Publishing a Federal Register, SAM.GOV, or similar notice that asks contractors with specific contracts to submit any outstanding invoices to the cognizant contracting activities within 60 days after that notice was published.

? No Change in Contractor Rights: Despite the expedited process, contractors' rights were preserved under the Contract Disputes Act of 1978, allowing them to file claims.

? Standard File Retention: Normal contract file retention requirements applied after the low-risk closeout process, following FAR guidelines.

11

Federal Acquisition Regulation (FAR) Companion

**Part 5 - Publicizing Contract Actions**

---

## **PART 5**

---

### **FC 5.000 Plain language.**

*Status: Unknown*

FC 5.000 Plain language.

When crafting solicitations and notices, prioritize clarity and simplicity by embracing plain language writing principles. Avoid overly technical jargon, complex sentence structures, and acronyms that are not widely understood.

The goal is to make it easy for businesses to determine whether they can do the work. Plain language is not merely about simplifying content. It is about making your message understandable upon first reading.

FC5.000 Actively engage throughout the process.

Acquisition work need not stop during mandatory notice posting periods, or when you have issued special notices to obtain more targeted feedback from industry. You can maintain momentum by connecting with internal teams and external partners to manage expectations, refine procurement documentation, address concerns, and ensure alignment on process, next steps, and goals.

Draft documents can be issued to industry at any time up until the publication of the final solicitation. For example, prior to the issuance of the solicitation or combined notice and solicitation, the agency may issue a sources sought notice, a draft requirements document, or an industry day announcement.

This proactive approach refines solicitations, addresses potential issues that may impact a potential offeror's bid or no bid decision, attracts higher-quality proposals, and fosters a collaborative competitive environment that balances commercial industry practices with government requirements.

---

### **FC 5.000 Expanding reach beyond the GPE.**

*Status: Unknown*

FC 5.000 Expanding reach beyond the GPE.

While SAM.gov serves as the required central platform for posting most federal notices and contract opportunities, acquisition teams can supplement their GPE postings by using other digital channels. These might include industry-specific websites and relevant social media platforms to amplify the opportunity and attract a wider pool of qualified vendors. These steps can be critical to expanding the current federal marketplace. When using extra channels, it is a good practice to include a direct link to the official SAM.gov notice so vendors can access authoritative documentation and complete opportunity details.

FC5.000 Modern digital engagement methods.

Acquisition teams have access to various digital platforms beyond the traditional posting methods. Interactive online portals allow users to view notices, apply filters, subscribe to alerts, and engage through comments or question-and-answer features.

Examples include specialized platforms like these:

? U.S. Special Operations Command (SOCOM) Vulcan platform ([www.vulcan-sof.com](http://www.vulcan-sof.com)),  
? Defense Advanced Research Project?s (DARPA) Connect platform ([www.darpa.mil](http://www.darpa.mil)), and  
12

Federal Acquisition Regulation (FAR) Companion

? The Office of the Chief Digital and Artificial Intelligence Officer?s Tradewinds Solutions  
Marketplace ([tradewindai.com](http://tradewindai.com)).

Social media channels can reach targeted industry segments quickly, particularly benefiting  
small businesses and technology providers. Mobile apps can deliver real-time notifications of  
notices or opportunities directly to potential vendors' devices.

---

## **FC 5.101 Using the Governmentwide Point of Entry (GPE) for market intelligence.**

*Status: Unknow*

FC 5.101 Using the Governmentwide Point of Entry (GPE) for market intelligence.

SAM.gov and other portals can serve as valuable tools for soliciting feedback and gathering  
information during market research, market intelligence, and acquisition planning activities.

SAM.gov notices are not limited to contracting opportunities. Acquisition teams can leverage  
notices to request feedback, engage potential offerors, and pose questions to inform  
requirements development. Be specific in your GPE notices. For instance, if you are looking for  
specific information such as incentives, quality metrics or other information, state this clearly in  
your notice. It is important to promptly amend notices when the government?s schedule  
changes, so that contractors can plan accordingly.

These efforts can be supplemented with creative tools such as virtual industry days, online  
forms to collect information easier, and industry-focused webinars or forums. These diverse  
feedback mechanisms support deeper understanding of marketplace capabilities, emerging  
technologies, pricing trends, and potential sources, leading to more informed acquisition  
decisions and better outcomes.

---

## **FC 5.101 Crafting effective presolicitation notices.**

*Status: Unknow*

FC 5.101 Crafting effective presolicitation notices.

Develop presolicitation notices that are both informative and efficient by focusing on what  
vendors need to know to determine if the contract action is relevant to them.

Prioritize clear and concise communication, including only necessary details while avoiding  
lengthy descriptions or redundant information. Link to attachments or government websites for  
comprehensive specifications rather than including that information in the presolicitation notice  
itself. Include applicable NAICS codes, dates, contracting office zip code, product or service  
codes, subject matter, proposed solicitation number when available, contact information,  
requirement description, place of performance, set-aside status, and special considerations  
such as compliance with 41 USC Ch. 83 - Buy American requirements.

For product-specific acquisitions, include the following key specifications:

? National Stock Number (NSN), if assigned

? qualification requirements

- ? manufacturer
- ? part number
- ? size and dimensions
- ? predominant material
- ? quantity and unit of issue
- ? destination
- ? delivery schedule
- ? planned contract duration

13

Federal Acquisition Regulation (FAR) Companion

---

### **FC 5.101(d) and FC 5.201(d) Response time considerations.**

Status: Unknown

FC 5.101(d) and FC 5.201(d) Response time considerations.

Response periods should balance acquisition complexity, minimum regulatory posting requirements, the commercial nature of the acquisition, and urgency to ensure timely publication and reasonable opportunity for offerors to respond. Response times to notices are generally calculated from the publication date on the GPE unless otherwise specified in the notice.

While the goal is to provide reasonable response times, certain circumstances, such as acquiring commercial products and services, may allow for shortened response times through the use of combined presolicitation notice and solicitation posting procedures or other expedited methods.

Conversely, other factors may require longer response times. Always verify minimum posting periods based on regulatory requirements when applicable. Consider factors that may impact response times. For instance, submittals of sensitive information or intellectual property, confidential, or proprietary information may require offerors to obtain additional corporate approvals, necessitating longer response times.

---

### **FC 5.102 Digital media over paid advertisements.**

Status: Unknown

FC 5.102 Digital media over paid advertisements.

While statutes may refer to paid advertisements in newspapers or trade publications, these approaches are generally less effective and more expensive in today's digital landscape.

Acquisition teams should prioritize digital and online mediums since they reach wider audiences, cost less than paid advertisements, allow for more detailed information and interaction, and are easier to measure for effectiveness.

Only consider paid advertisements when there is a compelling reason, such as demonstrated lack of digital access within the specific vendor community being targeted, and after thoroughly exploring other methods.

### **Part 6 - Competition Requirements**

---

## PART 6

---

### **FC 6.103(b)(1) Use planning to optimize competition and innovation.**

Status: Unknown

FC 6.103(b)(1) Use planning to optimize competition and innovation.

Early acquisition planning creates opportunities to structure your approach for maximum competition and innovation and may reduce the need to use FAR part 6 exceptions to competition.

With proper planning, you can break large requirements into smaller, more competitive packages; explore commercial solutions before developing custom requirements; and design evaluation criteria that reward innovative approaches.

Identify and address potential barriers to competition, whether they stem from current contractor advantages, unique requirements, or market limitations.

When you start planning early, you have time to develop multiple qualified sources, standardize requirements to enable broader competition, and work with industry to build capabilities before

14  
Federal Acquisition Regulation (FAR) Companion

you need them. This proactive approach to acquisition planning often results in better solutions, lower costs, and a more robust vendor base for future requirements.

Some competition exceptions may still be necessary due to legitimate market limitations or unique requirements. Thoughtful planning helps ensure that when you do use exceptions to competition, it's based on genuine market conditions rather than poor planning and shows you considered the long-term impacts or risks presented by limiting competition. When using exception authorities, consider the implications for future competition requirements.

---

### **FC 6.104 Preparing a strong Justification and Approval (J&A).**

Status: Unknown

FC 6.104 Preparing a strong Justification and Approval (J&A).

The J&A should tell a clear story about why this particular approach serves the government's interests, what alternatives you considered, and why they won't work. Focus on the mission impact and practical realities rather than merely providing legal citations. A compelling narrative that demonstrates genuine market analysis and thoughtful decision-making will persuade approving officials and be more readily defended if challenged.

A J&A isn't just a compliance document. It's your opportunity to show your sound acquisition planning and stewardship of taxpayer dollars. Therefore, treat your market research as the cornerstone of your justification, not an afterthought.

Market research under FAR 6.104-1(a)(8) should explore not just who can provide what you need, but how the market actually works, what drives pricing and innovation, and what barriers exist to broader competition.

When you conclude that only one source can meet your needs, your market research should clearly show why others cannot?whether due to technical capabilities, experience

requirements, timeline constraints, or other legitimate factors. If you invest time and effort into understanding the marketplace, what you learn will make the rest of your justification more convincing to your audience, as well as easier to write.

---

### **FC 6.104-1 Match J&A authority to reality.**

*Status: Unknown*

FC 6.104-1 Match J&A authority to reality.

Misaligned authorities create approval delays and undermine your justification. Always choose the legal exception authority based on the actual circumstances driving your acquisition.

### **Part 7 - Acquisition Planning**

---

## **PART 7**

---

### **FC 7.102(a) Oral acquisition plans.**

Status: Unknown

FC 7.102(a) Oral acquisition plans.

As a best practice, when a written acquisition plan is not required, an oral acquisition plan can be developed through a collaborative session with key stakeholders, including the program manager, customer, contracting officer, and small business specialist. The session should be facilitated by an acquisition planner (typically a member of the acquisition team) and cover essential elements, such as market research, competition, contract type, and small business opportunities. Following the discussion, decisions should be documented through an executive summary, which captures the key decisions and next steps agreed to during the collaborative session. This summary should be signed by the approving official and contracting officer to confirm that the oral acquisition plan has considered all necessary elements. Depending on the

15  
Federal Acquisition Regulation (FAR) Companion

complexity of the acquisition, to ensure the acquisition plan remains effective, periodic check-ins may be conducted during the procurement lifecycle to track progress and make any necessary updates to the executive summary.

---

### **FC 7.102(b) Early planning to optimize competition and innovation.**

Status: Unknown

FC 7.102(b) Early planning to optimize competition and innovation.

Early acquisition planning creates opportunities to structure your approach for maximum competition and innovation. With adequate planning time, you can break large requirements into smaller, more competitive packages, explore commercial solutions before developing custom requirements, and design evaluation criteria that reward innovative approaches. Planning also allows you to identify and address potential barriers to competition, whether they stem from incumbent advantages, unique requirements, or market limitations. This strategic approach to competition planning often results in better solutions, lower costs, and a more robust vendor base for future requirements.

---

### **FC 7.104(a) Industry engagement during acquisition planning.**

Status: Unknown

FC 7.104(a) Industry engagement during acquisition planning.

Effective communication between the program office, contracting office, and industry begins during the acquisition planning phase of the procurement lifecycle, which includes requirement development and market research activities. OFPP's myth-busting guidance confirms that one-on-one meetings with potential offerors prior to release of the solicitation are permissible provided no vendor receives preferential treatment (see e.g., OFPP Memo ?Myth-Busting:

Addressing Misconceptions to Improve Communication with Industry during the Acquisition Process,? February 2, 2011, and others in the OFPP Myth-Busting Memoranda series). Use industry days and market research sessions to understand capabilities, refine requirements, and inform the contracting approach during acquisition planning. Additionally, this early engagement may limit protest risk by ensuring requirements are realistic and evaluation criteria are appropriate for the acquisition.

---

## **FC 7.104(a) Start planning when you identify the need, not when you get funding.**

Status: Unknov

FC 7.104(a) Start planning when you identify the need, not when you get funding.

Effective acquisition planning under FAR part 7 begins the moment you recognize a potential requirement, not when budget authority arrives or deadlines approach. Early planning gives you the luxury of time to review lessons learned from previous or similar acquisitions (as applicable), explore options, understand market dynamics, and make strategic decisions rather than reactive ones. Use this early period to conduct preliminary market research, engage with potential vendors through industry days or capability briefings, and explore different acquisition approaches. This front-end investment allows you to identify potential challenges, develop risk mitigation strategies, and position your acquisition for better competition and outcomes. Waiting until funding is available often forces you into suboptimal strategies driven by urgency rather than sound business judgment.

---

## **FC 7.104(a) Needs statements to inform acquisition planning.**

Status: Unknov

FC 7.104(a) Needs statements to inform acquisition planning.

As you form your team and start planning, developing a needs statement is a best practice because it assists in providing clarity and focus, ensuring the acquisition aligns with organizational goals and success criteria. A needs statement may include: a clear description of the problem, an identification of the target population (e.g., users, organizations, citizen populations, etc.), supporting data and information (both quantitative and qualitative), key assumptions, an explanation of the organization's interest in resolving the problem, and desirable outcomes.

16

Federal Acquisition Regulation (FAR) Companion

Investing time in developing a needs statement upfront prevents wasted resources on solutions that don't address the core issue, improves the effectiveness of planning, and establishes clear benchmarks for evaluating solutions, and can increase the likelihood of acquisition success.

Consider following Lean-Six-Sigma principles during the creation of the needs statement, which supports efficiency, eliminating waste, and measurable outcomes. Prioritizing the needs statement, especially for requirements exceeding the Simplified Acquisition Threshold (SAT), provides clear direction for the acquisition team, guides the acquisition planning process

(including development of requirements and resultant solicitation), and ensures acquisitions are data-driven, aligned with strategic priorities, and achieve intended purposes with accountability

and transparency.

---

### **FC 7.104(b)(1) Build your team and align expectations early.**

Status: Unknown

FC 7.104(b)(1) Build your team and align expectations early.

Acquisition planning is fundamentally a collaborative process that requires input from acquisition representatives from the technical, supply, sourcing, legal, small business, and procurement areas as well as the customers and end users they support. Bring this team together early to develop a shared understanding of mission needs, performance expectations, and constraints. Use the planning process to educate team members about each other's perspectives and requirements, help program managers understand the various approaches to meet the mission need through the contracting process, explain the operational mission context to the acquisition team, and ensure everyone understands budget and timeline realities. Ensure that adequately trained and experienced personnel are available to manage and oversee the administration of contracts, especially contracts for services, from day one of contract performance. This early alignment prevents costly misunderstandings later and creates a foundation for effective decision-making throughout the acquisition lifecycle.

---

### **FC 7.104(b)(3) Treat your acquisition plan as a living document.**

Status: Unknown

FC 7.104(b)(3) Treat your acquisition plan as a living document.

For complex or mission-specific acquisitions, your initial acquisition plan should provide strategic direction while remaining flexible enough to evolve as you learn more about requirements, market conditions, and constraints. Good planning establishes a framework for making informed adjustments rather than starting from scratch when circumstances change. Regularly revisit and update your plan as new information becomes available, market research reveals different options, or requirements mature. This iterative approach allows you to maintain strategic coherence while adapting to real-world conditions. Document changes and the reasoning behind them so future team members can understand the decision-making process and continue building on your work. Unless agency procedures prescribe otherwise, these updates should not inherently require additional approvals. Procurement-specific acquisition plans need not be updated after award of the resultant contract.

---

### **FC 7.104(c) Contents of acquisition plans.**

Status: Unknown

FC 7.104(c) Contents of acquisition plans.

When developing a written or oral acquisition plan, the level of detail and content will vary depending on the complexity and specifics of the procurement. For more routine or common procurements, a streamlined acquisition plan might include:

? A brief description of the requirement, to include challenges, delivery schedule, and

market research conducted (if not already captured in a separate document)

? The proposed acquisition approach with rationale

17

Federal Acquisition Regulation (FAR) Companion

? The procedures that will apply to the acquisition and rationale (e.g., part 8, 12, 14, 15, 36, or 45)

? The contracting method, contract type, basis of award (e.g., how selection will be made), and rationale

? Any unique aspects of the acquisition (e.g., leased vehicles, severable services)

? Proposed high-level milestone schedule

In contrast, acquisition plans for complex or mission-specific acquisitions may require more detailed information, such as:

? A thorough analysis of the acquisition background and objectives, including:

? Life-cycle cost and design-to-cost objectives

? Application of should-cost analysis

? Trade-offs (as applicable) and risk management approach

? Plans for acquisition streamlining, such as industry participation and tailoring of contract requirements

? A comprehensive plan of action, including:

? Identification of prospective sources and consideration of small business and other socio-economic factors to include addressing the impacts of consolidation or bundling

? Strategies for promoting competition throughout the acquisition process

? Rationale for contract type selection and source selection procedures

? Details on how subcontract competition will be sought and sustained

? Discussion of how any requisite review (e.g., Integrated Baseline Review) will be considered in the selection decision, if applicable

By tailoring the acquisition plan to the specific needs of the procurement, agencies can ensure that they are well-prepared to manage the acquisition process and achieve their goals.

## **Part 8 - Required Sources of Supplies and Services**

---

## PART 8

---

### FC 8.103 Excess personal property.

Status: Unknown

FC 8.103 Excess personal property.

When practical, agencies should use excess personal property as the first source of supply for both agency and cost-reimbursement contractor requirements. Agency personnel have an affirmative obligation to make positive efforts to satisfy requirements by obtaining and using excess personal property before initiating contract actions, including property that may be suitable for adaptation or substitution to meet specific requirements. This priority ensures maximum utilization of government assets while reducing procurement costs and waste. Information regarding available excess personal property can be obtained through the GSA Office of Personal Property which provides a comprehensive online platform called Personal Property Management System (PPMS) for reviewing and requesting available excess property from across the federal government. Additionally, agencies can make direct contact with GSA or the specific activity holding the property to inquire about availability and condition. For supplies that are excepted from reporting as excess under the Federal Management Regulations (41

18 Federal Acquisition Regulation (FAR) Companion

CFR 102-36.220), GSA will assist agencies in meeting their requirements through direct coordination with the appropriate GSA Personal Property Management office.

Contact information for these offices is available on the GSA website, enabling agencies to access nonreportable property that may not appear in standard excess property databases but could still meet their operational needs.

---

### FC 8.103 Federal Prison Industries (also referred to as UNICOR) and AbilityOne Program.

Status: Unknown

FC 8.103 Federal Prison Industries (also referred to as UNICOR) and AbilityOne Program.

For UNICOR acquisitions, contracting officers follow specific federal ordering procedures that govern the procurement process for products and services manufactured in or provided by federal correctional institutions. Information about the UNICOR program, ordering procedures, and available product catalogs, are accessible at UNICOR.gov. The ordering process includes coordination requirements with UNICOR representatives and specific timeframes for product delivery that contracting officers consider when planning their acquisitions.

For AbilityOne acquisitions, contracting officers may coordinate with their agency's designated AbilityOne Representative and the Commission's AbilityOne Program Manager for products or services that may be available through the AbilityOne Program. This coordination ensures proper compliance with mandatory source requirements while leveraging the expertise of designated officials who maintain current knowledge of available offerings and procurement procedures. Agency AbilityOne Representatives serve as the primary liaison between contracting activities and the Committee for Purchase From People Who Are Blind or Severely

Disabled (operating as the U.S. AbilityOne Commission), providing guidance on product availability, pricing, and ordering procedures.

The AbilityOne Procurement List identifies all products and services that participating nonprofit agencies are authorized to provide to the federal government under mandatory source procurement requirements. Contracting officers should consult the current Procurement List at ABILITYONE.gov (Procurement List is available under Quick Links on main page). Additionally, GSA maintains a comprehensive website at GSA AbilityOne Partnership that provides detailed information about available AbilityOne products and services, including specifications, pricing, and ordering instructions.

---

## **FC 8.104 Use of existing contracts and maximizing commercial buys.**

Status: Unknown

FC 8.104 Use of existing contracts and maximizing commercial buys.

The U.S. federal government leverages its position as the world's largest buyer of goods and services by embracing a common governmentwide approach when procuring through Federal Supply Schedule contracts, governmentwide acquisition contracts, or other indefinite-delivery, indefinite-quantity contracts established through category management. The benefits of category management are best realized by maximizing centralized ordering of common spend and recognizing the efficiency and cost benefits of leveraging previously negotiated terms and conditions.

When supplies or services are unavailable from the mandatory sources listed in FAR 8.103, FAR 8.104 now requires agencies to procure commercial products and services through Office of Federal Procurement Policy designated ?required use? governmentwide contracts or blanket purchase agreements (BPAs), unless the head of the contracting activity provides an exception.

19  
Federal Acquisition Regulation (FAR) Companion

If there is not a suitable ?required use? contract or BPA, then the agency should consider other existing governmentwide contracts or BPAs.

There are not yet any ?required use? contracts or BPAs. These contracts are expected to be a new Tier 4 of Spend Under Management designation and will be separate from ?best-in-class?

(BICs) contracts, which are designated as Tier 3 Spend Under Management. Use of BICs will continue to be prioritized, but not mandated. At this time, given there are not yet any designated ?required use? contracts, agencies should consider other existing governmentwide contracts and BPAs aligned to Spend Under Management (e.g., prioritize Tier 3, then Tier 2 and the Federal Supply Schedule (FSS)).

Agencies should also consider shared services solutions to fulfill their requirements, particularly when these solutions can provide business or mission functions more efficiently than independent procurement actions.

This category management approach aligns with the broader governmentwide strategy of consolidating purchasing power and standardizing procurement approaches to achieve better pricing, improved service delivery, and reduced administrative burden across the federal acquisition community.

A beta release of the Category Management Buying Guide is now available to help the

practitioner consider their requirements and effectively navigate buying pathways aligned to category management.

## FC 8.401 Periodic Table of Acquisition Innovations (PTAI) procedures for FAR part 8 RFQ

Status: Unknown

FC 8.401 Periodic Table of Acquisition Innovations (PTAI) procedures for FAR part 8 RFQ streamlining.

The PTAI provides targeted support for streamlining FAR part 8 ordering procedures by offering proven innovative approaches that agencies can adopt and adapt to their procurements. PTAI evaluation methodologies can be directly applied to Request for Quotation (RFQ) processes when placing orders under Federal Supply Schedule contracts or governmentwide acquisition contracts established by category management. Contracting officers can implement more efficient comparative evaluation approaches that focus on best value determinations rather than lengthy technical assessments. The use of PTAI and other innovative approaches directly support FAR part 8 core objectives of reducing time, complexity, and cost while maintaining acquisition integrity and achieving optimal mission outcomes. Three flexible procedures that a contracting officer can use specific to the RFQ process are highlighted below. See the PTAI for additional information and additional approaches.

? Phased down-select processes. Consider multi-phase evaluation processes that progressively narrow the competitive field through increasingly detailed assessments. Initial phases might evaluate high-level solution approaches and team qualifications, while later phases examine technical details, pricing, and implementation plans from down-selected quoters. This approach reduces the proposal preparation burden for industry while allowing agencies to focus evaluation resources on the most promising solutions. Note this procedure is also useful under the Request for Proposal (RFP) process.

20

Federal Acquisition Regulation (FAR) Companion

? Exchanges with the best suited quoter. Once the government determines the quotation that is most advantageous to the government based on its evaluation of initial responses, the government may communicate with only that best suited quoter to address any remaining issues consistent with the terms of the solicitation.

? These issues may include technical and/or price. If the parties cannot successfully negotiate any remaining issues, as determined relevant by the government, the government reserves the right to communicate with the next best suited quoter based on the original analysis consistent with the terms of the solicitation.

? Comparative evaluation. The government may perform a comparative evaluation to select the quotation that provides the best value by comparing responses against the evaluation factors in the solicitation.

? Rather than assigning ratings to each quoter, the evaluation team ranks quotations against each other or, if sufficient, identifies the top ranked quotation for each evaluation factor.

? This streamlined approach focuses on documenting the rationale for how quotations rank relative to one another and explaining why the selected quotation represents the best value to the government. The evaluation and documentation should be efficient and proportional to the acquisition's complexity and value.

---

## **FC 8.401 Best value determinations under FAR part 8.**

Status: Unknov

FC 8.401 Best value determinations under FAR part 8.

Best value determinations for orders placed under Federal Supply Schedule contracts and governmentwide acquisition contracts require a balanced evaluation approach that considers both price and discriminating non-price factors to identify the solution that provides the greatest overall benefit to the government. Unlike traditional competitive procurements, FAR part 8 orders leverage pre-competed contract vehicles where basic price reasonableness has already been established, allowing contracting officers to focus their evaluation efforts on comparative analysis among available contractors rather than extensive independent price analysis. Limit evaluation factors to a manageable number, focusing on evaluation factors that will serve as meaningful discriminators, rather than those already addressed during the umbrella contract awards. The best value determination should demonstrate the rationale for selection.

---

## **FC 8.401(b) Strategic management of award notices, brief explanations, and protest**

Status: Unknov

FC 8.401(b) Strategic management of award notices, brief explanations, and protest windows.

To avoid unnecessarily extending the protest window, the acquisition team led by the contracting officer should prepare to quickly provide a brief explanation when requested after making award decisions and notifying unsuccessful offerors. This timing consideration is relevant because unsuccessful offerors generally have 10 calendar days to file a GAO bid protest from the date the basis of protest is known. Note that an automatic stay of performance at GAO is 10 days after contract award. Please note that if the last day of the computation period is a Saturday, Sunday, or Federal holiday, then the deadline for filing is the next day the protest venue (e.g., GAO, soliciting agency) is open.

21

Federal Acquisition Regulation (FAR) Companion

Additionally, consider preemptively including the "brief explanation" in the award notice. This approach may start the GAO 10-day bid protest clock, marking the point at which "the basis of protest is known or should have been known."

---

## **FC 8.401(b) Contents of a brief explanation.**

Status: Unknov

FC 8.401(b) Contents of a brief explanation.

In accordance with the FSS ordering procedures, if an unsuccessful quoter requests information on an award within 3 days after the notification of contract award, provide a brief explanation of the award decision (see GSAR 538.7102-2(b)(6)). The brief explanation may include the following information:

- ? The number of quotations received;
- ? The name of each quoter receiving an award;
- ? The total order price; and
- ? In general terms, the reason(s) the quoter's quotation was not selected, unless the price information shared readily reveals the reason. In no event must a quoter's cost breakdown, profit, overhead rates, trade secrets, manufacturing processes and techniques, or other confidential business information be disclosed to any other quoter.

---

### **FC 8.401(b), 538.7104-3(b)(2) Contents of sole source justifications.**

Status: Unknov

FC 8.401(b), 538.7104-3(b)(2) Contents of sole source justifications.

When developing a sole source justification required under GSAR 538.7104-3(b)(2), the level of detail and content will vary depending on the specifics of the procurement. A justification may include the following information, as applicable:

- ? Identification of the agency and the contracting activity, and specific identification of the document as an "FSS Sole Source Justification."
- ? Nature and/or description of the action, including a description of the supplies or services required to meet the agency's needs and the estimated value.
- ? The authority and supporting rationale (see GSAR 538.7104-3(b)(1)) and, if applicable, a demonstration of the proposed contractor's unique qualifications to provide the required supply or service.
- ? A determination by the ordering activity contracting officer that the order represents a fair and reasonable price consistent with GSAR 538.7102-2(d)(2) and 538.7104-2(a)(3).
- ? A description of the market research conducted among schedule holders and the results or a statement of the reason market research was not conducted.
- ? Any other facts supporting the justification.
- ? A statement of the actions, if any, the agency may take to remove or overcome any barriers that led to the restricted consideration before any subsequent acquisition for the supplies or services is made.
- ? The ordering activity contracting officer's certification that the justification is accurate and complete to the best of the contracting officer's knowledge and belief.

22

Federal Acquisition Regulation (FAR) Companion

### **Part 9 - Contractor Qualifications**

---

## **PART 9**

---

### **FC 9.000 Contractor team arrangements.**

*Status: Unknown*

FC 9.000 Contractor team arrangements.

A contractor team arrangement involves two or more companies forming a partnership or joint venture as a potential prime contractor, or a prime contractor agreeing with other companies to act as subcontractors for a specific government contract. These arrangements are beneficial for complementing capabilities and offering the best combination of performance, cost, and delivery. They are particularly suited for complex R&D but can be used in other acquisitions. Teams typically form before an offer, but can do so later, even after contract award. The government recognizes these arrangements if disclosed in an offer or before they become effective and generally won't require their dissolution. However, this doesn't authorize antitrust violations or limit the government's rights regarding subcontract consent, prime contractor responsibility, data rights, competitive contracting, or holding the prime contractor fully responsible for performance.

---

### **FC 9.000-70 Defense production pools and research and development pools.**

*Status: Unknown*

FC 9.000-70 Defense production pools and research and development pools.

These are groups of concerns that collaborate to secure and fulfill defense production or R&D contracts. They should have an approved agreement governing their organization and procedures, validated by either the Small Business Administration (SBA) or a designated official under Executive Order 10480 and the Defense Production Act of 1950.

A pool is generally treated like any other contractor. Offers are submitted in the pool's name or by a member on its behalf. Contracting officers verify the pool's approved status with the SBA or other approving agency. SBA-approved pools receive small business preferences and privileges accorded to small business concerns; Defense Production Act approval does not. For unincorporated pools, each participating member will be required to provide a power of attorney for the authorized signatory.

Pool members can submit independent offers, but not if they are also participating in a competing pool offer. When a pool member submits an individual offer, the contracting officer will consider the pool agreement, among other factors, to determine their responsibility as a prospective contractor.

---

### **FC 9.103 Total cost consideration.**

*Status: Unknown*

FC 9.103 Total cost consideration.

The award of a contract to a supplier based on lowest evaluated price alone can be misleading if there is subsequent default, late deliveries, or other unsatisfactory performance resulting in

additional contractual or administrative costs. While government purchases must be made at fair and reasonable prices, this does not require an award to a supplier solely because that supplier submits the lowest priced offer. Remember to stipulate evaluation criteria in the solicitation that will lead to best value awards.

---

### **FC 9.104-1 Special standards.**

Status: Unknov

FC 9.104-1 Special standards.

With the assistance of appropriate specialists, the contracting office may develop special standards of responsibility when it is necessary for a particular acquisition or class of acquisitions. Special standards may be particularly desirable when experience has demonstrated that unusual expertise or specialized facilities are needed for adequate contract performance. The special standards should be set forth in the solicitation; however, one must be

23  
Federal Acquisition Regulation (FAR) Companion

careful not to set overly restrictive standards that only one contractor can deliver without the proper justification.

---

### **FC 9.105-1 Preaward surveys.**

Status: Unknov

FC 9.105-1 Preaward surveys.

Preaward surveys should only be undertaken when necessary, specifically when contracting officers don't have enough information available through normal channels to determine if a potential contractor is responsible and capable of performing the work. These surveys are not encouraged as a routine practice but rather reserved for situations where commercial sources or other readily available information don't provide sufficient insight into the contractor's abilities. For simpler contracts(those with fixed prices at or below the simplified acquisition threshold or involving commercial products and services) surveys should be avoided unless exceptional circumstances justify the additional cost and time involved.

When a preaward survey is found to be necessary, the contracting officer may request the survey using Standard Form 1403 (Preaward Survey of Prospective Contractor (General)). This request includes the complete solicitation package, any relevant performance history, and the specific factors that need investigation. The survey team then conducts a comprehensive evaluation covering technical capabilities, production capacity, quality assurance processes, financial stability, and accounting systems using the appropriate standard forms (SF 1404 through SF 1408). If the survey reveals past performance issues, the team documents what corrective actions the contractor has taken or plans to implement. In some cases where sufficient positive information already exists, a shortened survey format using only SF 1403 may be appropriate to streamline the process while still ensuring contractor capability.

For AbilityOne participating nonprofit agencies, the process works slightly differently. When the Committee for Purchase From People Who Are Blind or Severely Disabled requests assistance in assessing a nonprofit agency's capabilities, contracting offices use SF 1403 to conduct the

capability survey and then provide a copy of the completed survey to the Committee's Executive Director. The contracting office may also determine that the AbilityOne nonprofit agency is capable without conducting a full survey, provided they can support this determination with appropriate rationale.

---

## **FC 9.201 Qualified bidders list.**

Status: Unknown

FC 9.201 Qualified bidders list.

For recurring procurements of commercial products and services, particularly those under the Federal Supply Schedule or utilizing the simplified request for quotation procedures (FAR **12.201-1**), consider employing the Qualified Bidders List (QBL) concept. This is especially useful for addressing agency-specific non-functional requirements, such as security, legal, and IT considerations.

For instance, if an agency has recurring needs for software products, managing objectionable product-specific End User License Agreements (EULAs), Terms of Service (TOS), or similar legal instruments can be time-consuming for each individual procurement. This effort can be streamlined by proactively establishing and maintaining a QBL with willing industry partners. Unlike Blanket Purchase Agreements (BPAs), QBLs do not require upfront consideration of price or competition for their establishment.

24

Federal Acquisition Regulation (FAR) Companion

## **Part 10 - Market Research**

---

## **PART 10**

---

### **FC 10.001 Conducting market research.**

*Status: Unknown*

FC 10.001 Conducting market research.

Federal acquisition teams should approach market research as an incremental process that builds understanding step by step. Start by getting familiar with the marketplace relevant to your buy, and what capabilities are available, especially if you're working in an area that's new to you or your agency.

Once you understand the marketplace for your requirement, determine if existing agency capabilities can fulfill the need. If you do not already have the capability within your agency, the next phase of market research can focus on whether shared services and other existing federal contract vehicles already offer the products or services you need. This can save time and effort. If existing contracts don't meet your requirements, then assess the marketplace more broadly for an open market acquisition. Throughout this process, examine whether commercial products or services can work as-is or with minor changes, and consider how industry typically handles contracts, warranties, and support.

Market research can also reveal how your requirement may be met by small businesses, non-traditional contractors, or new entrants. The amount of research you do should match your situation?simple purchases need less research than complex ones, and you can often build on research that's already been done if it's still relevant. Remember, if commercial options seem limited at first, consider whether you can adjust your requirements to use what's available in the marketplace. Research thoroughly as you frame your decision.

---

### **FC 10.001(b) Data-informed decision-making.**

*Status: Unknown*

FC 10.001(b) Data-informed decision-making.

The Federal acquisition workforce has access to relevant and up-to-date data to frame market research and resultant acquisition decisions.

This data is in systems such as, but not limited to, the System for Award Management (SAM.gov), the Contractor Performance Assessment Reporting System (CPARS.gov), the Federal Procurement Data System (FPDS.gov), the U.S. Small Business Administration Small Business Search, and other tools and datasets accessible through websites such as Acquisition.gov and Acquisition Gateway.

Use available data to shape strategies that match market realities, especially when deciding between acquisition methods or assessing vendor capability. You have discretion to use what is appropriate, as your professional judgment is trusted.

---

### **FC 10.001(b) Sources for market research.**

*Status: Unknown*

#### FC 10.001(b) Sources for market research.

Meaningful engagement with industry helps to ensure your market research supports well-formed requirements and sound acquisition strategies, especially in complex or changing markets. You have flexibility to scale your efforts based on the size, complexity, and market conditions pertinent to your acquisition. Sources of market research used to inform an acquisition should reflect current market conditions.

25

#### Federal Acquisition Regulation (FAR) Companion

When conducting market research, you have a multitude of options for gathering information about the marketplace. These options include both desk research and industry engagement, such as:

? Reviewing existing contract databases and procurement records to see what other agencies with similar requirements have purchased.

? Reviewing industry publications and trade journals to understand available products and market trends.

? Learning from industry through presolicitation conferences, industry days, reverse industry days, trade conferences, special notices, sources sought, requests for information, technical discussions, capability presentations, site visits, and online forums where vendors and government buyers exchange information.

? Examining supplier information from online resources like federal solution finders, category management websites, vendor websites, and on-line product literature.

? Talking with colleagues both within your agency and at other agencies who have worked on similar acquisitions or reaching out to technical experts who understand the requirements.

---

### **FC 10.001(c) Exchanges with industry.**

*Status: Unknown*

#### FC 10.001(c) Exchanges with industry.

Exchanges with industry before issuing the formal solicitation are considered market research.

The main purpose in this stage is to develop requirements and to form the most suitable competitive approach to meeting the agency's needs.

During market research, government officials including the program manager, users, small business specialists, IT specialists, as well as the contracting officer, can meet one-on-one with potential offerors. Government officials are not required to meet with all possible offerors. As a reminder, government officials must never promise business to any company or share other companies' information during exchanges.

---

### **FC 10.001(c) Industry engagement opportunities.**

*Status: Unknown*

#### FC 10.001(c) Industry engagement opportunities.

Industry days and presolicitation conferences directly benefit the government by promoting a common understanding of the agency's requirements and procurement specific information

(such as requirements or solicitation terms and conditions).

These engagement opportunities, when well conducted, also benefit industry ? especially small businesses ? by providing prime contractors and subcontractors a chance to meet and develop relationships or teaming agreements that benefit contract performance.

The value of these events derives from the government?s willingness to provide maximum information to industry on its requirements, answer questions, and improve the solicitation based on feedback from potential offerors and contractors.

---

## **FC 10.001(d) Requests for Information & Special Notices.**

*Status: Unknown*

FC 10.001(d) Requests for Information & Special Notices.

In government procurement, Special Notices, Sources Sought, and Requests for Information (RFIs) are essential for communication between agencies and industry partners. They enable the government to gather information and assess market capabilities before solicitations are issued.

26

Federal Acquisition Regulation (FAR) Companion

These notices are a means to signal upcoming opportunities. Sources Sought Notices are typically published to identify potential contractors, while Special Notices allow for formal information exchange before issuing a solicitation.

Both of these help the government identify qualified suppliers through demonstrated capabilities and get feedback from industry on draft government requirements.

They help vendors gain visibility and prepare for future solicitations by responding with information on their expertise and offerings.

These tools help the government refine acquisition strategies before releasing a solicitation.

---

## **FC 10.001 Commercial acquisitions.**

*Status: Unknown*

FC 10.001 Commercial acquisitions.

Under FAR 10.001, market research is not required prior to soliciting offers for acquisitions with an estimated value up to the simplified acquisition threshold. Further, a written market research report is not required prior to placing an order for commercial products or services under existing Federal Supply Schedule contracts or governmentwide acquisition contracts established by category management.

The contracting officer?s award documentation can serve as sufficient documentation of market research depending on the size and complexity of the acquisition. Refer to the applicable ordering procedures of the contract vehicle for specific guidance.

### **Part 11 - Describing Agency Needs**

---

## **PART 11**

---

### **FC 11.102(a)(2)(i) Modular acquisition strategies.**

*Status: Unknown*

FC 11.102(a)(2)(i) Modular acquisition strategies.

Break apart large, complex requirements into separately procurable components that reflect logical functional boundaries and technical interfaces, as appropriate (e.g., exceptions may apply for major systems programs).

This approach expands the competitive base by enabling specialized vendors to compete for elements within their core competencies, rather than mandating that contractors show expertise across all technical disciplines of an integrated system.

By procuring individual requirement components separately (including software applications, hardware subsystems, and specialized services) agencies can reduce system integration risks while maintaining clear technical interfaces and performance specifications.

This modular approach allows incremental technology insertion and component-level modernization without requiring complete system replacement. This approach optimizes lifecycle costs and enhances operational capability evolution throughout the system's service life.

Also, modular requirements development supports using performance-based specifications that focus on required outcomes rather than prescriptive technical solutions. This approach enables contractors to propose innovative approaches while maintaining clear accountability for

27

Federal Acquisition Regulation (FAR) Companion

deliverable performance standards and technical interface requirements. This is a common strategy for the acquisition of information technology (see more in FAR part 39 and FC 39).

---

### **FC 11.102(a)(2)(i) Rapid capabilities integration.**

*Status: Unknown*

FC 11.102(a)(2)(i) Rapid capabilities integration.

Create pathways for quickly testing and adopting emerging capabilities through pilot programs, proof-of-concept demonstrations, and accelerated evaluation processes.

Consider milestone-based line item number structures to incentive performance under contract. The government can contemplate one or more than one single-award contract, with line items aligned to different phases (e.g., proof of concept, pilot, low rate of initial production, full production). Award the first line item, and hold the other line items as options, to be exercised as performance and progress is considered under the previously awarded or exercised line item.

This and similar contracting approaches allow for rapid experimentation without full-scale commitment, so agencies can explore innovative solutions while managing risk. Flexible contract structures support constant development and evaluation and build partnerships with commercial innovators willing to show capabilities in government environments. This and similar

approaches also help the government stay current with technological advancement while providing valuable feedback to commercial developers about what the government needs and requires.

---

### **FC 11.102(a)(2)(i) Outcome-based contracting.**

Status: Unknown

FC 11.102(a)(2)(i) Outcome-based contracting.

Outcome-oriented strategies align contractor success with agency mission achievement. They encourage partnership between the government and the contractor focused on timely and quality mission delivery.

? Outcome-based contracting. Focus on what you need to achieve rather than dictating how vendors should deliver results. This approach gives commercial providers the flexibility to apply their expertise, innovation, and best practices to meet your mission needs. Instead of specifying exact methodologies, technologies, or labor categories required, define clear performance standards, metrics, and desired outcomes.

? Partnerships in the process. Focus on developing mutual trust and a shared sense of ownership for successful delivery between government and industry. Build relationships so both parties can align their financial and non-financial incentives to deliver better outcomes for the public. Building these transparent relationships helps offerors trust the government acted fairly if they didn't win the award and encourages them to compete again next time.

? Performance metrics alignment. Develop meaningful performance metrics that directly connect to mission outcomes rather than technical specifications. Effective metrics focus on user experience, business process improvement, and mission capability enhancement rather than system characteristics alone. Structure contracts to include incentives tied directly to these outcome-based metrics, rewarding contractors for exceeding targets and addressing performance shortfalls when metrics aren't met.

Recognize the role of the government team to support the outcomes and partner to

28  
Federal Acquisition Regulation (FAR) Companion

achieve the mission. This approach keeps both government and contractor teams focused on delivering real mission value.

---

### **FC 11.102(c) Collaborative requirements development.**

Status: Unknown

FC 11.102(c) Collaborative requirements development.

When possible and consistent with FAR 9.5, give potential contractors meaningful opportunities to engage with your requirements development process. While this may not be necessary for most simple, commercial procurements, more nuanced, government-specific, and complex requirements demand it.

Providing potential contractors with an opportunity to review and provide comments on draft requirements will yield more thoughtful requirements and unearth potential ambiguities early in

the drafting process. Methods for sharing draft requirements and obtaining such feedback may include issuing a Request for Information (RFI) and sharing draft requirements via SAM.GOV, or hosting requirements-focused industry days or other collaborative sessions.

This engagement helps ensure that what the government asks for makes sense in the real world and aligns with how industry actually works. Use existing specifications and standards as starting points rather than rigid rules and let the collaborative process inform final requirements. Avoid getting too specific about exactly how something should be built or delivered too early in the process?instead, focus on what you need to accomplish and let industry expertise pick the best way to get there. This approach leads to better solutions, more competition, and requirements that contractors can meet effectively.

---

### **FC 11.102(c) Identify available specifications.**

Status: Unknov

FC 11.102(c) Identify available specifications.

The National Institute of Standards and Technology can help agencies identify sources for, and content of, nongovernment standards. Department of Defense activities may get non-government standards from the Defense Standardization Program Office.

Agencies may also obtain nongovernment standards from the standards developing organization responsible for preparing, publishing, or maintaining the standard, or from an authorized document reseller.

---

### **FC 11.2 Treatment of inherently government functions.**

Status: Unknov

FC 11.2 Treatment of inherently government functions.

When preparing requirements for services contracts, it is crucial to avoid assigning inherently governmental functions (as defined in FAR 7.5) to contractors. The requirements documentation should stipulate that contractor personnel whose actions might be perceived as those of government officials are properly identified and that all documents and reports generated by contractors are suitably marked.

---

### **FC 11.204 Use brand name or equal purchase descriptions.**

Status: Unknov

FC 11.204 Use brand name or equal purchase descriptions.

While using vendor or product-neutral performance requirements is preferred to encourage offerors to propose innovative solutions, using brand name or equal purchase descriptions may help under certain circumstances, such as when a certain brand product is currently being used but you are open to considering comparable products.

Brand name or equal purchase descriptions should include, in addition to the brand name, a general description of those key salient physical, functional, or performance characteristics of the brand name item that an ?equal? item must meet to be acceptable for award.

29

#### Federal Acquisition Regulation (FAR) Companion

Under 6.103-1(d), use of brand-name descriptions, or specification of attributes peculiar to one manufacturer, prevents full and open competition and should only be used when justified and approved according to 6.104. This does not apply to ?brand name or equal? descriptions as they provide for full and open competition.

#### **Part 12 - Acquisition of Commercial Products and Commercial Services**

---

## PART 12

---

### FC 12.000, 2.101 Understanding commercial products and services.

Status: Unknown

FC 12.000, 2.101 Understanding commercial products and services.

When evaluating whether a product qualifies as commercial, acquisition professionals can focus on the extent of modifications required to meet government needs. The critical distinction lies between minor modifications and major customization.

? Minor modifications to products typically qualify as commercial when changes don't significantly alter how the item normally functions or its essential characteristics outside of government use.

? Major customization to products typically eliminates commercial status when substantial changes fundamentally alter core functionality or essential characteristics.

? Scope and value considerations include evaluating modifications relative to the overall product. Dollar amounts and percentages can serve as helpful guides, though they're not the only determining factors.

? For services, consider examining whether pricing reflects true commercial practices by checking if prices represent genuine market rates. Market rates are those established through normal business transactions between willing buyers and sellers, supported by competition or independent sources rather than just the vendor's claims.

The objective is to ensure that what the government is buying truly reflects what's available in the commercial marketplace under similar terms and conditions.

---

### FC 12.001 Selecting the appropriate contracting method for commercial construction.

Status: Unknown

FC 12.001 Selecting the appropriate contracting method for commercial construction.

For construction requirements that have been determined to be commercial (per the commercial service definition in FAR 2.101), FAR parts 6, 12, 14, and 36 offer several options for selecting the appropriate contracting method.

For contracts performed within the United States and its outlying areas, use FAR part 14 sealed bid procedures if all of the following conditions are met (see FAR 36.101-1(a) and 6.101(b)(1)):

- 1. Time permits staff to solicit, submit, and evaluate sealed bids;**
- 2. The award will be made on the basis of price and other price-related factors;**
- 3. Discussion with bidders is unnecessary; and**
- 4. Contracting officers reasonably expect to receive more than one sealed bid.**

If technical and price tradeoff is desired, or if negotiations may be necessary?

? For contracts up to \$9 million (as per the dollar threshold in FAR 12.001(c)), use the simplified request for quotation (RFQ) procedures outlined in FAR 12.201-1.

30

Federal Acquisition Regulation (FAR) Companion

? For contracts exceeding \$9 million, use the requests for proposals (RFP) procedure in

FAR part 15, in conjunction with part 12.

---

## **FC 12.201 Modular acquisition strategies.**

Status: Unknov

FC 12.201 Modular acquisition strategies.

Consider breaking large, complex requirements into smaller, independently procurable components that align with how commercial markets naturally organize products and services. This approach can open competition to vendors who excel in specific areas rather than requiring contractors to master every aspect of a complex system. This is a common strategy for the acquisition of information technology (see more in FAR part 39 and FC 39). By purchasing components of requirements separately (such as software applications, hardware components, or professional services), agencies may follow commercial best practices and reduce integration risks. This strategy also enables more frequent technology refreshes of individual components without replacing entire systems, potentially reducing long-term costs and improving performance over time.

---

## **FC 12.201-1(e)(3) Blanket purchase agreements (BPAs).**

Status: Unknov

FC 12.201-1(e)(3) Blanket purchase agreements (BPAs).

A blanket purchase agreement (BPA) is a simplified method of filling anticipated repetitive needs for supplies or services. BPAs may be established for use by an organization responsible for providing supplies for its own operations or for other offices, installations, projects, or functions within an agency or across the government. BPAs may be established with a single firm or multiple suppliers for products or services of the same type to provide maximum practicable competition.

BPAs should include:

- 1. Sufficient detail about the need, such as scope of work;**
- 2. An ordering period, inclusive of any options or award terms;**
- 3. Ordering procedures, such as identification of the customers/individuals authorized to place orders and any limitations surrounding the placement of orders; and**
- 4. If applicable, any ordering activity requirements, such as invoicing, delivery, discounts or other concessions (if any).**

BPAs should state the estimated value, but should not specify a ceiling. On an annual basis or prior to exercise of an option, BPAs should be reviewed to ensure the BPA still represents the best value; verify the accuracy of estimated quantities/amounts to assess if the value may need adjustments, ensure that the BPA ordering procedures are being followed; and consider if additional price discounts or other concessions can be obtained.

---

## **FC 12.204 Supplier license agreements.**

Status: Unknov

#### FC 12.204 Supplier license agreements.

Many commercial products and services are acquired subject to supplier license agreements. These are particularly common in information technology acquisitions, but they may apply to any supply or service.

For example, computer software and services delivered through the internet (web services) are often subject to license agreements, referred to as End User License Agreements (EULA), Terms of Service (TOS), or other similar legal instruments or agreements.

31

#### Federal Acquisition Regulation (FAR) Companion

The acquisition team managing Federal Supply Schedule contracts or governmentwide acquisition contracts under category management will establish commercial supplier license agreements that apply to all orders to maximize administrative efficiency.

As much as possible, agency orders under the Federal Supply Schedule should use these negotiated license agreements. Agencies should review the terms and determine whether any further terms necessitate negotiation.

When the supplier license agreement negotiated under existing Federal Supply Schedule or governmentwide acquisition contracts does not meet the agency's need, contracting officers should:

- ? conduct market research to identify the availability of such commercial license terms,
- ? coordinate with agency legal counsel and IT personnel to review and negotiate acceptable license agreements, and
- ? ensure that any negotiated terms comply with federal requirements and protect government interests while maximizing commercial terms and meeting the government's operational needs.

---

### **FC 12.301 Strategic management of award notices, brief explanations, and protest**

Status: Unknown

FC 12.301 Strategic management of award notices, brief explanations, and protest windows.

To avoid unnecessarily extending the protest window, the acquisition team led by the contracting officer should prepare to quickly provide a brief explanation when requested after making award decisions and notifying unsuccessful offerors. This timing consideration is relevant because unsuccessful offerors generally have 10 calendar days to file a GAO bid protest from the date the basis of protest is known. Note that an automatic stay of performance at GAO is 10 days after contract award. Please note that if the last day of the computation period is a Saturday, Sunday, or Federal holiday, then the deadline for filing is the next day the protest venue (e.g., GAO, soliciting agency) is open.

Additionally, consider preemptively including the "brief explanation" in the award notice. This approach may start the GAO 10-day bid protest clock, marking the point at which "the basis of protest is known or should have been known."

---

### **FC 12.301(b) and FC12.402(d) Contents of a brief explanation.**

FC 12.301(b) and FC12.402(d) Contents of a brief explanation.

The brief explanation of the award decision under FAR 12.301(b) or FAR 12.402(d) may include the following information:

? The number of quotations received;

? The name of each quoter receiving an award;

? The total contract price; and

? In general terms, the reason(s) the quotation was not accepted, unless the price information shared readily reveals the reason. In no event shall a quoter's cost breakdown, profit, overhead rates, trade secrets, manufacturing processes and techniques, or other confidential business information be disclosed to any other quoter.

32

Federal Acquisition Regulation (FAR) Companion

---

## FC 12.201-1 Periodic Table of Acquisition Innovations (PTAI) for FAR part 12 simplified

Status: Unknown

FC 12.201-1 Periodic Table of Acquisition Innovations (PTAI) for FAR part 12 simplified procedures.

FAR 12.201-1 provides for simplified procedures for the acquisition of commercial products and services valued up to \$9 million (or \$15 million as outlined in FAR 12.001(b)) through the issuance of a Request for Quotation (RFQ) followed by a purchase order. Use of FAR part 15 procedures for the acquisition of commercial products or services up to \$9 million is no longer permissible.

PTAI evaluation methodologies can be directly applied to Request for Quotation (RFQ) processes under FAR part 12 by offering proven innovative approaches that agencies can adopt and adapt to their procurements. Contracting officers can implement more efficient comparative evaluation approaches that focus on best value determinations rather than lengthy technical assessments. The use of Periodic Table of Acquisition Innovations (PTAI) and other innovative approaches directly support FAR part 12 core objectives of reducing time, complexity, and cost while maintaining acquisition integrity and achieving optimal mission outcomes.

Many of these innovative approaches are also appropriate and beneficial for acquisition of commercial products and services when using FAR part 12 in conjunction with part 15 above \$9 million.

### Part 13 - Simplified Procedures for Noncommercial Acquisitions

No additional guidance.

### Part 14 - Sealed Bidding

---

## **PART 14**

---

### **FC 14.202-4(c) Price-related factors other than the bid price that may be considered**

*Status: Unknown*

FC 14.202-4(c) Price-related factors other than the bid price that may be considered during evaluation.

When evaluating bids for award, the solicitation should include applicable factors like foreseeable government costs/delays (e.g., inspection, location, transportation, especially for f.o.b. origin bids), bidder-requested changes not grounds for rejection (FAR 14.3), advantages/disadvantages of multiple awards (assuming \$500 administrative cost per contract), applicable taxes (Part 29), and origin of supplies, including Buy American Act or other foreign purchase prohibitions (Part 25).

---

### **FC 14.209 Amendment of invitation for bids.**

*Status: Unknown*

FC 14.209 Amendment of invitation for bids.

Amend invitations for bids (IFBs) using Standard Form 30 for changes in quantity, specifications, delivery, etc., or to correct errors. Mentioning changes at a pre-bid conference doesn't negate the need for an amendment. Amendments should be sent to all invitees and displayed in the bid room before bid opening, if applicable. Before amending an IFB, contracting officers should consider the remaining time until bid opening and the need for extensions.

33

Federal Acquisition Regulation (FAR) Companion

---

### **FC 14.210 Bidding time.**

*Status: Unknown*

FC 14.210 Bidding time.

Insufficient bidding time can deter potential sources or force them to include contingencies, which could be eliminated with more time. Consider the following factors when setting a reasonable bidding time:

- ? Urgency: The degree of urgency associated with the requirement.
  - ? Complexity: The intricacy of the requirement.
  - ? Subcontracting: The anticipated extent of subcontracting involved.
  - ? Presolicitation Notices: Whether presolicitation notices were utilized.
  - ? Geographic Distribution: The geographic spread of potential bidders.
  - ? Transmittal Time: The typical time needed for transmitting both invitations and bids.
- 

### **FC 14.3 Pre-bid conference.**

*Status: Unknown*

### FC 14.3 Pre-bid conference.

In complex acquisitions, a pre-bid conference can be held after the invitation is issued but before bids are opened. Its purpose is to brief prospective bidders and clarify complicated specifications and requirements. This conference, which may follow the guidance for early exchanges with industry in part 15, should not, however, replace the need to amend a flawed or unclear invitation.

---

## **FC 14.3 Cancellation of invitations before opening.**

*Status: Unknown*

### FC 14.3 Cancellation of invitations before opening.

Canceling invitations for bids wastes government and bidder resources. It should only occur when clearly in the public interest, such as when requirements change or amendments are too extensive.

For non-electronic cancellations, return bids unopened and notify all prospective bidders. For electronic cancellations, post a general notice, do not view bids, and purge bids from storage. Cancellation notices typically identify the invitation by number and subject, explain the reason, and, if applicable, assure bidders of future opportunities. Records should include the number of bids invited and received.

---

## **FC 14.304-2 Apparent clerical mistakes.**

*Status: Unknown*

### FC 14.304-2 Apparent clerical mistakes.

To correct a bid, attach the verification to both the original and duplicate bids. Do not alter the bid itself, but reflect the correction in the award document. For bids submitted electronically, include the original bid, verification request, and bid verification in the electronic solicitation file.

---

## **FC 14.306 Extension of bid expirations after opening.**

*Status: Unknown*

### FC 14.306 Extension of bid expirations after opening.

If administrative difficulties arise after bid opening that could delay the award beyond the bidders' acceptance periods, the contracting officer should ask the several lowest bidders whose bids have not yet expired (regardless of the acceptance period stated in their bid) to extend their bid acceptance period in writing before their bids expire. This request should also include the consent of sureties, if applicable.

---

## **FC 14.307 Limited number of bids.**

*Status: Unknown*

### FC 14.307 Limited number of bids.

If less than three bids are received, investigate why. The contracting officer may still award the contract, and if appropriate, consider taking corrective action to increase future competition, noting it in the contract file.

34

Federal Acquisition Regulation (FAR) Companion

**Part 15 - Contracting by Negotiation**

---

## **PART 15**

---

### **FC 15.001 Deficiency definition.**

*Status: Unknown*

FC 15.001 Deficiency definition.

FAR 15.001 defines a deficiency as "any part of an offer that does not conform to a material requirement of a RFP". In addition to requirements that affect price, quantity, quality, or delivery, material requirements include requirements that "the RFP requires to be met at the time of proposal submission." Examples of such requirements may include, but are not limited to prerequisites such as certifications, credentials, or licenses. When the contracting officer intends to treat this kind of requirement as material, ensure that the instructions to offerors section of the solicitation specifies the information, documentation, or evidence that offerors must submit, and that the basis for award section of the solicitation addresses how compliance with the requirement will be considered.

---

### **FC 15.101(a) Early exchanges with industry.**

*Status: Unknown*

FC 15.101(a) Early exchanges with industry.

While the contracting officer is the focal point for any exchange with potential offerors after the release of the request for proposal (RFP), before the release, requirement owners should feel empowered to actively participate in early exchanges with industry even without the contracting officer. It is important that these exchanges do not disclose sensitive government information or provide any vendor preferential treatment. Agency officials should not discuss proprietary or other confidential business information, source selection sensitive information, or any information protected by the Privacy Act or Trade Secrets Act.

Government officials can use these early exchanges to learn from industry what is possible to accomplish given current or upcoming advances in technology, best commercial practices, or other approaches to solve government challenges or accomplish mission needs.

---

### **FC 15.103 Best value continuum.**

*Status: Unknown*

FC 15.103 Best value continuum.

Best value in competitive acquisitions can be achieved through various source selection approaches, as outlined in FAR 15.103. The balance between price and non-price factors can range from price being the sole determinant among technically acceptable offers to awarding to the highest technically rated offeror with a fair and reasonable price. The approaches across the best value continuum may be used for both single award and multiple award contracts.

35

Federal Acquisition Regulation (FAR) Companion  
Best Value Continuum

**(FAR 15.103)**

A continuum showing Price on the left and Technical on the right. From left to right, it lists:

? LPTA ? Lowest Price Technically Acceptable (closest to price): Prioritizes price among technically acceptable offers.

? Tradeoff (in the middle between price and technical): Non-price factors weighed against price. There are three tradeoff types, again listed from left (toward the price side of the continuum) to right (toward the technical side of the continuum):

o Non-price factors significantly less important than price.

o Non-price factors approximately equal to price.

o Non-price factors significantly more important than price.

? HTR-FRP ? Highest Technically Rated with a Fair and Reasonable Price (closest to technical): Prioritizes technical merit; no tradeoff between non-price factors and price.

Disclaimer: This continuum is not exhaustive and should be used in conjunction with professional judgment to achieve the best value for the government. Apply discretion to balance risk and value in procurement decisions.

The "lowest price technically acceptable" approach is typically used for requirements based on well-established technology where varied qualification levels above industry standards will not result in significant performance impacts.

In a "tradeoff" approach, the difference in price is weighed against the relative risks and benefits assessed in non-price factors such as quality, experience, or past performance. This requires an analysis by the government acquisition workforce to appropriately and fairly evaluate the differences in both technical factors and price among all offerors.

The "highest technically rated with a fair and reasonable price" approach is at the opposite end of the best value continuum from LPTA. The approach prioritizes the best possible performance, provided the price is determined to be fair and reasonable. Here, all proposals are initially evaluated based solely on the non-price factors specified in the solicitation. Only the price of the highest-ranked technical proposal is then evaluated to ensure it is fair and reasonable. This method avoids technical-price tradeoffs among offerors.

Variations of this approach may include establishing a predetermined fixed "bid to price" or an acceptable target price range. These targets can be based on independent cost estimates, a request for information (RFI), or the requiring activity's budget and affordability estimate. During the bid and proposal process, offerors often estimate the ideal proposal price based on their perception of whether the government seeks an "economical" or a "luxury" solution. This approach, when properly used, can help industry reduce "gamesmanship" and lower transaction costs. This approach is suitable when the buyer has a strong understanding of the requirements and technologies involved, allowing them to rely on the validity of their independent cost estimate, as further refined by the RFI.

36

Federal Acquisition Regulation (FAR) Companion

---

## **FC 15.102 Phased evaluation approach and down-select processes.**

Status: Unknown

FC 15.102 Phased evaluation approach and down-select processes.

When a large number of responses is anticipated in a competitive acquisition, the acquisition team may consider a phased evaluation and down-select process to promote efficiency, increase competition, and reduce the bid and proposal burden for industry. In a down-select, all offers are evaluated in the first phase under some of the evaluation factors, with the expectation that fewer offers will be considered in one or more subsequent phases.

The solicitation may require a phased offer submission (where the initial offer will address some evaluation factors and one or more subsequent offer updates will address the remaining evaluation factors). This is a matter for the contracting officer's discretion and sound business judgment, considering the realities of the marketplace and the complexities of the acquisition.

A notional two-phase down-select scenario is described in the table below. The contracting officer should adapt this process to fit the particular acquisition. The solicitation should clearly detail the evaluation factors that are relevant for each evaluation phase.

Notional scenario of a down-select process

Release solicitation describing all evaluation factors. Require offerers

1

to submit proposals that address Phase 1 factors

2 Receive Phase 1 proposals

Phase 1

3 Evaluate Phase 1 factors

Down-select to a subset of proposals based on evaluation of Phase 1

4

factors

Notify offerors of the government's decision (in the event of a firm down-select process) or recommendation (in the event of an advisory

5

down-select process). Request down-selected offerors to submit proposals that address Phase 2 factors

Phase 2 6 Receive Phase 2 proposals

7 Evaluate Phase 2 factors

Select awardees in accordance with the evaluation approach outlined

8

in the solicitation

For acquisitions where the contracting officer is not the selecting official, the contracting officer may make the down-select decision, while the selecting official retains the award decision.

Below are two broad approaches to a phased evaluation or down-select process, an advisory approach and a firm approach.

In an advisory or voluntary down-select process, an offeror not recommended to proceed to the next phase may still elect to participate in the next phase, and if so, will be considered for award. At the conclusion of an advisory down-select phase, the contracting officer informs each offeror either (1) that it is invited to participate in the next phase; or (2) that, based on the

37

Federal Acquisition Regulation (FAR) Companion

information it has already submitted, it is unlikely to be a viable competitor along with the general basis for that opinion. However, the notice should not restrict any offeror from participating in the next phase. The notices should inform offerors of the next submission

requirements and deadlines. Since no offeror has been eliminated, there are no grounds for protest.

In a firm or involuntary down-select process, an offeror not selected to proceed to the next phase will not be further considered for award. At the conclusion of a firm down-select process, it is recommended that the contracting officer inform each offeror either (1) that it is invited to participate in the next phase and provide information on the next submission requirements and deadlines; or (2) that it is no longer considered eligible for award.

Best practices and use cases for the application of down-selects can be found at the Periodic Table of Acquisition Innovations (PTAI).

---

## **FC 15.105-1 Oral presentations and product demonstrations.**

Status: Unknown

FC 15.105-1 Oral presentations and product demonstrations.

Oral presentations or product demonstrations deliver maximum value when scheduled in subsequent or final evaluation phases with a smaller, competitive pool of offerors. Treating the oral presentation or demonstration as a stand-alone evaluation factor, separate from other technical, management, or cost factors, ensures objective assessment and prevents overlap with written proposal evaluations. In addition, an oral presentation or product demonstration allows the government to discern actual capabilities of offerors (e.g., vice their use of proposal writers or artificial intelligence in proposal preparation).

When allowing briefing slides or written materials to accompany oral presentations or demonstrations, establishing uniform submission requirements creates a level playing field. Setting a common cut-off date and time, along with strict page or slide limits, focuses evaluation on the oral/demonstration aspects rather than written content. These constraints also clarify for all offerors that supplemental materials do not represent an opportunity to revise their proposals. To maintain a fresh collective memory and avoid bias from subsequent presentations, it is recommended to evaluate oral presentations and demonstrations immediately after each one concludes.

As an example, an approach can involve limiting presentation materials to 10 slides maximum, requiring submission 48 hours before the presentation, and explicitly stating in the solicitation that slides will only be used to support the oral presentation?not scored as standalone written content. This keeps the focus on the offeror's ability to communicate and demonstrate capabilities in real-time rather than creating another written submission opportunity.

---

## **FC 15.106(e) Amendments based on alternate solutions.**

Status: Unknown

FC 15.106(e) Amendments based on alternate solutions.

When the government becomes interested in a proposal that departs from the RFP's stated requirements, contracting officers may issue an amendment to permit alternative solutions by all offerors. Some best practices for RFP amendments based on alternative solutions include:

? Focus on outcomes: Carefully prepare the amendment to avoid revealing the specific alternate approach or any proprietary information from the proposal that sparked the

38

Federal Acquisition Regulation (FAR) Companion

government's interest; focus instead on the desired outcomes the government is interested in.

? Open door to innovation: Allow offerors to propose their own innovative solutions, even if they had not initially considered doing so.

? Maintain fairness: If alternative solutions were not clearly permitted and the government is open to them, amending the RFP provides all offerors the opportunity to compete on the basis of new criteria.

? Government benefit: The government potentially benefits from a wider range of solutions that could lead to better outcomes for the mission or service delivery.

As an example, an RFP required landscaping and grounds maintenance services for a government facility. The RFP specified that all grass cutting must be done using traditional gas-powered mowers and that fertilizer application must be done using a specific granular fertilizer. The RFP also required a minimum of five on-site personnel during each service visit. An offeror proposed a different approach using electric mowers powered by renewable energy sources

(via solar panels installed on their service vehicles). They also proposed using an organic, liquid fertilizer applied through a precision spraying system. Finally, they stated that through the use of more efficient equipment and optimized routing, they can achieve the same level of service with only three on-site personnel. The government found this alternate solution appealing because it aligned with sustainability goals, reduced noise pollution, and potentially lowered long-term costs (less fuel, fewer personnel). The CO issued an amendment to the RFP, phrased in a way that did not reveal the specifics of the original offeror's proposal.

The amended language stated: "The Government will consider alternative approaches to grounds maintenance that demonstrate a commitment to environmental sustainability and/or offer potential cost savings. Offerors are encouraged to propose solutions that reduce reliance on fossil fuels, minimize environmental impact, and/or optimize labor resources while meeting or exceeding the performance standards outlined in the original RFP."

The amendment did not reveal the offeror's proposed solution (e.g., it did not mention electric mowers, solar panels, or specific fertilizer types). It focused on the outcomes the government was interested in (sustainability, cost savings). It allowed other offerors to propose their own innovative solutions, even if they had not initially considered doing so. Maybe another offeror has a different approach to sustainable landscaping. All offerors now have the opportunity to compete on the basis of these new criteria. The government potentially benefits from a wider range of innovative solutions that could lead to better outcomes (environmental, financial, etc.).

---

## **FC 15.202(b) Rating systems.**

Status: Unknown

FC 15.202(b) Rating systems.

Proposals should be evaluated based on their underlying merits. When using the tradeoff approach, the evaluation must include an assessment of each offeror's ability to accomplish the technical requirements as well as an evaluation of the relative strengths, deficiencies, significant weaknesses, and risks supporting the evaluation. While the evaluation is not required to include

a rating system, a contracting officer may consider using a rating system when helpful to guide decision-making, such as evaluations involving several evaluation factors or where there is a high probability of having a number of closely rated proposals. Rating systems can provide a consistent, structured method for evaluators to assess the merits of a proposal, and generally to organize evaluation documentation and supporting rationale for evaluation decisions. In

39  
Federal Acquisition Regulation (FAR) Companion

choosing to employ a rating system, weigh any time added and effort required to develop and apply rating definitions or criteria against any benefit the rating system is expected to add to the evaluation process.

There are several rating systems that can be used for source selection evaluation. Common rating approaches include but are not limited to adjectival ratings, confidence ratings, numeric or score-based ratings, and risk-based ratings. While source selections under FAR 15.202(b)(2)(ii) using tradeoffs require an evaluation of relative strengths, deficiencies, significant weaknesses, and risks, these can be incorporated into any of the rating approaches. The key is that any rating approach should never be a rigid counting exercise, but a holistic evaluation of the proposals grounded in the government's overall expectation of successful performance. Evaluation best practices and use cases, including the application of confidence ratings, can be found at the Periodic Table of Acquisition Innovations (PTAI).

---

## **FC 15.202(b) On-the-spot consensus.**

Status: Unknov

FC 15.202(b) On-the-spot consensus.

On-the-spot consensus evaluation is a method used in source selections where evaluators collaboratively discuss and immediately agree upon the substantive merits and associated rating, as applicable, for a proposal against specific criteria. On-the-spot consensus is suitable for the evaluation of written proposals, as well as oral presentations or technical demonstrations.

This approach involves the evaluators reading proposals, then engaging as an evaluation team in a focused discussion to identify key strengths, significant weaknesses, deficiencies, and risks, arriving at a unified assessment and corresponding rating in real-time, and documenting the assessment and corresponding rating, as applicable, immediately thereafter.

The benefits of using on-the-spot consensus evaluation include increased efficiency, as it streamlines the evaluation process by eliminating the need for multiple rounds of individual reviews and consolidations. Overall, on-the-spot consensus evaluation provides a collaborative and efficient approach to assessing proposals.

## **Part 16 - Types of Contracts**

---

## PART 16

---

### FC 16.101(a) Selecting contract type.

Status: Unknown

FC 16.101(a) Selecting contract type.

A wide selection of contract types is available to the government and contractors in order to provide flexibility in acquiring the large variety and volume of supplies and services required by agencies. Contract types vary according to the degree and timing of the responsibility assumed by the contractor for the costs of performance; and the amount and nature of the profit incentive offered to the contractor for achieving or exceeding specified standards or goals.

Contract types are grouped into two broad categories: fixed-price contracts (see subpart 16.2) and cost-reimbursement contracts (see subpart 16.3). The continuum of contract types range from firm-fixed-price, in which the contractor has full responsibility for the performance costs, to cost-plus-fixed-fee, in which the contractor has minimal responsibility for the performance costs. In between are various incentive contracts (see subpart 16.4), in which the contractor's

40

Federal Acquisition Regulation (FAR) Companion

responsibility for the performance costs and the profit or fee incentives offered are tailored to the uncertainties involved in contract performance.

In line with 1.102, Guiding principles for the System, agencies are encouraged to use innovative contracting types and approaches to the maximum extent practicable to (1) achieve mission outcomes; (2) promote efficiency and economy in contracting; (3) avoid unnecessary burdens for agencies and contractors; and (4) align with commercial practices.

The objective is to select a contract type and pricing structure (or estimated cost and fee) that are most appropriate to the circumstances of the acquisition. Factors to consider may include reasonable contractor risk and providing the contractor with incentives for efficient, cost-effective, and quality performance.

---

### FC 16.2 Firm-Fixed-Unit-Price (FFUP) contract.

Status: Unknown

FC 16.2 Firm-Fixed-Unit-Price (FFUP) contract.

A firm-fixed-unit-price (FFUP) contract establishes a fixed-price(s) for supplies or services but does not establish the quantity, except for a guaranteed minimum and a ceiling. Volume discounts and equitable adjustments to the unit price based on actual usage do not render the contract other than a firm-fixed-unit-price contract.

A FFUP contract is suitable when the government needs supplies or services but is unsure of the exact quantity. The contract specifies units of supply or service, estimated quantities, and unit prices, and may include a clause for price adjustment based on actual usage (e.g., volume discount or other economies of scale).

FFUP contracts should require identifiable, discrete, and common units of service, each representing a consistent measure of value and work output. The unit price covers all costs and

contractor profit, serving as total compensation for unit delivery. The contractor assumes cost risk, except for pre-stipulated price adjustment.

When establishing a FFUP contract, ensure the following:

**1. Payment is for supplies or services rendered, not just for labor expended and materials**

acquired regardless of achievement. Each unit delivered and accepted provides a measure of value to the government commensurate with the unit price.

**2. Payment is for acceptable performance, not just best effort. The government pays only** for supplies or services that conform to contract requirements.

**3. The unit price covers all costs and profit, not just labor, and the contractor bears the risk** associated with all performance costs (e.g, labor and materials). The government bears the cost risk associated with the quantity of services needed.

**4. Fiscal controls (e.g., limitation of funds clause), as needed, are specified in the contract** to avoid open-ended obligations.

---

## FC 16.2 Consumption-based contracting.

Status: Unknown

FC 16.2 Consumption-based contracting.

A firm-fixed-unit-price (FFUP) contract may be structured on a consumption basis, in which a fixed-price is established for a unit of usage, such as a resource unit, and supplies and services are metered and billed based on actual usage over a predetermined periodic basis. A type of FFUP contract is a consumption-based contract.

41

Federal Acquisition Regulation (FAR) Companion

This contract type may be suitable for procuring cloud computing or other types of information technology where the supply or service can be described in terms of usage rather than a specific product or task, ongoing and dynamic usage makes separate task or delivery orders impractical, and anticipated usage cannot be estimated to the level of certainty that would justify a firm-fixed-price contract.

The contracting officer should establish a price for all estimated requirements. The contracting officer should also state a realistic estimate of the consumption and the total amount in dollars estimated to be expended in the contract. The contracting officer may obtain the estimate from records of previous requirements and consumption, or by other means, and should base the estimate on the most current information available. Although a consumption-based firm-fixed-price contract is not subject to subpart 16.5, to establish a binding contract the contract must provide for a guaranteed minimum amount of usage that is more than a nominal amount, but not more than the government is likely to use.

The contracting officer should determine that the consumption monitoring capabilities offered by the Contractor will enable the government to adequately track actual usage before awarding a contract.

The contracting officer should ensure that the contract provides appropriate fiscal controls, ensuring that the government will not be obligated to pay the Contractor any amount in excess of the amount of obligated funding identified in the contract, and the Contractor would not be obligated to continue performance if doing so would exceed this amount. As an example,

language similar to the below could be incorporated into the solicitation and resultant contract:

The Contractor shall?

**1. Provide, at no additional cost to the government, access to tools that enable the**

government to track its usage of services offered on a consumption basis; and

**2. Notify the contracting officer when total consumption reaches?**

a. 50 percent and 75 percent of the ceiling price for each CLIN for consumption-based services, or other milestones as agreed upon by the Contractor and the contracting officer; and

b. 50 percent and 75 percent of the contract ceiling price, or other milestones as agreed upon by the Contractor and the contracting officer.

In addition or in lieu of the language above, the contracting officer may use a limitation of funds clause when CLINs under the contract are incrementally funded, such as or similar to FAR

**52.232-22 Limitation of Funds, DFARS 252.232-7007, Limitation of Government's Obligation, or NFS 1852.232-77, Limitation of Funds (Fixed-Price Contract).**

---

## **FC 16.102 Factors in selecting contract types.**

Status: Unknown

FC 16.102 Factors in selecting contract types.

There are many factors that a contracting officer may consider in selecting the contract type.

They include, but are not limited to, the following:

**1. Commerciality: When acquiring commercial products or services, the contract types**

used should generally align with those prevalent in the commercial market.

42

Federal Acquisition Regulation (FAR) Companion

**2. Price competition: Normally, effective price competition results in fair and reasonable**

pricing, and a fixed-price contract is ordinarily in the government's interest.

**3. Price analysis: Price analysis, with or without competition, may provide a basis for**

selecting the contract type. The degree to which price analysis can provide a realistic pricing standard should be carefully considered (see 15.404-1(b)).

**4. Cost analysis: In the absence of effective price competition and if price analysis is not**

sufficient, the cost estimates of the offeror and the government may provide the bases for negotiating contract pricing arrangements. It is essential that the uncertainties involved in performance and their possible impact upon costs be identified and evaluated, so that a contract type that places a reasonable degree of cost responsibility upon the contractor can be negotiated.

**5. Type and complexity of the requirement: Complex requirements, particularly those**

unique to the government, may have a greater assumption of risk by the government.

This may be relevant to complex research and development contracts, as an example, when performance uncertainties or the likelihood of changes makes it difficult to estimate performance costs in advance. As a requirement recurs or as quantity production begins, the cost risk should shift to the contractor, and a fixed-price contract should be considered.

**6. Combining contract types: If the entire contract cannot be firm-fixed-price, the**

contracting officer may consider whether or not a portion of the contract can be established on a firm-fixed-price basis.

**7. Urgency of the requirement: If urgency is a primary factor, the government may choose**

to assume a greater proportion of risk or it may offer incentives tailored to performance outcomes to ensure timely contract performance.

**8. Period of performance or length of production run: In times of economic uncertainty,**

contracts extending over a relatively long period may require economic price adjustment or price redetermination clauses.

**9. Contractor's technical capability and financial responsibility.**

**10. Adequacy of the contractor's accounting system. Before agreeing on a contract type**

other than firm-fixed-price, the contracting officer should ensure that the contractor's accounting system will permit timely development of all necessary cost data in the form required by the proposed contract type. This factor may be critical when the contract type requires price revision while performance is in progress or when a cost-reimbursement contract is being considered and all current or past experience with the contractor has been on a fixed-price basis. See FAR 42.302(a)(12).

**11. Concurrent contracts: If performance under the proposed contract involves concurrent**

operations under other contracts, the impact of those contracts, including their pricing arrangements, should be considered.

**12. Extent and nature of proposed subcontracting: Select a contract type that reflects the**

actual risks to the prime contractor if the contractor proposes extensive subcontracting.

**13. Acquisition history: Contractor risk usually decreases as the requirement is repetitively**

acquired. Also, product descriptions or descriptions of services to be performed can be defined more clearly.

43

Federal Acquisition Regulation (FAR) Companion

---

## **FC 16.202 Application of firm-fixed-price contracts.**

Status: Unknown

FC 16.202 Application of firm-fixed-price contracts.

This contract type places upon the contractor maximum risk and full responsibility for all costs and resulting profit or loss. It provides maximum incentive for the contractor to control costs and perform effectively and imposes a minimum administrative burden upon the contracting parties.

For firm-fixed-price contracts that include travel related expenses, the contracting officer may include a separate reimbursable line item for travel, as travel is generally a reimbursable expense under commercial practices. The contracting officer may use a firm-fixed-price contract in conjunction with an award-fee incentive (see FAR 16.402-3) and performance or delivery incentives (see FAR 16.403-2 and FAR 16.403-3) when the award fee or incentive is based solely on factors other than cost. The contract type remains firm-fixed-price when used with these incentives.

---

## **FC 16.204 Fixed-price contracts with prospective price redetermination ceiling price.**

Status: Unknov

FC 16.204 Fixed-price contracts with prospective price redetermination ceiling price.

If the contract provides for a ceiling price based on evaluation of uncertainties involved in performance and their possible cost impact, the ceiling price should provide for assumption of a reasonable proportion of the risk by the contractor and, once established, may be adjusted only by operation of contract clauses providing for equitable adjustment or other revision of the contract price under stated circumstances.

---

## **FC 16.205 Fixed-ceiling-price contracts with retroactive price redetermination.**

Status: Unknov

FC 16.205 Fixed-ceiling-price contracts with retroactive price redetermination.

Since this contract type provides the contractor no cost control incentive except the ceiling price, the contracting officer should make clear to the contractor during discussion before award that the contractor's management effectiveness and ingenuity will be considered in retroactively redetermining the price.

---

## **FC 16.304 Cost-plus-fixed-fee contracts.**

Status: Unknov

FC 16.304 Cost-plus-fixed-fee contracts.

This contract type permits contracting for efforts that might otherwise present too great a risk to contractors, but it provides the contractor only a minimum incentive to control costs. When considering whether to utilize a completion or term form of a cost-plus-fixed-fee contract, because of the differences in obligation assumed by the contractor, the completion form is typically preferred over the term form whenever the work, or specific milestones for the work, can be defined well enough to permit development of estimates within which the contractor can be expected to complete the work.

An example of when a cost-plus-fixed-fee contract type may be suitable is when a cost-reimbursement contract is appropriate and the contract is for the performance of research or preliminary exploration or study, and the level of effort required is unknown. Cost-plus-fixed-fee contract type may also be suitable when a cost-reimbursement contract is appropriate and the

44

Federal Acquisition Regulation (FAR) Companion

contract is for development and testing, and using a cost-plus-incentive-fee contract is not practical.

A cost-plus-fixed-fee contract normally should not be used in development of major systems

(see part 34) once preliminary exploration, studies, and risk reduction have indicated a high degree of probability that the development is achievable and the government has established reasonably firm performance objectives and schedules.

---

## **FC 16.403-2 Performance incentives.**

Status: Unknov

FC 16.403-2 Performance incentives.

Performance incentives may be particularly appropriate in major systems contracts, both in development (when performance objectives are known and the fabrication of prototypes for test and evaluation is required) and in production (if improved performance is attainable and highly desirable to the government). Performance incentives may involve a variety of specific characteristics that contribute to the overall performance. Accordingly, balance the incentives on individual technical characteristics so that no one of them is exaggerated to the detriment of the overall performance. Performance tests and/or assessments of work performance are generally essential in order to determine the degree of attainment of performance targets. Therefore, be as specific as possible in the contract in establishing test criteria (such as testing conditions, instrumentation precision, and data interpretation) and performance standards (such as the quality levels of services to be provided).

Because performance incentives present complex considerations in contract administration, it is a best practice to negotiate them in full coordination with government engineering and pricing specialists. And it is extremely useful if the government and contractor agree explicitly on the effect that contract changes (e.g., pursuant to the Changes clause) will have on performance incentives. In establishing performance criteria, the contractor should not be rewarded or penalized for obtaining government-furnished components.

## **FC 16.403-3 Delivery incentives.**

Status: Unknov

FC 16.403-3 Delivery incentives.

It is important to determine the government's primary objectives in a given contract when establishing delivery incentives (e.g., earliest possible delivery or earliest quantity production).

## **FC 16.404-1 Fixed-price incentive (firm target) contracts.**

Status: Unknov

FC 16.404-1 Fixed-price incentive (firm target) contracts.

Under a fixed-price incentive (firm target) contract, the price ceiling is the maximum that may be paid to the contractor, except for any adjustment under other contract clauses. When the contractor completes performance, the parties negotiate the final cost, and the final price is established by applying the formula. Because the profit varies inversely with the cost, this contract type provides a positive, calculable profit incentive for the contractor to control costs. A fixed-price incentive (firm target) contract is appropriate when the parties can negotiate at the outset a firm target cost, target profit, and profit adjustment formula that will provide a fair and reasonable incentive and a ceiling that provides for the contractor to assume an appropriate share of the risk. When the contractor assumes a considerable or major share of the cost responsibility under the adjustment formula, the target profit should reflect this responsibility.

45

## Federal Acquisition Regulation (FAR) Companion

---

### **FC 16.404-2 Fixed-price incentive (successive targets) contract ceiling price.**

Status: Unknov

FC 16.404-2 Fixed-price incentive (successive targets) contract ceiling price.

When the production point specified in the contract is reached, the parties negotiate the firm target cost, giving consideration to cost experience under the contract and other pertinent factors. The firm target profit is established by the formula. At this point, the parties have two alternatives, as follows:

- 1. They may negotiate a firm fixed price, using the firm target cost plus the firm target profit** as a guide.
- 2. If negotiation of a firm fixed price is inappropriate, they may negotiate a formula for** establishing the final price using the firm target cost and firm target profit. The final cost is then negotiated at completion, and the final profit is established by formula, as under the fixed-price incentive (firm target) contract (see FAR 16.404-1).

---

### **FC 16.405 Cost-plus-incentive-fee contracts.**

Status: Unknov

FC 16.405 Cost-plus-incentive-fee contracts.

A cost-plus-incentive-fee contract may be appropriate for services or development and test programs when a cost-reimbursement contract is necessary; and a target cost and a fee adjustment formula can be negotiated that are likely to motivate the contractor to manage effectively. Incentives should be tied to established technical performance objectives. This approach also may apply to other acquisitions, if the use of both cost and technical performance incentives is desirable and administratively practical. The fee adjustment formula should provide an incentive that will be effective over the full range of reasonably foreseeable variations from target cost. If a high maximum fee is negotiated, the contract should also provide for a low minimum fee that may be a zero fee or, in rare cases, a negative fee.

---

### **FC 16.504-1(b) Contractor?s delivery obligations in an indefinite-quantity contract.**

Status: Unknov

FC 16.504-1(b) Contractor?s delivery obligations in an indefinite-quantity contract.

Under FAR clause 52.216-22, Indefinite Quantity, the contractor "shall furnish to the government, when and if ordered, the supplies or services specified in the Schedule up to and including the quantity designated in the Schedule as the maximum." Consequently, any valid order placed within the maximum value is binding and must be fulfilled by the contractor.

---

### **FC 16.504-4 On-ramps and off-ramps.**

Status: Unknov

#### FC 16.504-4 On-ramps and off-ramps.

On-ramping (adding new contractors) and off-ramping (removing contractors) from multiple-award contracts, especially when ordering periods are multi-year, helps maintain current, competitive, and innovative pools of vendors. The process allows for the government to remove inactive or under-performing vendors or add new vendors to the multiple-award contract. The government has discretion of how and when to open a multiple-award contract for an on-ramp or an off-ramp. These processes do not need to occur at the same time. For instance, if the marketplace has not significantly changed, the government may determine it is necessary to only conduct an off-ramp to narrow the existing multiple-award contract to only active and well-performing vendors. Conversely, if the current vendor pool is active and well-performing, but research demonstrates that sufficient new vendors have entered the marketplace, the contracting officer may conduct only an on-ramp.

When considering methods to assess the multiple-award vendor pool for purposes of off-ramping, past performance on earlier orders under the contract should be given priority consideration (see FAR 16.507-2(c)(2)).

46

Federal Acquisition Regulation (FAR) Companion

Examples of on-ramp and off-ramp procedures are covered in the Periodic Table of Acquisition Innovation.

---

### FC 16.505 Strategic inclusion of ?continuity of services? and ?option to extend services?

Status: Unknov

FC 16.505 Strategic inclusion of ?continuity of services? and ?option to extend services? clauses.

For recurring and continuous service requirements, contract and order awards can face delays due to external factors like bid protests, disruptions to the incumbent contractor's business, or alleged bidding errors. To avoid challenging negotiations for short extensions, consider incorporating FAR clauses 52.217-8, Options to Extend Services, and 52.237-3, Continuity of Services, into all indefinite-quantity contracts where orders may be placed for vital services. Together, these clauses provide up to six additional months of performance beyond the stated task order period for unforeseen delays, and an extra 90 days for a smooth transition to a successor contractor or to the government.

---

### FC 16.507 Streamlining ordering procedures.

Status: Unknov

FC 16.507 Streamlining ordering procedures.

Implementing efficient ordering procedures is crucial for maximizing the streamlined procedures under existing vehicles. While it is important to ensure compliance with the ordering procedures for the specific vehicle, consider the following best practices:

**1. Minimize redundant information: Refrain from requiring offerors to resubmit information** that was already provided during the initial vehicle establishment. This not only reduces

the administrative burden on offerors but also expedites the ordering process.

**2. Leverage previous evaluations: Unless there is strategic value in doing so, it is not** necessary to re-evaluate information that was already assessed during the vehicle establishment phase. If the basis of that evaluation is unclear in the associated ordering guide, reach out to the vehicle contracting officer or program manager to learn more. Focus evaluation for an order on new or relevant information specific to the order, ensuring a more efficient and effective evaluation process.

**3. Harness innovative techniques: Building on innovative approaches used during the** vehicle establishment, such as oral presentations, can further streamline ordering procedures. By maximizing the use of these techniques, you can reduce the complexity and time required for ordering.

---

## FC 16.507-2(a)(2) Periodic Table of Acquisition Innovations (PTAI) procedures for FAR

Status: Unknown

FC 16.507-2(a)(2) Periodic Table of Acquisition Innovations (PTAI) procedures for FAR  
**part 16 streamlining.**

The PTAI provides targeted support for streamlining FAR part 16 ordering procedures by offering proven innovative approaches that agencies can adopt and adapt to their procurements. The use of PTAI and other innovative approaches directly support FAR part 16 core objectives of reducing time, complexity, and cost while maintaining acquisition integrity and achieving optimal mission outcomes. Five procedures that a contracting officer can use specific to the ordering process are highlighted below. See the Periodic Table of Acquisition Innovation (PTAI) for additional information and additional approaches.

? Phased down-select processes. Consider phased evaluation processes and down-select approaches that progressively narrow the competitive field through increasingly detailed assessments. Initial phases might evaluate high-level solution approaches and

47  
Federal Acquisition Regulation (FAR) Companion

team qualifications, while later phases examine technical details, pricing, and implementation plans from down-selected quoters/offerors. This approach reduces the bid preparation burden for industry while allowing agencies to focus evaluation resources on the most promising solutions.

? Exchanges with the best suited quoter/offeror. Consider stating in the order solicitation, and then utilizing as advantageous to the government:

? Once the government determines the quotation/proposal that is most advantageous to the government based on its evaluation of initial responses, the government may communicate with only that best suited quoter/offeror to address any remaining issues consistent with the terms of the solicitation. These issues may include technical and/or price. If the parties cannot successfully negotiate any remaining issues, as determined relevant by the government, the government reserves the right to communicate with the next best suited quoter/offeror based on the original analysis consistent with the terms of the solicitation.

? Comparative evaluation. The government may perform a comparative evaluation to select the quotation/proposal that provides the best value by comparing responses against the evaluation factors in the solicitation.

? Rather than assigning ratings to each quoter/offeror, the evaluation team ranks quotations/proposals against each other or, if sufficient, identifies the top ranked quotation/proposal for each evaluation factor.

? This streamlined approach focuses on documenting the rationale for how quotations/proposals rank relative to one another and explaining why the selected quotation/proposal represents the best value to the government. The evaluation and documentation should be efficient and proportional to the acquisition's complexity and value.

? Confidence ratings. A type of adjectival rating system that permits evaluators to look holistically at the strong points and weak points of a proposal and then assign a confidence rating based on the evaluators' overall confidence in the offeror's likelihood of success.

? Confidence ratings can be used for any evaluation except for sealed bidding (part **14**).

? The confidence rating scale is designed to communicate the government's level of confidence that a proposal will successfully meet solicitation requirements. It generally incorporates risk assessment, as that is often a natural aspect in determining the level of confidence the government has that a proposal will successfully meet requirements outlined in a solicitation.

? Best practices and use cases for the application of confidence ratings can be found at the Periodic Table of Acquisition Innovations (PTAI).

48

Federal Acquisition Regulation (FAR) Companion

? On-the-spot consensus documentation. Evaluators collaboratively discuss and immediately agree upon the merits and associated rating, as applicable, for a quote/proposal against specific criteria. This approach involves a team of evaluators reviewing a quote/proposal, engaging in a focused discussion to identify key differentiators, and then arriving at a unified assessment and corresponding rating in real-time.

? The benefits of using on-the-spot consensus evaluation include increased efficiency, as it streamlines the evaluation process by eliminating the need for multiple rounds of individual reviews and consolidations.

? It enhances transparency by creating a clear record of the evaluation team's collective reasoning and the basis for their consensus decisions.

---

## **FC 16.507-2(c)(3) Blanket Purchase Agreements (BPAs) under multiple-award contracts.**

*Status: Unknown*

FC 16.507-2(c)(3) Blanket Purchase Agreements (BPAs) under multiple-award contracts.

The foundation of the contracting officer's decision to establish one or more BPAs under a multiple-award contract, when authorized, lies in thoroughly understanding the government's

requirement.

Single award BPAs work particularly well when the government's needs are highly integrated or sequential, where one task naturally flows into or depends upon another. Single award BPAs are also well-suited when standardization or scalability is critical (for instance, when there is a need for consistent processes, systems, or methodologies across all orders). Consider the value of relationship continuity; some requirements benefit significantly from a single vendor developing deep institutional knowledge or rapid delivery capabilities over time.

Multiple award BPAs, conversely, are well-suited when requirements can be logically segmented into distinct categories. Multiple BPAs provide access to varied approaches and innovations, which can be particularly valuable for complex or evolving requirements. When surge capacity or broad geographic coverage matters, multiple vendors can provide the flexibility and redundancy your mission demands, especially if they are awarded based on specialization areas or geographic regions.

Cost considerations extend beyond unit prices. While multiple awards may drive competition on individual orders, they also increase administrative overhead. Weigh these administrative costs against potential savings and consider the total cost of ownership, including any transition costs if vendors change. For high-frequency, low-dollar orders, the simplicity of a single award often provides the best value. For irregular, high-value requirements, the benefits of competition may justify the additional administrative investment.

Performance risk represents another critical factor. Single awards create vendor dependency; if your sole vendor falters, mission impact could be significant. Multiple awards provide natural backup options and risk mitigation. However, this must be balanced against the complexity of managing multiple relationships and ensuring consistency across vendors.

Market research will reveal whether meaningful competition exists. If the market offers diverse, qualified sources with meaningfully different approaches or capabilities, multiple awards could drive innovation and value.

49

Federal Acquisition Regulation (FAR) Companion

Your ordering patterns also matter. Predictable, consistent order volumes favor single awards, allowing vendors to optimize their operations and potentially offer better pricing. Variable or unpredictable needs may benefit from the flexibility multiple awards provide.

Consider hybrid approaches that blend the benefits of both structures. You might establish multiple BPAs divided by geographic regions, functional categories, or order value tiers. This can provide competition where it adds value while maintaining simplicity where it doesn't.

Regardless of your chosen structure, build in flexibility. Include periodic review points to assess whether the BPA continues to meet your needs and represents best value. Document not just your decision but your reasoning, focusing on operational efficiency and mission support.

---

## **FC 16.507-5(c), 16.508 Strategic management of award notices, debriefings, and protest**

Status: Unknown

FC 16.507-5(c), 16.508 Strategic management of award notices, debriefings, and protest windows.

To avoid unnecessarily extending the protest window, the acquisition team led by the

contracting officer should prepare to quickly provide debriefings when requested after making award decisions and notifying unsuccessful offerors. This timing consideration is relevant for protestable orders (i.e., for civilian agencies, an order valued in excess of \$10 million; for DoD, NASA, or the Coast Guard, an order valued in excess of \$35 million; see 16.508) because unsuccessful offerors generally have 10 calendar days to file a GAO bid protest from the date the basis of protest is known.

Note that an automatic stay of performance at GAO is 10 days after contract award or within 5 days of a debriefing date offered. Please note that if the last day of the computation period is a Saturday, Sunday, or Federal holiday, then the deadline for filing is the next day the protest venue (e.g., GAO, soliciting agency) is open.

---

### **FC 16.507-5(c) Debriefing best practices.**

*Status: Unknown*

FC 16.507-5(c) Debriefing best practices.

When debriefings are requested, the acquisition team led by the contracting officer might consider providing technical evaluation documentation relevant to the requesting vendor. Providing this transparency may reduce the likelihood of protests due to lack of information. Debriefings should be framed as opportunities for vendors to learn for future proposal development and for the government to improve future solicitation preparation.

### **Part 17 - Special Contracting Methods**

---

## PART 17

---

### FC 17.1 Multiyear contracting.

Status: Unknow

FC 17.1 Multiyear contracting.

When considering multiyear contracting, several benefits can be considered. These include lower costs, enhanced standardization, and reduced administrative burdens. Additionally, multiyear contracting can help maintain production continuity, avoiding annual startup and phaseout costs. It can also stabilize the contractor's workforce, reduce the need for new quality control techniques, and broaden the competitive base by attracting firms that may not be willing or able to compete for smaller quantities. Furthermore, multiyear contracting can provide incentives for contractors to improve productivity through investments in capital facilities, equipment, and advanced technology.

50

Federal Acquisition Regulation (FAR) Companion

When determining the contracting method, the nature of the requirement should be the primary consideration, as multiyear contracting can be used with various methods, such as sealed bidding or negotiation. For fixed-price contracts, consider the longer performance period and adjust pricing accordingly, potentially incorporating economic price adjustment terms and profit objectives that reflect the contractor's risk and financing arrangements.

---

### FC 17.106 Strategic inclusion of ?continuity of services? and ?option to extend services?

Status: Unknow

FC 17.106 Strategic inclusion of ?continuity of services? and ?option to extend services? clauses.

Contract awards for recurring and continuous service requirements are often delayed by factors outside the acquisition team's control, such as bid protests, disruptions to the incumbent contractor's business, or alleged bidding errors. To prevent difficult negotiations for short contract extensions, consider including FAR clauses 52.217-8, Options to Extend Services, and **52.237-3, Continuity of Services, in solicitations and contracts for services where the services** under the contract are vital and must be continued without interruption.

Together, these clauses provide for up to six additional months of performance beyond the stated contract period for unforeseen delays; and up to 90 days for a smooth transition to the successor contractor or to the government.

---

### FC 17.201-1 Use of options.

Status: Unknow

FC 17.201-1 Use of options.

Solicitations containing option provisions typically state the basis of evaluation, either exclusive or inclusive of the option, and may inform offerors that the government anticipates exercising

the option at the time of award. Permitting vendors to propose prices for additional quantities can enable them to provide their best pricing for these quantities. This approach can encourage competition by allowing flexible pricing for option quantities and provide vendors with the flexibility to meet their business needs and enables the contracting agency to gain a more accurate understanding of the total contract cost and make a more informed decision by evaluating offers based on total anticipated cost.

When structuring option provisions, the contract's overall duration and quantity requirements are key considerations. For service contracts, the period in which an option may be exercised may extend beyond the contract completion date to accommodate situations where exercising the option would obligate funds not available in the fiscal year of contract completion. The duration of the basis and option periods can vary; but ensure you follow any statutory limitations on contract duration (for instance, under the Service Contract Labor Standards statute - see FAR **part 22**). **However, the specific circumstances of the contract will dictate the appropriate** duration. Options for increased quantities of supplies or services can be expressed in various ways, such as a percentage increase of specific line items, an increase in specific line items, or additional numbered line items. Contract term extensions can be expressed as an amended completion date or as additional time for performance. In some cases, solicitations may require that options be offered at prices no higher than those for the initial requirement, such as when future competition for the option is impracticable. In these situations, the solicitation should specify how the government will evaluate an offer containing an option price higher than the base price.

51

Federal Acquisition Regulation (FAR) Companion

---

## **FC 17.204-1 Determination and finding for exercise of an option.**

*Status: Unknown*

FC 17.204-1 Determination and finding for exercise of an option.

When exercising an option, it's essential to determine that the option price is fair and reasonable based on current market conditions and that exercise of the option is in the best interest of the government. To make this determination, consider various factors, such as whether a new solicitation would produce a better price or more advantageous offer. If a new solicitation is unlikely to yield a better result, it may be reasonable to exercise the option. Other factors to consider include informal market analysis, the time elapsed since contract award, and market stability. Additionally, take into account the government's need for operational continuity and potential disruption costs, as well as the potential impact on small businesses.

To ensure compliance with full and open competition requirements, the option needs to be evaluated as part of the initial competition, and its exercisable amount needs to be specified in or reasonably determinable from the basic contract. Examples of acceptable option pricing include specific dollar amounts, amounts determined by a formula or provision in the contract, or prices subject to economic price adjustments or changes in prevailing labor rates. When exercising an option, the contract modification or notification document should cite the option clause as authority. By following these best practices, contracting officers can ensure that option exercises are fair, reasonable, and in the best interest of the government.

## **FC 17.401 Leader company contracting.**

Status: Unknown

FC 17.401 Leader company contracting.

Objectives of leader company contracting include but are not limited to: reducing delivery time; achieving geographic dispersion of suppliers; maximizing the use of scarce tooling or special equipment; achieving economies of production; ensuring uniformity and reliability in equipment, compatibility, or standardization of components, and interchangeability of parts; eliminating problems in the use of proprietary data that cannot be resolved by more satisfactory solutions; or facilitating the transition from development to production and to subsequent competitive acquisition of end items or major components.

Leader company contracting is best used only when the leader company (1) has the necessary production knowledge and is able to provide necessary assistance to the follower(s); (2) no other company can meet the government's requirements without the assistance of the leader company; (3) the assistance required of the leader company is limited to that which is essential to enable the follower(s) to provide the items; and (3) its use is authorized in accordance with any agency procedures.

When structuring contracts involving leader and follower companies, contracting officers can consider various approaches to facilitate collaboration. For instance, they may award a prime contract to a leader company, requiring it to subcontract with a designated follower company, or award separate contracts to the leader and follower companies. To ensure a successful partnership, it's essential to include a clear agreement on the handling of sensitive information, such as trade secrets or proprietary data. Additionally, when using leader company contracting, it's a best practice for the government to reserve the right to approve subcontracts between the leader and follower companies, promoting transparency and oversight in the contractual arrangement.

52

Federal Acquisition Regulation (FAR) Companion

## **FC 17.802-3(b) Reverse auction service provider fees.**

Status: Unknown

FC 17.802-3(b) Reverse auction service provider fees.

A service platform for conducting reverse auctions may be provided by a commercial or government entity. While some reverse auction service providers are paid directly by the government for reverse auction services, other providers may incorporate a fee structure that uses an indirect payment method. When using an indirect payment method, the reverse auction service provider adds a fee(s) to the price of the successful offer that is provided to the government at the close of an auction. The government then pays the successful offeror the total price of the offer, which includes the fee(s) added by the reverse auction service provider. The reverse auction service provider then collects its fee(s) from the successful offeror.

## **Part 18 - Emergency Acquisitions**

## **PART 18**

---

### **FC 18.001 Response planning.**

*Status: Unknown*

FC 18.001 Response planning.

In anticipation of potential emergency response requirements, agencies involved in response planning should consider awarding emergency response contracts before a major disaster or emergency occurs to ensure immediate response and relief. These contracts should be structured to respond to immediate emergency response needs.

---

### **FC 18.001 Emergency Procurement List.**

*Status: Unknown*

FC 18.001 Emergency Procurement List.

The FAR has built-in flexibilities that allow contracting officers to act quickly for an urgent need. These flexibilities can be used without a formal emergency declaration or contingency operation designation. Contracting officers may use the flexibilities detailed in the Emergency Procurement List to support emergencies.

---

### **FC 18.001 Streamlined procedures for commercial products and services in support of**

*Status: Unknown*

FC 18.001 Streamlined procedures for commercial products and services in support of emergency acquisitions.

FAR 12.001(b) permits agencies to treat any acquisition of supplies or services that, as determined by the head of the agency, are to be used to facilitate defense against or recovery from cyber, nuclear, biological, chemical, or radiological attack, as an acquisition of commercial products or commercial services. For these acquisitions, the \$9 million threshold referenced throughout this part is increased to \$15 million. Further, FAR 12.201-1 provides for simplified procedures for the acquisition of commercial products and services through the issuance of a Request for Quotation (RFQ) followed by a purchase order. The Periodic Table of Acquisition Innovations (PTAI) offers evaluation methodologies that can be directly applied to support emergency acquisitions by offering proven innovative approaches that agencies can adopt and adapt to their procurements.

### **Part 19 - Small Business**

---

## **PART 19**

---

### **FC 19.1 Innovative approaches to reduce bid and proposal burdens for increased small**

Status: Unknov

FC 19.1 Innovative approaches to reduce bid and proposal burdens for increased small business opportunities.

There are many opportunities to apply innovative techniques on the Periodic Table of Acquisition Innovations (PTAI) to maximize small business opportunities. The techniques and approaches found on the PTAI benefit small business in the following ways:

53

Federal Acquisition Regulation (FAR) Companion

? Reduced barriers to entry through simplifying the request for quote and request for proposal process, lowering bid and proposal costs, streamlining submission processes, and more clearly explaining the evaluation criteria and approach.

? Faster contract awards can help small businesses which may not be able to sustain cash flows for burdensome, lengthy acquisition timelines.

? Commercial procurements, modular contracting, and agile procurement methods may align more with how small businesses operate.

? Emphasizing solutions and mission over compliance attracts companies of all sizes and affords companies to showcase their unique capabilities.

The PTAI has a finder feature that filters innovative acquisition approaches and techniques which benefit small businesses.

---

### **FC 19.101(b) Encouraging small business participation in acquisitions.**

Status: Unknov

FC 19.101(b) Encouraging small business participation in acquisitions.

There are many ways to encourage small business participation in acquisitions in addition to the acquisition strategies outlined in FAR 19.101(b), which include, but are not limited to the following actions that a contracting officer may consider:

? Identify opportunities to break down complex requirements into simpler parts whenever possible, or divide proposed acquisitions of supplies and services (except construction) into reasonably small lots (not less than economic production runs) to permit offers on quantities less than the total requirement.

? Establish realistic delivery schedules that will encourage small business participation to the extent consistent with the actual requirements of the government.

? Allow the maximum amount of time practicable for the submission of offers.

? Provide relevant information with solicitations that is necessary for the preparation of quotes or proposals (e.g. specifications, plans, system designs, drawings).

---

### **FC 19.103(b) Determining the appropriate NAICS code for the solicitation.**

FC 19.103(b) Determining the appropriate NAICS code for the solicitation.

When determining the appropriate NAICS code for the solicitation, it may be useful to consider the industry descriptions in the U.S. NAICS Manual, the product or service descriptions in the solicitation, the relative value and importance of the components of the requirement making up the end item being procured, and the function of the goods or services being purchased. A procurement is usually classified according to the component that accounts for the greatest percentage of contract value. In the event of a NAICS code appeal, more information concerning appeals of NAICS code designations can be found in the SBA's regulations, and is located at 13 CFR 121.1002 and 13 CFR part 134.

---

### **FC 19.104-1(f) Identification of manufacturers.**

FC 19.104-1(f) Identification of manufacturers.

For the purposes of applying the nonmanufacture rule, the manufacturer, processor, or producer is the concern that manufactures, processes, or produces an end item with its own facilities (e.g., transforms raw materials, miscellaneous parts, or components into the end item being acquired). See 13 CFR 121.406(b)(2). In an acquisition for multiple items, if a small business offeror is both a manufacturer of item(s) and a nonmanufacturer of other item(s), the contracting officer should apply the manufacturer size standard.

54

Federal Acquisition Regulation (FAR) Companion

---

### **FC 19.108-11(a)(2) Release from the 8(a) program.**

FC 19.108-11(a)(2) Release from the 8(a) program.

A requirement is automatically released from the 8(a) program if a follow-on procurement is set aside for the HUBZone, SDVOSB, or WOSB programs, or a mandatory source is identified to meet the requirement per FAR 19.108-11(a)(1). In such cases, a formal release request is not necessary. This ensures that follow-on procurements remain within the small business program.

---

### **FC 19.109 Small business subcontracting plans.**

FC 19.109 Small business subcontracting plans.

When a subcontracting plan is required in accordance with FAR 19.109, the contracting officer may require the submission of a subcontracting plan with the initial offers or at any other time prior to award. From an efficiency perspective, unless proposed small business subcontracting is a required evaluation factor in accordance with FAR 15.104(c)(2), or other extenuating circumstances that warrant the evaluation of subcontracting plans apply, it is appropriate to only require submission of a subcontracting plan by the apparent successful offeror and negotiate

the terms of the subcontracting plan with the apparent successful offeror prior to award. If handled as a negotiation with the apparent successful offeror, the subcontracting plan negotiation is separate and distinct from other negotiations that may occur under source selection.

---

## **FC 19.110 Price evaluation preference for HUBZone small business concerns.**

Status: Unknov

FC 19.110 Price evaluation preference for HUBZone small business concerns.

When evaluating price for HUBZone small business concerns, the factor of 10 percent should be applied on a line item basis or to any group of items on which an award may be made. Other evaluation factors, such as transportation costs or rent-free-use of government property, should be added to the offer to establish the base offer before adding the factor of 10 percent.

When the two highest-rated offerors are a HUBZone small business concern and a large business, and the evaluated offer of the HUBZone small business concern is equal to the evaluated offer of the large business after considering the price evaluation preference, the contracting officer should award the contract to the HUBZone small business concern.

---

## **FC 19.111-2 Set-asides for orders under multiple-award contracts.**

Status: Unknov

FC 19.111-2 Set-asides for orders under multiple-award contracts.

The contracting officer is encouraged to consider, but has the discretion to decide, whether or not to set aside an order under multiple-award contracts for small business concerns.

Accordingly, the "rule of two" (see FAR 19.104-1(a)) does not apply to orders placed under multiple-award contracts, or to orders under the Federal Supply Schedules.

If the contracting officer decides to set aside an order for small business concerns, the specific program eligibility requirements identified in FAR part 19, as well as the ordering procedures for the Federal Supply Schedule (FAR subpart 8.4 and GSAR subpart 538.71) or a multiple-award contract (FAR subpart 16.5) must be followed. The set-aside may be a total set-aside or a partial set-aside (see FAR 19.104-2). When establishing a blanket purchase agreement under the Federal Supply Schedule, the contracting officer may also establish a reserve for small business (GSAR 538.7102-2(c)(1)).

A contracting officer's decision to set aside or not set aside an order for small business concerns is not a basis for protest (see 19.111-2(a)(2)). FAR 19.104-1(a) has been updated to use "contracts" instead of "acquisition" for greater clarity. This particular clarification aims to resolve a perceived conflict in interpretations between the Government Accountability Office

55

Federal Acquisition Regulation (FAR) Companion

(GAO) and the U.S. Court of Federal Claims (COFC) around the application of the "Rule of Two" within the context of multiple-award contracts.

Note that only small business concerns awarded contracts under partial set-aside multiple-award contracts may compete for orders issued under those portions of the multiple-award contract. However, small business awardees may compete against other than small business

awardees for an order issued under the portion of the multiple-award contract that was not set-aside, if the small business received a contract award for the non-set-aside portion of the multiple-award contract.

Below are examples of language for consideration in a solicitation should the contracting officer decide to set-aside an order under the Federal Supply Schedule or a multiple-award contract, or conduct a reserve under the Federal Supply Schedule. This language is intended to aid the contracting officer, and can and should be tailored to the specific acquisition, contract vehicle, and set-aside decision.

FAR 8.4 or FAR 16.5: Total set-aside.

This language is suitable when setting aside the entire requirement for a specific small business category.

Example: Total Small Business Set-Aside

"This order is a total set-aside for small business concerns. Only quotes submitted by contractors that are currently designated as a small business under their awarded [insert contract type, e.g., GSA MAS, IDIQ, etc.] will be considered for award. Any quote received from a contractor that is not an eligible small business concern will be deemed non-responsive and will not be evaluated."

Example: Total Service-Disabled Veteran-Owned Small Business (SDVOSB) Set-Aside

"This order is a total set-aside for Service-Disabled Veteran-Owned Small Businesses (SDVOSBs). In accordance with FAR 8.401(b) and GSAR 538.7102-2(c)(1) or FAR 16.505, only offers from SDVOSBs will be considered. Any offer submitted by a contractor that is not a certified SDVOSB will not be considered for award."

FAR 16.5: Partial set-aside.

This language may be used when soliciting an order or BPA under the set-aside portion of the multiple-award contract when the multiple-award contract itself contains a partial set-aside provision.

Example: Partial set-aside under an existing multiple-award contract

"This order is being solicited in accordance with the terms of the multiple-award contract [insert contract number], including FAR 52.219-7 and 52.219-13. Offers are being solicited for the set-aside portion of this requirement. In accordance with FAR 19.111-2, only small business concerns awarded contracts for the set-aside portion(s) are eligible to compete."

56

Federal Acquisition Regulation (FAR) Companion

GSAR 538.702-2(c)(1): Reserve.

This language may be applied to a competitive multiple-award BPA under the Federal Supply Schedule that includes a reserve for one or more small businesses.

Example: Reserve under Federal Supply Schedule multiple-award BPA

"This acquisition includes a reserve for one or more small businesses. In accordance with GSAR 538.7102-2(c)(1), the contracting officer intends to reserve BPAs for one or more small business concerns."

Combined FAR 8.4 and FAR 16.5 set-aside statement.

This statement can be added to the competitive announcement for orders under FSS or multiple-award contracts.

Example: Notice of set-aside of orders

"In accordance with FAR [insert 8.401(b)/GSAR 538.7102-2(c)(1) or 16.505, as applicable], the

contracting officer has determined that this order will be set aside for [insert specific small business category, e.g., small business concerns, SDVOSB, HUBZone, etc.]. All eligible vendors holding a [insert contract type, e.g., GSA MAS, IDIQ, etc.] are invited to compete."

Tips for contracting officers when deciding to set-aside an order for small business:

? Specify the program: When creating the RFQ, specify the particular set-aside type (e.g., Small Business, SDVOSB, WOSB, etc.) and insert the appropriate FAR clause to ensure that only eligible contractors respond.

? Use eBuy features: For FSS orders, GSA's eBuy portal automatically includes the appropriate set-aside language and filters the solicitation so that only eligible contractors can view it.

---

## **FC 19.302-1(d) Small business subcontracting goals for orders against multiple-award**

Status: Unknown

FC 19.302-1(d) Small business subcontracting goals for orders against multiple-award contracts.

To evaluate subcontracting goals for an order in accordance with FAR 19.302-1(d), contracting officers should leverage the master subcontracting plan for the multiple-award contract, and not require an individual order level subcontracting plan unless elements of the plan are considered unacceptable for the order level requirement.

### **Part 20 - Reserved**

Reserved.

### **Part 21 - Reserved**

Reserved.

57

Federal Acquisition Regulation (FAR) Companion

### **Part 22 - Application of Labor Laws to Government Acquisitions**

---

## PART 22

---

### FC 22.001 Definitions.

Status: Unknown

FC 22.001 Definitions.

Wage and Hour Division means the unit in the Department of Labor to which is assigned functions of the Secretary of Labor under the Service Contract Labor Standards statute.

Wage determination means a determination of minimum wages or fringe benefits made under **41 U.S.C. 6703 or 6707(c) applicable to the employment in a given locality of one or more classes of service employees.**

---

### FC 22.4 Department of Labor regulations involving construction.

Status: Unknown

FC 22.4 Department of Labor regulations involving construction.

Under the statutes and Executive orders referred to in FAR subpart 22.4 and Reorganization Plan No. 14 of 1950 (3 CFR 1949-53 Comp., p. 1007), the Secretary of Labor has issued regulations in title 29, subtitle A, Code of Federal Regulations, prescribing standards and procedures to be observed by the Department of Labor and the federal contracting agencies. Those standards and procedures applicable to contracts involving construction are implemented in this subpart.

The Department of Labor regulations include:

? Part 1, relating to Construction Wage Rate Requirements statute minimum wage rates;

? Part 3, relating to the Copeland (Anti-Kickback) Act and requirements for submission of weekly statements of compliance and the preservation and inspection of weekly payroll records;

? Part 5, relating to enforcement of the:

? Construction Wage Rate Requirements statute;

? Contract Work Hours and Safety Standards statute; and

? Copeland (Anti-Kickback) Act;

? Part 6, relating to rules of practice for appealing the findings of the Administrator, Wage and Hour Division, in enforcement cases under the various labor statutes, and by which Administrative Law Judge hearings are held;

? Part 7, relating to rules of practice by which contractors and other interested parties may appeal to the Department of Labor Administrative Review Board, decisions issued by the Administrator, Wage and Hour Division, or administrative law judges under the various labor statutes;

? Part 10, relating to establishing a minimum wage for federal contractors; and

? Part 13, relating to establishing paid sick leave for federal contractors.

Refer all questions relating to the application and interpretation of wage determinations

(including the classifications therein) and the interpretation of the Department of Labor regulations in this subsection to the Administrator, Wage and Hour Division.

---

## **FC 22.4 Construction Wage Rate Requirements statute wage determinations.**

Status: Unknown

FC 22.4 Construction Wage Rate Requirements statute wage determinations.

The Department of Labor is responsible for issuing wage determinations reflecting prevailing wages, including fringe benefits. The wage determinations apply only to those laborers and

58  
Federal Acquisition Regulation (FAR) Companion

mechanics employed by a contractor upon the site of the work including drivers who transport to or from the site materials and equipment used in the course of contract operations.

Determinations are issued for different types of construction, such as building, heavy, highway, and residential (referred to as rate schedules), and apply only to the types of construction designated in the determination within a specified geographic area.

---

## **FC 22.4 General wage determination.**

Status: Unknown

FC 22.4 General wage determination.

General wage determinations contain no expiration date and remain valid until modified, superseded, or canceled by the Department of Labor. Once incorporated in a contract, a general wage determination normally remains effective for the life of the contract, unless the contracting officer exercises an option to extend the term of the contract. These determinations should be used whenever possible. They are issued at the discretion of the Department of Labor either upon receipt of an agency request or on the Department of Labor's own initiative. General wage determinations are published on the Wage Determinations at the SAM.gov website. General wage determinations are effective on the publication date of the wage determination or upon receipt of the wage determination by the contracting agency, whichever occurs first. ?Publication? within the meaning of this section means the first date the wage determination is published on the Wage Determinations at SAM.gov.

Archived Construction Wage Rate Requirements statute general wage determinations that are no longer current may be accessed in the ?Archived DB WD? database on Wage Determinations at SAM.gov website for information purposes only. Contracting officers may not use an archived wage determination in a contract action without obtaining prior approval of the Department of Labor. To obtain prior approval, contact the Department of Labor, Wage and Hour Division, using SAM.gov, or contact the procurement agency labor advisor listed on SAM.gov.

---

## **FC 22.4 Project wage determination.**

Status: Unknown

FC 22.4 Project wage determination.

Once incorporated in a contract, a project wage determination normally remains effective for the life of the contract, unless the contracting officer exercises an option to extend the term of the contract.

---

## FC 22.4 Wage determinations - general requirements.

Status: Unknov

FC 22.4 Wage determinations - general requirements.

When more than one rate schedule is contained in the general wage determination, the contracting officer may either include only the rate schedules that apply to the particular types of construction (building, heavy, highway, etc.) or include the entire wage determination and clearly indicate the parts of the work to which each rate schedule will be applied. Inclusion by reference is not permitted.

The Wage and Hour Division has issued the following general guidelines for use in selecting the proper schedule(s) of wage rates:

? Building construction is generally the construction of sheltered enclosures with walk-in access, for housing persons, machinery, equipment, or supplies. It typically includes all construction of such structures, installation of utilities and equipment (both above and below grade level), as well as incidental grading, utilities and paving, unless there is an established area practice to the contrary.

59

Federal Acquisition Regulation (FAR) Companion

? Residential construction is generally the construction, alteration, or repair of single family houses or apartment buildings of no more than four (4) stories in height, and typically includes incidental items such as site work, parking areas, utilities, streets and sidewalks, unless there is an established area practice to the contrary.

? Highway construction is generally the construction, alteration, or repair of roads, streets, highways, runways, taxiways, alleys, parking areas, and other similar projects that are not incidental to building, residential, or heavy construction.

? Heavy construction includes those projects that are not properly classified as either building, residential, or highway, and is of a catch-all nature. Such heavy projects may sometimes be distinguished on the basis of their individual characteristics, and separate schedules issued (e.g., dredging, water and sewer line, dams, flood control, etc.).

? When the nature of a project is not clear, it is necessary to look at additional factors, with primary consideration given to locally established area practices. If there is any doubt as to the proper application of wage rate schedules to the type or types of construction involved, guidance should be sought before the opening of bids, or receipt of best and final offers, from the Administrator, Wage and Hour Division. Further examples are contained in Department of Labor All Agency Memoranda Numbers 130 and 131.

---

## FC 22.403(e) Notification of improper wage determination before award.

Status: Unknov

FC 22.403(e) Notification of improper wage determination before award.

If the contracting officer is notified of an improper wage determination for the primary site of the work, the contracting officer should-

For sealed bids, if received before bid opening, postpone the bid opening date, if necessary, to allow a reasonable time to (i) obtain the appropriate determination if a new wage determination

is required, (ii) amend the solicitation to incorporate the determination (or rate schedule), and (iii) permit bidders to amend their bids. If the appropriate wage determination does not change any wage rates and would not warrant amended bids, the contracting officer should amend the solicitation to include the number and date of the new determination.

If received after bid opening but before award, delay awarding the contract, if necessary, and if required, obtain the appropriate wage determination.

For negotiated acquisitions, delay award, if necessary, and process the notification of an improper wage determination for the primary site of the work in the same manner as a new wage determination.

---

### **FC 22.404-1(f)(1) Examinations of the payrolls and payroll statements.**

Status: Unknov

FC 22.404-1(f)(1) Examinations of the payrolls and payroll statements.

Fringe benefits payments, contributions made, or costs incurred on other than a weekly basis should be considered as a part of weekly payments to the extent they are creditable to the particular weekly period involved and are otherwise acceptable.

---

### **FC 22.404-2 Disposition of disputes concerning construction contract labor standards**

Status: Unknov

FC 22.404-2 Disposition of disputes concerning construction contract labor standards enforcement.

The areas of possible differences of opinion between contracting officers and contractors in construction contract labor standards enforcement include:

- ? Misclassification of workers;
- 60
- Federal Acquisition Regulation (FAR) Companion
- ? Hours of work;
- ? Wage rates and payment;
- ? Payment of overtime;
- ? Withholding practices; and
- ? The applicability of the labor standards requirements under varying circumstances.

When requesting the contractor to take corrective action in labor violation cases, the contracting officer should inform the contractor of the following:

- ? Disputes concerning the labor standards requirements of the contract are handled under FAR clause 52.222-14, Disputes Concerning Labor Standards, and not under FAR clause 52.233-1, Disputes.
- ? The contractor may appeal the contracting officer's findings or part thereof by furnishing the contracting officer a complete statement of the reasons for the disagreement with the findings.

---

## FC 22.10 Examples of contracts covered by the Service Contract Labor Standards

Status: Unknown

FC 22.10 Examples of contracts covered by the Service Contract Labor Standards statute.

The following examples, while not definitive or exclusive, illustrate some of the types of services that have been found to be covered by the Service Contract Labor Standards statute (see 29 CFR 4.130 for additional examples):

- ? Motor pool operation, parking, taxicab, and ambulance services.
- ? Packing, crating, and storage.
- ? Custodial, janitorial, housekeeping, and guard services.
- ? Food service and lodging.
- ? Laundry, dry-cleaning, linen-supply, and clothing alteration and repair services.
- ? Snow, trash, and garbage removal.
- ? Aerial spraying and aerial reconnaissance for fire detection.
- ? Some support services at installations, including grounds maintenance and landscaping.
- ? Certain specialized services requiring specific skills, such as drafting, illustrating, graphic arts, stenographic reporting, or mortuary services.
- ? Electronic equipment maintenance and operation and engineering support services.
- ? Maintenance and repair of all types of equipment, for example, aircraft, engines, electrical motors, vehicles, and electronic, office and related business and construction equipment (but see FAR 22.1002-1(e)(1) and (f)(1)(iv)).
- ? Operation, maintenance, or logistics support of a federal facility.
- ? Data collection, processing and analysis services.

## FC 22.10 Repair distinguished from remanufacturing of equipment.

Status: Unknown

FC 22.10 Repair distinguished from remanufacturing of equipment.

Contracts principally for remanufacturing of equipment which is so extensive as to be equivalent to manufacturing are subject to 41 U.S.C. chapter 65 rather than to the Service Contract Labor Standards statute. Remanufacturing should be deemed to be manufacturing when the criteria in either paragraphs (1) or (2) are met.

(1) Major overhaul of an item, piece of equipment, or materiel which is degraded or inoperable, and under which all of the following conditions exist:

61

Federal Acquisition Regulation (FAR) Companion

- ? The item or equipment is required to be completely or substantially torn down into individual component parts.
- ? Substantially all of the parts are reworked, rehabilitated, altered and/or replaced.
- ? The parts are reassembled so as to furnish a totally rebuilt item or piece of equipment.
- ? Manufacturing processes similar to those which were used in the manufacturing of the item or piece of equipment are utilized.
- ? The disassembled components, if usable (except for situations where the number of

items or pieces of equipment involved are too few to make it practicable) are commingled with existing inventory and, as such, lose their identification with respect to a particular piece of equipment.

? The items or equipment overhauled are restored to original life expectancy, or nearly so.

? Such work is performed in a facility owned or operated by the contractor.

(2) Major modification of an item, piece of equipment, or material which is wholly or partially obsolete, and under which all of the following conditions exist:

? The item or equipment is required to be completely or substantially torn down.

? Outmoded parts are replaced.

? The item or equipment is rebuilt or reassembled.

? The contract work results in the furnishing of a substantially modified item in a usable and serviceable condition.

? The work is performed in a facility owned or operated by the contractor.

Remanufacturing does not include the repair of damaged or broken equipment which does not require a complete teardown, overhaul, and rebuild as described above, or the periodic and routine maintenance, preservation, care, adjustment, upkeep, or servicing of equipment to keep it in usable, serviceable, working order. Such contracts typically are billed on an hourly rate

(labor plus materials and parts) basis. Any contract principally for this type of work is subject to the Service Contract Labor Standards statute. Examples of such work include the following:

? Repair of an automobile, truck, or other vehicle, construction equipment, tractor, crane, aerospace, air conditioning and refrigeration equipment, electric motors, and ground powered industrial or vehicular equipment.

? Repair of typewriters and other office equipment (but see FAR 22.1002-1(e)(1) and (f)(1)(iv)).

? Repair of appliances, radios, television sets, calculators, and other electronic equipment.

? Inspecting, testing, calibration, painting, packaging, lubrication, tune-up, or replacement of internal parts of equipment listed in the first three bullets of this list.

? Reupholstering, reconditioning, repair, and refinishing of furniture.

---

## **FC 22.10 Department of Labor responsibilities and regulations.**

Status: Unknov

FC 22.10 Department of Labor responsibilities and regulations.

Under the Service Contract Labor Standards statute, the Secretary of Labor is authorized and directed to enforce the provisions of the Service Contract Labor Standards statute, make rules and regulations, issue orders, hold hearings, make decisions, and take other appropriate action.

The Department of Labor has issued implementing regulations on such matters as:

? Service contract labor standards provisions and procedures (29 CFR part 4, subpart A);  
62

Federal Acquisition Regulation (FAR) Companion

? Wage determination procedures (29 CFR part 4, subparts A and B);

? Application of the Service Contract Labor Standards statute (rulings and interpretations) (29 CFR part 4, subpart C);

? Compensation standards (29 CFR part 4, subpart D);

- ? Enforcement (29 CFR part 4, subpart E);
  - ? Safe and sanitary working conditions (29 CFR part 1925);
  - ? Rules of practice for administrative proceedings enforcing service contract labor standards (29 CFR part 6); and
  - ? Practice before the Administrative Review Board (29 CFR part 8).
- 

### **FC 22.1002-1(b) Applicability.**

Status: Unknown

FC 22.1002-1(b) Applicability.

This subpart does not apply to individual contract requirements for services in contracts not having as their principal purpose the furnishing of services. The nomenclature, type, or particular form of contract used by contracting agencies is not determinative of coverage.

---

### **FC 22.1002-1(g) Administrative limitations, variations, tolerances, and exemptions.**

Status: Unknown

FC 22.1002-1(g) Administrative limitations, variations, tolerances, and exemptions.

The Secretary of Labor may provide reasonable limitations and may make rules and regulations allowing reasonable variations, tolerances, and exemptions to and from any or all provisions of the Service Contract Labor Standards statute other than 41 U.S.C. 6707(f). These will be made only in special circumstances where it has been determined that the limitation, variation, tolerance, or exemption is necessary and proper in the public interest or to avoid the serious impairment of government business, and is in accord with the remedial purpose of the Service Contract Labor Standards statute to protect prevailing labor standards (41 U.S.C. 6707(b)).

---

### **FC 22.1002-2(c)(1) Statement of equivalent rates for federal hires.**

Status: Unknown

FC 22.1002-2(c)(1) Statement of equivalent rates for federal hires.

Wages paid to blue collar employees should be the basic hourly rate for each class. The rate should be Wage Board pay schedule step two for nonsupervisory service employees and step three for supervisory service employees.

Wages paid white collar employees should be an hourly rate for each class. The rate may be obtained by dividing the general pay schedule step one biweekly rate by 80.

Local civilian personnel offices can assist in determining and providing grade and salary data.

---

### **FC 22.1002-2(f) All possible places of performance not identified.**

Status: Unknown

FC 22.1002-2(f) All possible places of performance not identified.

If the place of performance is unknown, the contracting officer should attempt to identify the

specific places or geographical areas where the services might be performed. The following may indicate possible places of performance:

- A. Locations of previous contractors and their competitors.
- B. Databases available via the Internet for lists of prospective offerors and contractors.
- C. Responses to a presolicitation notice (see FAR 5.204).

If the contracting officer believes that there may be offerors interested in performing in unidentified places or areas, the contracting officer may include the following information in the synopsis and solicitation:

? That the place of performance is unknown.

63

Federal Acquisition Regulation (FAR) Companion

? The possible places or areas of performance that the contracting officer has already identified.

? That the contracting officer will obtain wage determinations for additional possible places of performance if asked to do so in writing.

? The time and date by which offerors must notify the contracting officer of additional places of performance.

The closing date for receipt of offerors' requests for wage determinations for additional possible places of performance should allow reasonable time for potential offerors to review the solicitation and determine their interest in competing. Generally, 10 to 15 days from the date of issuance of the solicitation may be considered a reasonable period of time.

---

## **FC 22.1002-3 Obtaining wage determinations.**

*Status: Unknown*

FC 22.1002-3 Obtaining wage determinations.

Contracting officers may obtain most prevailing wage determinations using the Wage Determinations at SAM.gov website. Contracting officers may also use the Department of Labor's e98 electronic process, located on the Wage Determinations at SAM.gov website, to request a wage determination directly from the Department of Labor. If the Wage Determinations at SAM.gov database does not contain the applicable prevailing wage determination for a contract action, the contracting officer may use the e98 process to request a wage determination from the Department of Labor.

In using the e98 process to obtain prevailing wage determinations, contracting officers should provide as complete and accurate information on the e98 as possible. Contracting officers should ensure that the email address submitted on an e98 request is accurate.

The contracting officer should anticipate the amount of time required to gather the information necessary to obtain a wage determination, including sufficient time, if necessary, to contact the Department of Labor to request wage determinations that are not available through use of the Wage Determinations at SAM.gov.

Although the Wage Determinations at SAM.gov website provides assistance to the contracting agency to select the correct wage determination, the contracting agency remains responsible for the wage determination selected. If the contracting agency has used the e98 process, the Department of Labor will respond to the contracting agency based on the information provided

on the e98. The contracting agency may rely upon the Department of Labor response as the correct wage determination for the contract.

To obtain the applicable wage determination for each contract action, the contracting officer should determine the following information concerning the service employees expected to be employed by the contractor and any subcontractors in performing the contract:

? Determine the classes of service employees to be utilized in performance of the contract using the Wage and Hour Division's Service Contract Act Directory of Occupations (Directory). The Directory can be found on Wage Determinations at SAM.gov Library Page, and is for sale by the Superintendent of Documents, U.S. Government Publishing Office.

? Determine the locality where the services will be performed (see FAR 22.1002-3(a)(1)).

64

Federal Acquisition Regulation (FAR) Companion

? Determine whether 41 U.S.C. 6707(c) applies (see FAR 22.1002-3(b), 22.1003(b), and **22.1004-6**).

? Determine the wage rate that would be paid each class if employed by the agency and subject to the wage provisions of 5 U.S.C. 5341 and/or 5332 (see FAR 22.1002-2(c)(1) and the clause at 52.222-42).

If the contracting officer has questions regarding the procedures for obtaining a wage determination, or questions regarding the selection of a wage determination, the contracting officer should request assistance from the agency labor advisor.

---

## **FC 22.1002-3(b) Successorship with incumbent contractor collective bargaining**

Status: Unknov

FC 22.1002-3(b) Successorship with incumbent contractor collective bargaining agreement.

If the contracting officer has timely received the collective bargaining agreement, the contracting officer may use the Wage Determinations at SAM.gov website to prepare a wage determination referencing the agreement and incorporate that wage determination, attached to a complete copy of the collective bargaining agreement, into the successor contract action. In using the Wage Determinations at SAM.gov process, it is not necessary to submit a copy of the collective bargaining agreement to the Department of Labor unless requested to do so.

The contracting officer may also use the e98 process on Wage Determinations at SAM.gov to request that the Department of Labor prepare the cover wage determination. The Department of Labor's response to the e98 may include a request for the contracting officer to submit a complete copy of the collective bargaining agreement. Any questions regarding the applicability of the Service Contract Labor Standards statute to a collective bargaining agreement should be directed to the agency labor advisor.

### **Part 23 - Sustainable Acquisition, Material Safety, and Pollution Prevention**

---

## **PART 23**

---

### **FC 23.103 Resources for Statutory Environmental Purchasing Programs.**

*Status: Unknown*

FC 23.103 Resources for Statutory Environmental Purchasing Programs.

The General Services Administration (GSA) maintains information about statutory environmental purchasing programs, products, and services.

---

### **FC 23.202 Energy Savings Performance Contracts (ESPCs).**

*Status: Unknown*

FC 23.202 Energy Savings Performance Contracts (ESPCs).

Under an ESPC, an agency can contract with an energy service company for a period not to exceed 25 years to improve energy efficiency in one or more agency facilities at no direct capital cost to the United States Treasury. The energy service company finances the capital costs of implementing energy conservation measures and receives, in return, a contractually determined share of the cost savings that result. Note that except as provided in 10 CFR 436.34, ESPC's are subject to FAR subpart 17.1.

To solicit and award an ESPC, the contracting officer may use the ?Qualified List? of energy service companies established by the Department of Energy and other agencies. For procedures related to unsolicited proposals for energy savings performance contracts, see **15.505(a)**.

65

Federal Acquisition Regulation (FAR) Companion

## **Part 24 - Protection of Privacy and Freedom of Information**

---

## **PART 24**

---

### **FC 24.203 Processing FOIA Requests for Awarded Contracts.**

*Status: Unknown*

FC 24.203 Processing FOIA Requests for Awarded Contracts.

When a Freedom of Information Act (FOIA) request is received for an awarded contract that includes a contractor's proposal, consider allowing the contractor to confirm the accuracy of any redactions. If additional time is required for this validation, an extension should be requested.

### **Part 25 - Foreign Acquisition**

---

## PART 25

---

### FC 25.002 Applicability of subparts.

Status: Unknown

FC 25.002 Applicability of subparts.

The following table shows the applicability of the subparts.

Services

Supplies for use Construction

performed

Inside Outside Inside Outside Inside Outside

**U.S. U.S. U.S. U.S. U.S. U.S.**

Subpart

#### 25.1 Buy American?Supplies

X

#### 25.2 Buy American?

Construction Materials X

#### 25.3 Reserved

#### 25.4 Trade Agreements

X X X X X X

#### 25.5 Evaluating Foreign

Offers?Supply X X

Contracts

#### 25.6 Solicitation Provisions

and Contract Clauses X X X X X X

#### 25.7 Contracts Performed

Outside the United X X X

States

66

Federal Acquisition Regulation (FAR) Companion

Services

Supplies for use Construction

performed

Inside Outside Inside Outside Inside Outside

**U.S. U.S. U.S. U.S. U.S. U.S.**

Subpart

#### 25.8 Other International

Agreements and

X X X X

Coordination

#### 25.9 Customs and Duties

X

#### 25.10 Additional Foreign

## FC 25.5 Evaluation Examples.

Status: Unknov

### FC 25.5 Evaluation Examples.

The following examples illustrate the application of the evaluation procedures in FAR 25.502 and 25.503. The examples assume that the contracting officer has eliminated all offers that are unacceptable for reasons other than price (see FAR 25.502(a)(1)). The evaluation factor may change as provided in agency regulations.

Buy American statute.

#### Example 1.

Offeror Price End Product Type

Offer A \$16,000 Domestic end product, small business.

Offer B \$15,700 Domestic end product, small business.

Offer C \$10,100 U.S.-made end product (not domestic), small business.

Analysis: This acquisition is for end products for use in the United States and is set aside for small business concerns. The Buy American statute applies. Since the acquisition value is less than \$50,000 and the acquisition is set aside, none of the trade agreements apply. Perform the steps in FAR 25.502(a). Offer C is of 50 percent domestic content, therefore Offer C is evaluated as a foreign end product, because it is the product of a small business but is not a

67  
Federal Acquisition Regulation (FAR) Companion

domestic end product (see FAR 25.502(c)(4)). Since Offer B is a domestic offer, apply the 30 percent factor to Offer C (see FAR 25.106(b)(2)). The resulting evaluated price of \$13,130 remains lower than Offer B. The cost of Offer B is therefore unreasonable (see FAR

**25.106(b)(1)(ii)). The FAR 25.106(b)(2) procedures do not apply. Award on Offer C at \$10,100**

(see FAR 25.502(c)(4)(i)).

#### Example 2.

Offeror Price End Product Type

Offer A \$11,000 Domestic end product, small business.

Offer B \$10,700 Domestic end product, small business.

Offer C \$10,200 U.S.-made end product (not domestic), small business.

Analysis: This acquisition is for end products for use in the United States and is set aside for small business concerns. The Buy American statute applies. Perform the steps in FAR

**25.502(a). Offer C is evaluated as a foreign end product because it is the product of a small**

business but is not a domestic end product (see FAR 25.502(c)(4)). After applying the 30 percent factor, the evaluated price of Offer C is \$13,260. Award on Offer B at \$10,700 (see FAR **25.502(c)(4)(ii)).**

#### Example 3.

Offeror Price End Product Type

Domestic end product (complies with the required domestic content),

Offer A \$14,000

small business.

U.S.-made end product (not domestic, exceeds 55% domestic

Offer B 12,500

content), small business.

U.S.-made end product (not domestic, with less than 55% domestic

Offer C 10,100

content), small business.

Analysis: This acquisition is for end products for use in the United States and is set aside for small business concerns. The Buy American statute applies. Since the acquisition value is less than \$50,000 and the acquisition is set aside, none of the trade agreements apply. Perform the steps in FAR 25.502(a). Offers B and C are initially evaluated as foreign end products, because they are the products of small businesses but are not domestic end products (see FAR

**25.502(c)(4)). Offer C is the low offer. After applying the 30 percent factor, the evaluated price of 68**

Federal Acquisition Regulation (FAR) Companion

Offer C is \$13,130. The resulting evaluated price of \$13,130 remains lower than Offer A. The cost of Offer A is therefore unreasonable. Offer B is then treated as a domestic offer, because it is for a U.S.-made end product that exceeds 55 percent domestic content (see FAR

**25.106(b)(2)). Offer B is determined reasonable because it is lower than the \$13,130 evaluated price of Offer C. Award on Offer B at \$12,500.**

WTO GPA/Caribbean Basin Trade Initiative/FTAs.

Example 1.

Offeror Price End Product Type

Offer A \$304,000 U.S.-made end product (not domestic).

Offer B \$303,000 U.S.-made end product (domestic), small business.

Offer C \$300,000 Eligible product.

Offer D \$295,000 Noneligible product (not U.S.-made).

Analysis: Eliminate Offer D because the acquisition is covered by the WTO GPA and there is an offer of a U.S.-made or an eligible product (see FAR 25.502(b)(1)). If the agency gives the same consideration given eligible offers to offers of U.S.-made end products that are not domestic offers, it is unnecessary to determine if U.S.-made end products are domestic (large or small business). No further analysis is necessary. Award on the low remaining offer, Offer C (see FAR

**25.502(b)(2)).**

FTA/Israeli Trade Act.

Example 1.

Offeror Price End Product Type

Offer A \$105,000 Domestic end product, small business.

Offer B \$100,000 Eligible product.

Analysis: Since the low offer is an eligible offer, award on the low offer (see FAR 25.502(c)(1)).

69

Federal Acquisition Regulation (FAR) Companion

Example 2.

Offeror Price End Product Type

Offer A \$105,000 Eligible product.

Offer B \$103,000 Noneligible product.

Analysis: Since the acquisition is not covered by the WTO GPA, the contracting officer can consider the noneligible offer. Since no domestic offer was received, make a nonavailability determination and award on Offer B (see FAR 25.502(c)(2)).

Example 3.

Offeror Price End Product Type

Offer A \$105,000 Domestic end product, large business.

Offer B \$103,000 Eligible product.

Offer C \$100,000 Noneligible product.

Analysis: Since the acquisition is not covered by the WTO GPA, the contracting officer can consider the noneligible offer. Because the eligible offer (Offer B) is lower than the domestic offer (Offer A), no evaluation factor applies to the low offer (Offer C). Award on the low offer (see FAR 25.502(c)(3)).

70

Federal Acquisition Regulation (FAR) Companion

Group award basis.

Example 1.

Offers

Item A B C

**1 DO = \$55,000 EL = \$56,000 NEL = \$50,000**

**2 NEL = \$13,000 EL = \$10,000 EL = \$13,000**

**3 NEL = \$11,500 DO = \$12,000 DO = \$10,000**

**4 NEL = \$24,000 EL = \$28,000 NEL = \$22,000**

**5 DO = \$18,000 NEL = \$10,000 DO = \$14,000**

Total \$121,500 \$116,000 \$109,000

Key: DO = Domestic end product; EL = Eligible product; NEL = Non-eligible product

Problem: Offeror C specifies all-or-none award. Assume all offerors are large businesses. The acquisition is not covered by the WTO GPA .

Analysis: (see FAR 25.503)

STEP 1: Evaluate Offers A & B before considering Offer C and determine which offer has the lowest evaluated cost for each line item (the tentative award pattern):

? Item 1: Low offer A is domestic; select A.

? Item 2: Low offer B is eligible; do not apply factor; select B.

? Item 3: Low offer A is noneligible and Offer B is a domestic offer. Apply a 20 percent factor to Offer A. The evaluated price of Offer A is higher than Offer B; select B.

? Item 4: Low offer A is noneligible. Since neither offer is a domestic offer, no evaluation factor applies; select A.

? Item 5: Low offer B is noneligible; apply a 20 percent factor to Offer B. Offer A is still higher than Offer B; select B.

71

Federal Acquisition Regulation (FAR) Companion

STEP 2: Evaluate Offer C against the tentative award pattern for Offers A and B:

Offers

Tentative award

Low offer C

Item pattern from A and B

**1 A DO = \$55,000 \*NEL = \$60,000**

**2 B EL = \$10,000 EL = \$13,000**

**3 B DO = \$12,000 DO = \$10,000**

**4 A NEL = \$24,000 NEL = \$22,000**

**5 B \*NEL = \$12,000 DO = \$14,000**

Total \$113,000 \$119,000

\*Offer + 20 percent

On a line item basis, apply a factor to any noneligible offer if the other offer for that line item is domestic.

For Item 1, apply a factor to Offer C because Offer A is domestic and the acquisition was not covered by the WTO GPA. The evaluated price of Offer C, Item 1, becomes \$60,000 (\$50,000 plus 20 percent). Apply a factor to Offer B, Item 5, because it is a noneligible product and Offer C is domestic. The evaluated price of Offer B is \$12,000 (\$10,000 plus 20 percent). Evaluate the remaining items without applying a factor.

STEP 3: The tentative unrestricted award pattern from Offers A and B is lower than the evaluated price of Offer C. Award the combination of Offers A and B. Note that if Offer C had not specified all-or-none award, award would be made on Offer C for line items 3 and 4, totaling an award of \$32,000.

Example 2.

Offers

Item A B C

**1 DO = \$50,000 EL = \$50,500 NEL = \$50,000**

**2 NEL = \$10,300 NEL = \$10,000 EL = \$10,200**

**3 EL = \$20,400 EL = \$21,000 NEL = \$20,200**

**4 DO = \$10,500 DO = \$10,300 DO = \$10,400**

72

Federal Acquisition Regulation (FAR) Companion

Offers

Item A B C

Total \$91,200 \$91,800 \$90,800

Problem: The solicitation specifies an award on a group basis. Assume the Buy American statute applies and the acquisition cannot be set aside for small business concerns. All offerors are large businesses.

Analysis: (see FAR 25.503(c))

STEP 1: Determine which of the offers are domestic (see FAR 25.503(c)(1)):

Offer Domestic (percent) Determination

A \$50,000 (Offer A1) + \$10,500 (Offer A4) = \$60,500 Domestic

\$60,500/\$91,200 (Offer A Total) = 66.3%

B \$10,300 (Offer B4)/\$91,800 (Offer B Total) = 11.2% Foreign

C \$10,400 (Offer C4)/\$90,800 (Offer C Total) = 11.5% Foreign

STEP 2: Determine whether foreign offers are eligible or noneligible offers (see FAR

**25.503(c)(2)):**

Offer Domestic + eligible (percent) Determination

A N/A (Both Domestic) Domestic

B \$50,500 (Offer B1) + \$21,000 (Offer B3) + \$10,300 (Offer B4) Eligible  
= \$81,800

\$81,800/\$91,800 (Offer B Total) = 89.1%

C \$10,200 (Offer C2) + \$10,400 (Offer C4) = \$20,600 Noneligible

\$20,600/\$90,800 (Offer C Total) = 22.7%

STEP 3: Determine whether to apply an evaluation factor (see FAR 25.503(c)(3)). The low offer (Offer C) is a foreign offer. There is no eligible offer lower than the domestic offer. Therefore, apply the factor to the low offer. Addition of the 20 percent factor (use 30 percent if Offer A is a small business) to Offer C yields an evaluated price of \$108,960 (\$90,800 + 20 percent). Award

73  
Federal Acquisition Regulation (FAR) Companion

on Offer A (see FAR 25.502(c)(4)(ii)). Note that, if Offer A were greater than Offer B, an evaluation factor would not be applied, and the award would be on Offer C (see FAR **25.502(c)(3)**).

Example 3.

Offers

Item A B C

**1 DO = \$17,800 FO (>55%) = \$16,000 FO (<55%) = \$11,200**

**2 FO (>55%) = \$9,000 FO (>55%) = \$8,500 DO = \$10,200**

**3 FO (<55%) = \$11,200 FO (>55%) = \$12,000 FO (<55%) = \$11,000**

**4 DO = \$10,000 DO = \$9,000 FO (<55%) = \$6,400**

Total \$48,000 \$45,500 \$38,800

Key:

? DO = Domestic end product (complies with the required domestic content).

? FO (> 55%) = Foreign end product with domestic content exceeding 55%.

? FO (< 55%) = Foreign end product with domestic content of 55% or less.

Problem: The solicitation specifies an award on a group basis. Assume only the Buy American statute applies (i.e., no trade agreements apply) and the acquisition cannot be set aside for small business concerns. All offerors are large businesses.

Analysis: (see FAR 25.503(d))

STEP 1: Determine which of the offers are domestic (see FAR 25.503(d)(1)):

Offer Domestic (percent) Determination

A \$17,800 (Offer A1) + \$10,000 (Offer A4) = \$27,800 Domestic

\$27,800/\$48,000 (Offer A Total) = 58%

B \$9,000 (Offer B4)/\$45,500 (Offer B Total) = 19.8% Foreign

C \$10,200 (Offer C2)/\$38,800 (Offer C Total) = 26.3% Foreign

STEP 2: Determine which offer, domestic or foreign, is the low offer. If the low offer is a foreign offer, apply the evaluation factor (see FAR 25.503(d)(2)). The low offer (Offer C) is a foreign offer. Therefore, apply the factor to the low offer. Addition of the 20 percent factor (use 30

74

Federal Acquisition Regulation (FAR) Companion

percent if Offer A is a small business) to Offer C yields an evaluated price of \$46,560 (\$38,800 + 20 percent). Offer C remains the low offer.

STEP 3: Determine if there is a foreign offer that could be treated as a domestic offer (see

**25.106(b)(2) and FAR 25.503(d)(2).**

Offer Amount of domestic content (percent) Determination

**A N/A N/A.**

B \$9,000 (Offer B4)/\$45,500 (Offer B Total) = 19.8% is domestic Can be treated as domestic

AND

\$16,000 (Offer B1) + \$8,500 (Offer B2) + \$12,000 (Offer B3) = \$36,500

\$36,500/\$45,500 (Offer B Total) = 80.2% can be treated as domestic

**19.8% + 80.2% = 100% is domestic or can be treated as domestic**

C \$10,200 (Offer C2)/\$38,800 (Offer C Total) = 26.3% is domestic Foreign

STEP 4: If there is a foreign offer that could be treated as a domestic offer, compare the evaluated price of the low offer to the price of the offer treated as domestic (see FAR

**25.503(d)(3)). Offer B can be treated as a domestic offer (\$45,500). The evaluated price of the**

low offer (Offer C) is \$46,560. Award on Offer B.

---

## **FC 25.9 Tax on foreign procurements.**

*Status: Unknown*

FC 25.9 Tax on foreign procurements.

Before buying goods or services from a foreign source, the contracting officer should consult the agency-designated legal counsel to:

? Get information about foreign tax treaties and agreements in effect and any foreign-tax-relief programs; and

? Resolve any other tax questions affecting the planned contract.

## **Part 26 - Other Socioeconomic Programs**

---

## **PART 26**

---

### **FC 26.103. Indian Incentive Program procedures.**

*Status: Unknown*

FC 26.103. Indian Incentive Program procedures.

FAR 26.103 provides the standard of reliance on representations made by Indian organizations or Indian-owned economic enterprises regarding Indian Incentive Program eligibility as well as the referral process in the event of a challenge. The contracting officer should notify the prime contractor upon receipt of any challenge.

75

Federal Acquisition Regulation (FAR) Companion

To be considered timely, challenges should be in writing, include the basis for the challenge, provide detailed evidence supporting the claim, and be filed with and received by the contracting officer prior to award of the subcontract in question. If notification of a challenge is received before award, the prime contractor shall withhold award pending Bureau of Indian Affairs (BIA) determination unless the prime contractor and contracting officer agree that award should proceed to ensure timely performance of the prime contract. Challenges received after subcontract award will still be referred to BIA, but any determination will only apply to future contract actions.

The referral process requires the contracting officer to refer the matter to the U.S. Department of the Interior, Bureau of Indian Affairs (BIA). The BIA will acknowledge receipt of the request within 5 business days and will provide a written determination to the contracting officer within 45 additional business days. If the BIA determination is not received within the prescribed 50 business day timeframe, contracting officers and prime contractors may proceed based on the subcontractor's original representation.

---

### **FC 26.2 Disaster Response Registry and Emergency Procurement List.**

*Status: Unknown*

FC 26.2 Disaster Response Registry and Emergency Procurement List.

When national emergencies or disasters occur, supplies and services need to be procured and rushed to the affected area quickly. The System for Award Management contains a Disaster Response Registry that lists those contractors who are willing to provide related services. Further, FAR FC18.1 provides an emergency procurement list of acquisition flexibilities that support disaster response (see also Emergency Procurement List).

---

### **FC 26.402 Food donation procedures.**

*Status: Unknown*

FC 26.402 Food donation procedures.

In accordance with FAR 26.4, contracting officers should encourage contractors to donate apparently wholesome excess food to nonprofit organizations that provide assistance to food-

insecure people in the United States, to the maximum extent practicable and safe. This encouragement recognizes both the social benefit of reducing food waste and supporting vulnerable populations while acknowledging that contractors may face legitimate operational or safety constraints that limit their participation in food donation programs.

When encouraging food donations, contracting officers should clarify that contractors retain full responsibility for all costs and logistics associated with collecting, transporting, maintaining safety of, and distributing excess food to nonprofit organizations. The government will not assume any financial responsibility for these donation activities, and executive agencies cannot reimburse contractors for expenses incurred in connection with food donations under any contract. Additionally, contractors cannot claim food donation costs as allowable public relations expenses, ensuring these activities remain voluntary charitable contributions rather than reimbursable contract costs. This cost framework preserves the charitable nature of food donations while preventing unintended increases to government contract expenses.

76

Federal Acquisition Regulation (FAR) Companion

## **Part 27 - Patents, Data, and Copyrights**

---

## PART 27

---

### FC 27.000 General guidance.

Status: Unknov

FC 27.000 General guidance.

The government encourages the maximum practical commercial use of inventions made under government contracts. Generally, the government will not refuse to award a contract on the grounds that the prospective contractor may infringe a patent. The government may authorize and consent to the use of inventions in the performance of certain contracts, even though the inventions may be covered by U.S. patents. Generally, contractors providing commercial products and commercial services should indemnify the government against liability for the infringement of U.S. patents.

The government recognizes rights in data developed at private expense, and limits its demands for delivery of that data. When such data is delivered, the government will acquire only those rights essential to its needs. Generally, the government requires that contractors obtain permission from copyright owners before including copyrighted works, owned by others, in data to be delivered to the government.

Given the complex nature of intellectual property, it is a best practice for the contracting officer to consult agency-designated legal counsel about any patents, data, and copyrights issues.

---

### FC 27.000 Foreign license and technical assistance agreements.

Status: Unknov

FC 27.000 Foreign license and technical assistance agreements.

Agencies should provide necessary policy and procedures regarding foreign technical assistance agreements and license agreements involving intellectual property, including avoiding unnecessary royalty charges.

---

### FC 27.202 Reporting of royalties.

Status: Unknov

FC 27.202 Reporting of royalties.

To determine whether royalties anticipated or actually paid under government contracts are excessive, improper, or inconsistent with government patent rights, the solicitation provision at **52.227-6 requires prospective contractors to furnish royalty information. The contracting officer** should take appropriate action to reduce or eliminate excessive or improper royalties.

If the response to a solicitation includes a charge for royalties, the contracting officer should, before award of the contract, forward the information to the office having cognizance of patent matters for the contracting activity. The cognizant office should promptly advise the contracting officer of appropriate action.

When considering the approval of a subcontract, the contracting officer should require royalty information if it is required under the prime contract. The contracting officer should forward the

information to the office having cognizance of patent matters. However, the contracting officer need not delay consent while awaiting advice from the cognizant office.

The contracting officer should forward any royalty reports to the office having cognizance of patent matters.

---

## **FC 27.3 Policy on patent rights under government contracts.**

Status: Unknov

FC 27.3 Policy on patent rights under government contracts.

It is the policy objective of the government to promote the use of federally funded inventions, encourage industry participation, ensure free competition, promote U.S. commercialization, secure government rights, and minimize administration costs.

77

Federal Acquisition Regulation (FAR) Companion

Generally, contractors may elect to retain title to subject inventions after disclosure to the government. However, the government may require title assignment if the contractor is foreign located or controlled, in exceptional circumstances, for national security reasons, for specific DOE nuclear programs, or as per statute/regulations. Even if the government has a right to title, contractors can request greater rights. Small businesses and nonprofits, even with national security exceptions requiring title assignment, generally retain the right to elect ownership if the invention is unclassified or not limited from dissemination by DOE within six months. Contracts in support of DOE naval nuclear propulsion programs are exempt from this. For contracts with task orders, exceptions can apply to individual orders.

The government receives a nonexclusive, nontransferable, irrevocable, paid-up worldwide license for any subject invention and may require additional rights for treaties. The government can also receive title if the invention is not disclosed, if the contractor doesn't elect or fails to retain rights in a country, doesn't file or prosecute a patent, or no longer desires title. The government can require utilization reports, which are confidential and not disclosed outside the government without contractor permission.

Agencies have "march-in rights" to compel licensing if the invention isn't being practically applied, to alleviate health/safety needs, to meet public use requirements, or if the U.S. manufacturing agreement is breached. Ensure contractors are provided the opportunity to respond before march-in rights are exercised. Contractors receiving title or their assignees need to agree that U.S. sales/use of the invention require substantial U.S. manufacturing, unless waived by the agency due to unsuccessful licensing efforts or commercial infeasibility.

Nonprofit contractors should try to attract small business licensees. The Secretary of Commerce can informally investigate if a nonprofit isn't meeting this obligation but won't intervene in ongoing licensing negotiations or contractor decisions concerning the licensing of a specific subject invention.

If the government acquires title, the contractor typically receives a revocable, nonexclusive, paid-up worldwide license, extendable to domestic subsidiaries/affiliates. This license can be revoked or modified for expeditious practical application, but not in areas where the contractor has already achieved practical application. Foreign licenses can be revoked if practical application hasn't been achieved.

Agencies can withhold information about inventions in which the government has rights for a reasonable time to allow patent applications to be filed. Once filed, copies of patent application documents are not required to be released.

---

## **FC 27.3 Administration of patent rights clauses.**

Status: Unknown

FC 27.3 Administration of patent rights clauses.

Contracts with patent rights clauses require active administration to protect the government's interests. Your administration should ensure five key outcomes:

- 1. Inventions are identified, disclosed, and reported as required by the contract.**
- 2. The government's rights in subject inventions are established.**
- 3. Patent applications are timely filed and prosecuted when appropriate.**

78

Federal Acquisition Regulation (FAR) Companion

**4. The government's rights in filed patent applications are documented through formal instruments like licenses or assignments.**

**5. Subject inventions achieve expeditious commercial utilization.**

When a subject invention results from a contract funded by multiple agencies, designate one agency to administer the government's rights in the invention, either at the contractor's request or proactively.

Your agency should establish follow-up procedures to verify that subject inventions are properly identified, disclosed, and protected. For contracts containing clauses referenced in FAR 27.304-2, coordinate these activities with the appropriate agency. As the contracting officer, you are responsible for receiving all invention-related documents from the contractor, including disclosures, reports, confirmatory instruments, notices, and requests. When contractors fail to provide required documents on time, promptly request the missing information. For confirmatory instruments specifically, if not received within 6 months after filing a patent application (or within 6 months after submitting the invention disclosure if the application was previously filed), request these documents from the contractor. Take appropriate action to secure compliance if failures persist. Forward all patent-related documents promptly to legal counsel.

Focus your compliance review efforts on contracts most likely to produce significant inventions: research, developmental, or experimental contracts; high-dollar contracts; and any contracts where non-compliance is suspected. Use spot-checks for other contracts as feasible. Deploy government patent personnel to interview technical staff about novel developments, review technical reports with agency experts, check the Official Gazette of the United States Patent and Trademark Office for contractor patents in related fields, and conduct on-site interviews and inspections of contractor work and records. When contractors don't understand their obligations or have deficient procedures, explain their requirements clearly. You may invoke the withholding of payments provision in the patent rights clause for non-compliance. Document significant or repeated failures in the general file per FAR part 4.

---

## **FC 27.3 Securing invention rights acquired by the government.**

FC 27.3 Securing invention rights acquired by the government.

When the government acquires full rights to an invention, establish a clear chain of title from inventor to government through assignments?either from each inventor to the contractor and then to the government, or directly from inventor to government with the contractor's consent. For limited government rights, obtain a confirmatory license. Your agency may develop its own assignment and license forms, which should be recorded in the U.S. Patent and Trademark Office per Executive Order 9424 (February 18, 1944).

---

## **FC 27.3 Protection of invention disclosures.**

FC 27.3 Protection of invention disclosures.

Under clauses 52.227-11 or 52.227-13, the government must protect invention disclosures reported from public disclosure for a reasonable time to allow patent filing, as authorized by 35 U.S.C. 205. As you follow the confidentiality policy in FAR subpart 27.3, also protect other information disclosing subject inventions when the contractor identifies both the data and related invention at delivery, notifying both the contracting officer and any designated patent representative. Refer to 37 CFR 401.13 for additional guidance on protecting invention disclosures.

79

Federal Acquisition Regulation (FAR) Companion

---

## **FC 27.4 Treatment of rights in data and copyrights.**

FC 27.4 Treatment of rights in data and copyrights.

Agencies acquire or obtain access to many types of data through their contracts to fulfill mission requirements. You need data for several critical purposes: to obtain competition among suppliers; to fulfill responsibilities for disseminating and publishing the results of your activities; to ensure appropriate utilization of research, development, and demonstration results, including disseminating technical information to foster future technological developments; to meet other programmatic and statutory requirements; and to meet specialized acquisition needs and ensure logistics support.

At the same time, contractors often have proprietary interests in data that require protection from unauthorized use and disclosure. This protection is essential not only to prevent compromise of contractor interests but also to encourage qualified contractors to participate in government programs and contribute innovative concepts. Your responsibility is to balance the government's legitimate needs for data with the contractor's legitimate proprietary interests. This balanced approach ensures the government obtains necessary data while maintaining an environment where contractors are willing to share their innovations and compete for government work.

## FC 27.4 Cosponsored research and development activities.

Status: Unknov

FC 27.4 Cosponsored research and development activities.

In contracts involving cosponsored research and development where the contractor makes substantial contributions of funds or resources, such as through cost-sharing or repayment of nonrecurring costs, and the respective contributions to any item developed or produced under the contract are not readily segregable, the contracting officer has the authority to limit the acquisition of, or acquire less than unlimited rights to, any data developed and delivered under the contract. Agencies have the flexibility to regulate the use of this authority through their supplements. When acquiring less than unlimited rights, the government should, at a minimum, ensure that it can use the data for agreed-upon government purposes, including reprocurement rights where appropriate, and address any limitations on disclosure. The contracting officer may also consider requiring the contractor to directly license others if necessary to achieve the contract's objectives.

The decision to limit data rights should be made with consideration of the contract's purpose, the contractor's legitimate proprietary interests, the government's needs, and the respective contributions of both parties. As a general guideline, a clause limiting data rights may be appropriate when the contractor's contribution is approximately 50 percent of the total contract cost, and the contributions are not readily segregable for any specific work element. This type of clause can be applied to the entire contract or specific tasks, and its use may be in addition to other data rights clauses prescribed under this subpart. The contract should clearly identify which clause applies to which tasks or work elements. However, limiting data rights may not be suitable when the contract aims to produce data for public dissemination or develop technologies that will be available to the public for direct use, as outlined in FC 27.4, Treatment of rights in data and copyrights.

When the contractor's contributions are clearly identifiable and segregable by performance requirements and funding, as specified in the contract, the resulting data can be treated as limited rights data or restricted computer software in accordance with 27.404-2(c) or (d).

Alternatively, if this treatment is inconsistent with the contract's purpose, the rights to the data

80  
Federal Acquisition Regulation (FAR) Companion

can be negotiated and stated in the contract in a manner consistent with paragraph (a) of this section. This approach ensures that the data rights are handled in a way that balances the needs of both the government and the contractor.

---

## FC 27.406 Acquisition of data.

Status: Unknov

FC 27.406 Acquisition of data.

It is the government's practice to determine, to the extent feasible, its data requirements in time for inclusion in solicitations. The data requirements may be subject to revision during contract negotiations. Since the preparation, reformatting, maintenance and updating, cataloging, and storage of data represents an expense to both the government and the contractor, efforts

should be made to keep the contract data requirements to a minimum, consistent with the purposes of the contract.

**Part 28 - Bonds and Insurance**

No additional guidance.

**Part 29 - Taxes**

No additional guidance.

**Part 30 - Cost Accounting Standards Administration**

---

## **PART 30**

---

### **FC 30.201 - Cost Accounting Standards (CAS) applicability.**

*Status: Unknown*

FC 30.201 - Cost Accounting Standards (CAS) applicability.

The determination of CAS applicability can be made at any time prior to contract award.

Sometimes, an initial CAS determination, made during acquisition planning, will need to be updated throughout pre-award activities as new information emerges. For instance, a contract awarded to a small business concern will be exempt from CAS applicability under 48 CFR **9903.201-1(b), even if the initial acquisition plan did not anticipate award to a small business.**

Remember to keep the acquisition plan updated in accordance with FC 7.104(b)(3) to reflect any new information that could impact CAS applicability learned during the pre-award phase. Exemptions to CAS should not be confused with waivers granted under FAR 30.202. Waivers should be rare and only granted or submitted for approval to the CASB when benefits to be derived from waiving the CAS outweigh the risk associated with the waiver, and contract award cannot otherwise be obtained.

---

### **FC 30.301 - Coordination with the cognizant federal agency official (CFAO).**

*Status: Unknown*

FC 30.301 - Coordination with the cognizant federal agency official (CFAO).

To identify the CFAO for a particular contract award, use the contractor's CAGE code or contract number in the Award Management Team (AMT) section of Electronic Data Access **(EDA).**

There is also a locator on the Defense Contract Management Agency's (DCMA) website. To find the cognizant team, fill out the form with your email and the contractor CAGE code.

81

Federal Acquisition Regulation (FAR) Companion

If there is no DCMA CFAO listed, Defense Contract Audit Agency (DCAA) also has a locator tool.

### **Part 31 - Contract Cost Principles and Procedures**

No additional guidance.

### **Part 32 - Contract Financing**

---

## PART 32

---

### FC 32.007 Contract financing payments.

Status: Unknown

FC 32.007 Contract financing payments.

Unless otherwise prescribed, the due date for making contract financing payments by the designated payment office is the 30th day after the designated billing office receives a proper contract financing request. If an audit or other review of a specific financing request is required to ensure compliance with the terms and conditions of the contract, the designated payment office is not compelled to make payment by the specified due date.

Agency heads may prescribe shorter periods for payment based on contract pricing or administrative considerations. For example, a shorter period may be justified by an agency if the nature and extent of contract financing arrangements are integrated with agency contract pricing policies.

For advance payments, loans, or other arrangements that do not involve recurrent submission of contract financing requests, the designated payment office will make payment in accordance with the applicable contract financing terms or as directed by the contracting officer.

The designated billing office and designated payment office should annotate each contract financing request with the date their respective offices received the request.

---

### FC 32.403 Applicability of advance payments for other than commercial acquisitions.

Status: Unknown

FC 32.403 Applicability of advance payments for other than commercial acquisitions.

Advance payments may be considered useful and appropriate in, but not limited to, the following circumstances:

- 1. Contracts for experimental, research, or development work with nonprofit educational or research institutions;**
- 2. Contracts solely for the management and operation of government-owned plants;**
- 3. Contracts for acquisition, at cost, of property for government ownership;**
- 4. Contracts of such a highly classified nature that the agency considers it undesirable for national security to permit assignment of claims under the contract;**
- 5. Contracts entered into with financially weak contractors whose technical ability is considered essential to the agency.** In these cases, the agency should closely monitor the contractor's performance and financial controls to reduce the government's financial risk;
- 6. Contracts for which a loan by a private financial institution is not practicable, whether or not a loan guarantee under this part is issued;** for example, if financing institutions will

82  
Federal Acquisition Regulation (FAR) Companion

not assume a reasonable portion of the risk under a guaranteed loan or if loans with reasonable interest rates or finance charges are not available to the contractor;

**7. Contracts that involve operations so remote from a financial institution that the institution**

could not be expected to suitably administer a guaranteed loan;

**8. Contracts with small business concerns, under which circumstances that make advance**

payments appropriate often occur (but see FAR 32.104(b)); or

**9. Contracts under which exceptional circumstances make advance payments the most**

advantageous contract financing method for both the government and the contractor.

---

**FC 32.607-2 Deferment of collection.**

Status: Unknov

FC 32.607-2 Deferment of collection.

As required under FAR 32.607-2(a), all requests for deferment of collection must be submitted in writing to the contracting officer. If the contractor has appealed the debt under the procedures of the Disputes clause of the contract, the information with the request for deferment may be limited to an explanation of the contractor's financial condition. Actions filed by contractors under the Disputes clause should not suspend or delay collection.

If there is no appeal pending or action filed under the Disputes clause of the contract, the following information about the contractor should be submitted with the request:

- ? Financial condition.
- ? Contract backlog.
- ? Projected cash receipts and requirements.
- ? The feasibility of immediate payment of the debt.
- ? The probable effect on operations of immediate payment in full.

Upon receipt of the contractor's written request, the contracting officer should promptly provide a notification to the payment office and advise the payment office that the contractor's request is under consideration. The contracting officer should consider any information necessary to develop a recommendation on the deferment request. The contracting officer should forward the following to the office designated in agency procedures for a decision:

- ? A copy of the contractor's request for a deferment of collection.
- ? A written recommendation on the request and the basis for the recommendation including the advisability of deferment to avoid possible overcollections.
- ? A statement as to whether the contractor has an appeal pending or action filed under the Disputes clause of the contract and the docket number if the appeal has been filed.
- ? A copy of the contracting officer's final decision (see FAR 32.605).

The office designated in agency procedures may authorize a deferment pending the resolution of appeal to avoid possible overcollections. The agency is required to use unexpired funds to pay interest on overcollections.

---

**FC 32.704 Tailoring the limitation of cost or funds clause.**

Status: Unknov

FC 32.704 Tailoring the limitation of cost or funds clause.

When applying the Limitation of Cost clause (FAR 52.232-20) or the Limitation of Funds clause

(FAR 52.232-22), the standard 60-day period may be varied, such as from 30 to 90 days, or the 75 percent incurred costs from 75 percent to 85 percent. ?Task Order? or other appropriate designation may be substituted for ?Schedule? wherever that word appears in the clause.

83

Federal Acquisition Regulation (FAR) Companion

**Part 33 - Protests, Disputes, and Appeals**

---

## **PART 33**

---

### **FC 33.103 Solicitation clarity and execution.**

*Status: Unknown*

FC 33.103 Solicitation clarity and execution.

The most effective protest defense involves having a clear solicitation and following what you say you will do. Many protest issues may be preventable through proper execution against your solicitation requirements. Complex evaluation schemes with multiple factors, subfactors, and unclear evaluation criteria carry higher protest risk. Avoid using overtly constraining language that limits the government's permissible discretion during evaluation or source selection.

---

### **FC 33.103 Technical evaluation safeguards.**

*Status: Unknown*

FC 33.103 Technical evaluation safeguards.

To ensure a defensible position during trade-off evaluations, precisely follow the solicitation evaluation criteria. Deviations from the stated methodology or the evaluation of unstated criteria is likely to lead to potential protests. When proposals offer capabilities beyond requirements, it is important to document whether these enhancements add value or are unnecessary. Strengthen the evaluation record by ensuring ratings align with solicitation definitions and are supported by specific rationale.

---

### **FC 33.103 Documentation practices.**

*Status: Unknown*

FC 33.103 Documentation practices.

Direct, succinct, and bulleted documentation makes it easier to assess and understand the rationale for government decisions. Maintaining clear contemporaneous records of evaluation rationale, decision points, and supporting analysis provides the foundation for defending award decisions.

---

### **FC 33.103(b)(3) Referral to the agency suspending and debarring official.**

*Status: Unknown*

FC 33.103(b)(3) Referral to the agency suspending and debarring official.

If a post-award protest is upheld due to an awardee's intentional or negligent misstatement, misrepresentation, or miscertification, the contracting officer should consider referring the issue to the agency's suspending and debarring official for review under FAR subpart 9.4.

---

### **FC 33.105-1 Protests to GAO.**

### FC 33.105-1 Protests to GAO.

GAO publishes and maintains an informal, practical guide to the bid protest process. It is available at Bid Protests at GAO: A Descriptive Guide (Tenth Edition, 2018) | U.S. GAO.

---

## **FC 33.105-3 Strategic management of award notices, debriefings, brief explanations, and**

FC 33.105-3 Strategic management of award notices, debriefings, brief explanations, and protest windows.

To avoid unnecessarily extending the protest window, the acquisition team led by the contracting officer should prepare to quickly provide debriefings when requested after making award decisions and notifying unsuccessful offerors. This timing consideration is relevant because unsuccessful offerors generally have 10 calendar days to file a GAO bid protest from the date the basis of protest is known. Note that an automatic stay of performance at GAO is 10 days after contract award or within 5 days of a debriefing date offered. Please note that if the last day of the computation period is a Saturday, Sunday, or Federal holiday, then the deadline for filing is the next day the protest venue (e.g., GAO, soliciting agency) is open.

Additionally, when a "brief explanation" of the award decision is required (as opposed to a debriefing), such as when awarding an order under the Federal Supply Schedule or using FAR **part 12 request for quotations procedures (see FAR 12.201-1), consider including the "brief**  
84

Federal Acquisition Regulation (FAR) Companion

explanation" in the award notice. This approach may start the GAO 10-day bid protest clock, marking the point at which "the basis of protest is known or should have been known."

---

## **FC 33.105-3 Debriefing best practices.**

FC 33.105-3 Debriefing best practices.

When debriefings are required and requested, the acquisition team led by the contracting officer might consider providing technical evaluation documentation relevant to the requesting vendor. Providing this transparency may reduce the likelihood of protests due to lack of information. Debriefings should be framed as opportunities for vendors to learn for future proposal development and for the government to improve future solicitation preparation.

---

## **FC 33.205-6 Contracting officer's duties upon appeal.**

FC 33.205-6 Contracting officer's duties upon appeal.

The contracting officer should provide the agency Board of Contract Appeals (BCA) with necessary data, documentation, information, and support for a pending appeal stemming from

the contracting officer's decision, as permitted by agency procedures governing contact with BCA personnel.

---

### **FC 33.205-8 Alternative dispute resolution (ADR).**

*Status: Unknown*

FC 33.205-8 Alternative dispute resolution (ADR).

Contracting officers may choose the most suitable Alternative Dispute Resolution (ADR) procedure to address issues as they emerge. Legal consultation should be sought when necessary.

#### **Part 34 - Major System Acquisition**

No additional guidance.

#### **Part 35 - Research and Development Contracting**

---

## **PART 35**

---

### **FC 35.000 Oversight in research contracts with educational and nonprofit institutions.**

*Status: Unknown*

FC 35.000 Oversight in research contracts with educational and nonprofit institutions.

When awarding research and development (R&D) contracts to educational or nonprofit institutions, especially for open-ended research, clearly define the role and time commitment of the principal investigator (PI), who is the lead researcher responsible for managing the project and delivering results.

If the contract is based on the PI's expertise, name them in the contract as a key personnel, and require approval for any changes to the PI, research focus, objectives, or methods. The PI should maintain active engagement throughout the project and notify the contracting officer of any substantial reduction in level of effort. For institutions with multiple contracts, consider a basic agreement to promote consistency and reduce administrative workload. Review and update these agreements at least annually. This helps ensure the research stays aligned with government expectations while supporting innovation.

Additionally, nonprofit, educational, or State institutions performing cost-reimbursement contracts often do not carry insurance. They may claim immunity from liability for torts, or, as State institutions, they may be prohibited by State law from expending funds for insurance.

85

Federal Acquisition Regulation (FAR) Companion

When establishing contracts with these entities, see FAR part 28 to ensure appropriate insurance clause coverage.

---

### **FC 35.002 Understanding the purpose of R&D contracts.**

*Status: Unknown*

FC 35.002 Understanding the purpose of R&D contracts.

The primary purpose of contracted R&D programs is to advance scientific and technical knowledge and apply that knowledge to the extent necessary 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. It is difficult to judge the probabilities of success or required effort for technical approaches, some of which offer little or no early assurance of full success.

The contracting process shall be used to encourage the best sources from the scientific and industrial community to become involved in the program. The program should provide an environment in which the work can be pursued with reasonable flexibility and minimum administrative burden.

---

### **FC 35.002 Recoupment.**

### FC 35.002 Recoupment.

Recoupment refers to the government's recovery of government-funded nonrecurring costs from contractors. This applies when contractors sell, lease, or license the resulting products or technology to entities other than the Federal government. If not legally mandated, recoupment should adhere to agency procedures.

## **FC 35.1 Understanding the different approaches to R&D contracting.**

### FC 35.1 Understanding the different approaches to R&D contracting.

R&D contracts differ fundamentally from supply or service contracts in that they often have undefined or evolving methods and objectives aimed at advancing knowledge or technology. Federal acquisition teams should recognize this unique nature and design contracting approaches that encourage innovation and adaptability by avoiding overly prescriptive requirements.

Create contracting environments that minimize administrative burdens to attract and retain top scientific and technical talent. Use outcome-focused language in contracts rather than rigid specifications and allow contractors space to explore alternative technical approaches that may lead to breakthrough solutions. Consider developing more than one source to create long-term competition.

## **FC 35.101 Developing effective requirements documentation.**

### FC 35.101 Developing effective requirements documentation.

Federal acquisition teams benefit from working with technical experts to develop clear, complete requirements documentation tailored to the unique goals of R&D efforts. Effective approaches focus on defining achievable and meaningful objectives that advance agency mission requirements while encouraging problem-solving rather than dictating specific methods.

Strong requirements documentation emphasizes research objectives and provides a concise, well-defined understanding of the problem to solve. R&D contracts may identify goals but not how to reach them, as that determination is left up to the contractor ? especially in the early or

86  
Federal Acquisition Regulation (FAR) Companion

exploratory phases. This approach allows contractors the freedom to innovate and apply creative approaches, which is essential to R&D.

Requirements documentation works best when aligned with the type and form of contract being used. For example, level-of-effort contracts outline the required technical effort and reporting expectations, while completion contracts describe specific end objectives or milestones. Mixing language from both types within one document can create confusion.

Well-structured R&D requirements documentation includes contextual information such as background on prior related work, known phenomena, relevant methodologies, and any

constraints related to personnel, environments, or interfaces that may impact the effort. Key elements include clearly identified milestones like testing phases, assessment points, or minimum viable product demonstrations, along with deadlines for progress and delivery. Administrative elements like payment procedures and security requirements also merit clear articulation.

Effective requirements documentation avoids rigid, overly detailed performance specifications that could hinder agility and adaptation. Strong documentation sets expectations and guides performance while empowering contractors to bring forward their best ideas and keeping government objectives front and center.

---

### **FC 35.101 Subcontractor considerations.**

Status: Unknov

FC 35.101 Subcontractor considerations.

R&D contracts are awarded based on the contractor's technical expertise, so it's critical to know who will actually perform the work to maintain the integrity and quality of the R&D effort.

Contractors should not subcontract technical or scientific tasks without the contracting officer's prior knowledge and approval.

This means, for cost-reimbursement contracts, this information should be gathered during negotiations; for fixed-price contracts, it should still be reviewed to protect the government's interests. Use FAR clause 52.244-2 to require approval of key subcontracts as appropriate for your R&D contracts.

---

### **FC 35.101(g) Contract types for R&D.**

Status: Unknov

FC 35.101(g) Contract types for R&D.

The contract type should reflect the maturity and predictability of the work, balancing flexibility with accountability throughout the life of the R&D effort.

Federal acquisition teams typically encounter technical uncertainty, evolving requirements, and cost unpredictability in the R&D context that render sealed bidding and fixed-price contract approaches ineffective for early-stage projects.

Negotiation is typically required, and selecting the right contract type should involve input from technical experts who can assess the project's complexity, objectives, and risks.

Fixed-price contracts may be appropriate for R&D contracts, if the work can be divided into objective and measurable milestones where the technical and cost risk is reasonable. This approach allows for more control over budget and performance, even in R&D settings.

87

Federal Acquisition Regulation (FAR) Companion

Fixed-price level-of-effort contracts can also work well for short-term or well-defined tasks like concept development or problem solving. As the project matures, and design stability and risk diminish and become more tolerable, the acquisition strategy should shift toward more fixed-price arrangements to encourage performance and cost discipline.

In many cases, cost-reimbursement contracts are appropriate for R&D (e.g., research in

advanced technology applications, early conceptual work on a complex project) because they offer the flexibility needed for exploratory or developmental work where uncertainty about needed resources make it difficult to negotiate an affordable fixed price. However, these "best effort" arrangements increase the government's exposure to overspending because they provide little incentive to control cost. Contractors are only required to make a good-faith attempt within the agreed budget, so use cost-reimbursement contracts with caution, and consider hybrid arrangements that allow for work to go from cost-type to fixed-price as greater stability in requirements develops and cost profiles are established.

---

### **FC 35.102 Peer and scientific review processes.**

Status: Unknown

FC 35.102 Peer and scientific review processes.

Use peer or scientific review processes to evaluate submissions, which generally involves a panel of experts evaluating proposals based on their specialized knowledge and experience relevant to the subject matter.

Expert panels may include scientists, engineers, and subject matter experts from government, industry, or academia to provide objective assessment of technical merit, feasibility, and potential impact of proposed solutions.

Use flexible evaluation frameworks tailored to R&D complexity, recognizing that projects often involve unique challenges and unpredictable outcomes that require moving away from rigid, one-size-fits-all evaluation approaches.

---

### **FC 35.201 How to use evaluation criteria for R&D.**

Status: Unknown

FC 35.201 How to use evaluation criteria for R&D.

Evaluate submissions based on technical merit, including how innovative, feasible, and well-developed the proposed solution appears to be. Limit evaluation factors to a manageable number, focusing on evaluation factors that will serve as meaningful discriminators. Consider the submission's connection with the agency's problem, specifically how directly and effectively the proposal addresses critical agency challenges. Assess the funds available and the proposed price for the solution and determine whether the solution's value justifies the price while aligning with agency goals and resource limits. Consider the return on investment (ROI) and evaluate whether the project is affordable given the agency's competing priorities and available funding.

---

### **FC 35.201 Merit-based evaluation methods.**

Status: Unknown

FC 35.201 Merit-based evaluation methods.

Choose R&D solutions based on best technical ideas and organizational competence rather than solely on lowest cost or traditional comparative methods. Prefer merit-based evaluation for R&D acquisitions, given the unique nature of innovation and the difficulty in comparing direct

prices between fundamentally different technical approaches.

88

Federal Acquisition Regulation (FAR) Companion

---

### **FC 35.201(c) Price evaluation in R&D acquisitions.**

Status: Unknow

FC 35.201(c) Price evaluation in R&D acquisitions.

Before heading into negotiations, think critically about the evaluation of price. Don't just focus on the numbers. In R&D acquisitions, price competition is often limited, and comparing proposals can feel like comparing apples to oranges.

Start by asking what's the cost of walking away with no award? Would it delay the mission or increase costs later? Then, compare what each offer delivers for the price using practical alternative approaches that make sense for unique, innovative solutions.

If your solicitation encourages multiple offerors (like in a Broad Agency Announcement, or BAA), that alone can create competitive pressure, fostering inherent economic competition and driving reasonable pricing from the start, even if the solutions differ. Still, you can and should negotiate further to fine-tune the final price.

When one proposal is more expensive, ask whether the higher price is tied to real technical advantages. Use a "price-walk" approach: line up two solutions, break down their technical differences, and assign value to those differences. Look for the most similar solution with known pricing to help judge whether the added cost is justified. Avoid writing off solutions as "too different to compare." With the right questions and analysis, you can make smarter, more defensible price decisions.

Think about the value of what you're buying. Will it improve performance, reduce long-term costs, or strengthen the mission? A return-on-investment mindset helps justify pricing when no clear benchmarks exist.

Evaluate the basis of an estimate. Instead of requiring a detailed cost breakdown, look for a well-explained, logical estimate. How did the offeror build their price? Are the assumptions clear and supported by solid data?

Finally, be cautious about using the budget ceiling as the only check on pricing. Just because a proposal comes in under the ceiling doesn't mean the price is right. Always combine budget info with a broader look at the solution's value, ROI, and pricing logic. These methods help you make sound, supportable decisions, even in the complex world of R&D.

---

### **FC 35.403 Establishing and managing sponsoring agreements for Federally Funded**

Status: Unknow

FC 35.403 Establishing and managing sponsoring agreements for Federally Funded Research and Development Centers (FFRDCs).

When working with a FFRDC, a sponsoring agreement helps to establish a clear mission, define responsibilities, and guide the relationship over time. The agreement formalizes the relationship between the government and the FFRDC, defines the FFRDC's mission, and sets the expectations for periodic reviews.

While specific content in an agreement may vary depending on circumstances, the agreement should cover key items like the FFRDC's mission, how to handle termination or nonrenewal, how to handle assets and liabilities, how to use retained earnings, and rules about competing for non-FFRDC federal work, which is prohibited in FAR 35.403(b)(4).

The agreement should also state whether the FFRDC can take on work from entities other than the sponsor and under what conditions. Sponsoring agreements promote transparency, prevent

89

Federal Acquisition Regulation (FAR) Companion

confusion, and support long-term success. Review such agreements annually and renew every five years, keeping expectations up to date and ensuring they remain current and relevant.

### **Part 36 - Construction and Architect-Engineer Contracts**

---

## **PART 36**

---

### **FC 36.000 Design-Build vs. Design-Bid-Build.**

*Status: Unknown*

FC 36.000 Design-Build vs. Design-Bid-Build.

Design-Build and Design-Bid-Build are two methods used to acquire construction.

Design-Bid-Build (DBB): With the DBB process, the government will issue two contracts. The first is to an Architect-Engineer (A-E) firm for the design of the facility; the second is to a construction contractor for the building of the facility in accordance with the provided design.

Once a need is identified, the government will select an A-E firm in accordance with the procedures at FAR 36.102-2. The selected firm will design the facility pursuant to the terms of the contract. The completed design will include the technical drawings, materials, and estimated cost. This becomes the basis for the construction requirements and the Independent Government Estimate (IGE). Once the design is developed, the government will use the IGE to obtain funding and the design to solicit a construction contract. The offerors for the construction contract will base their bids on the design provided by the government. The government will award the contract to the lowest priced offeror.

Design-Build (DB): With DB, the end user (in this instance, the government) issues one contract to a construction contractor where the contractor is responsible for developing the design of the construction and subsequently performing the construction. Procedures for using DB are spelled out in FAR 36.101-2. In phase one, the government develops the scope of work describing the needs of the facility and the salient characteristics of the facility to include the estimated budget. The government also develops the technical evaluation factors, which assess and determine those vendors that will proceed from phase one to phase two. Vendors prepare their design to meet the requirements of the government and make a phase one offer to the solicitation, which does not include price. The government evaluates offers in accordance with the evaluation factors and selects vendors to move to phase two.

Phase one does not follow FAR part 15 procedures. The vendors selected to advance to phase two are given the opportunity to prepare a complete proposal for their design evaluated in phase one. The phase two proposal will include pricing and technical information regarding their plan to implement their phase one design. The proposals are evaluated by the government, and the government makes a best value determination based on the evaluation criteria. The contract is awarded, and the contractor builds the facility to their design. Phase 2 follows FAR part 15 procedures.

---

### **FC 36.000 Distinction between design phase and construction phase.**

*Status: Unknown*

FC 36.000 Distinction between design phase and construction phase.

In Design-Bid-Build, the distinction between the design and construction phases is clear. An Architect-Engineer (A-E) firm is engaged in the design phase. A construction contractor is not involved in the design process as they will not be engaged until the final design is complete.

With the final design, the government solicits a construction contractor to build according to the design provided. During construction, if changes to the design are necessary, the construction contractor engages with the government, who in turn, may engage with the A-E firm for the necessary changes. This distinction is clear as there are two separate contractors ? the A-E firm and the construction contractor.

Federal Acquisition Regulation (FAR) Companion

contractor engages with the government, who in turn, may engage with the A-E firm for the necessary changes. This distinction is clear as there are two separate contractors ? the A-E firm and the construction contractor.

In Design-Build, one contractor is responsible for both the design and construction phases.

Accordingly, the contractor must address any design issues discovered during the construction phase.

---

### **FC 36.002(c) Design-Build success factors.**

*Status: Unknown*

FC 36.002(c) Design-Build success factors.

Design-Build integrates design and construction services into a single contract; it's

fundamentally different from traditional linear Design-Bid-Build or Architect-Engineer contracts.

The professional responsibility for the design and design integrity is with the Designer-of-Record on the contractor's Design-Build team, not the government. Success depends on understanding these unique aspects and structuring procurements accordingly.

---

### **FC 36.1 Presolicitation notice for construction and architect-engineer contracts.**

*Status: Unknown*

FC 36.1 Presolicitation notice for construction and architect-engineer contracts.

A presolicitation notice is intended to stimulate interest in the upcoming construction project.

This is especially important for small businesses as they need as much time as possible to assemble a team to compete for the project. The presolicitation notice should include a brief description of the work, the location of the work, tentative dates for the acquisition process, state the availability of construction plans, and if the construction will be limited to small businesses.

---

### **FC 36.1 Maximizing preaward site visits for construction contracts.**

*Status: Unknown*

FC 36.1 Maximizing preaward site visits for construction contracts.

Preaward site visits under FAR part 36 enable potential contractors to physically inspect project locations, evaluate site conditions and constraints, and gather critical information necessary for developing accurate proposals and realistic project approaches. These visits support informed bidding by allowing contractors to assess site accessibility, existing conditions, environmental factors, and logistical challenges that may impact construction methods, scheduling, and costs. Federal acquisition teams should conduct comprehensive site visits that facilitate meaningful contractor engagement and information exchange. Structure visits to include scenario-based walkthroughs where vendors address specific implementation challenges, enabling government

personnel to identify potential requirement gaps or unrealistic expectations. Incorporate real-time technical discussions with project engineers, facility managers, and end-users to clarify operational requirements and construction constraints. Consider presolicitation site visits to gather industry feedback that can strengthen requirement development and reduce postaward modifications. Document existing conditions thoroughly through photos, videos, and measurements, provide studies and surveys, and include opportunities for confidential vendor feedback through discovery sessions. Effective site visits reduce proposal assumptions, surface practical construction challenges early, and establish collaborative relationships that minimize differing site conditions claims while ensuring contractors can deliver feasible, innovative solutions.

---

### **FC 36.101 Construction.**

*Status: Unknown*

FC 36.101 Construction.

Refer to FAR part 12 (if commercial), FAR part 14 (if using Sealed Bid) and FAR part 15 (if contracting by negotiation) for the presolicitation requirements.

91

Federal Acquisition Regulation (FAR) Companion

---

### **FC 36.101-2(b)(1) Use performance-based requirements.**

*Status: Unknown*

FC 36.101-2(b)(1) Use performance-based requirements.

Minimize prescriptive specifications and maximize performance-based requirements to allow design-build teams to innovate. Since the design-builder holds responsibility for design adequacy, detailed government specifications can limit the benefits of integrated delivery and create unnecessary risk conflicts.

---

### **FC 36.101-2(b)(2) Emphasize qualifications over price.**

*Status: Unknown*

FC 36.101-2(b)(2) Emphasize qualifications over price.

Structure evaluations where past performance and experience are the most heavily weighted factors, with all non-price factors combined being significantly more important than price.

Here are some approaches that can support an emphasis on qualifications:

? Verify past performance of the integrated design-build entity, key designers, and trade partners for projects within the past seven years.

? Credit teams with demonstrated collaboration history on previous design-build projects, as the relationship between contractor and designer-of-record is critical to success.

? Require identification of the Design-Build Project Manager and key personnel with specialized certifications such as Leadership in Energy and Environmental Design - Accredited Professional (LEED-AP), Project Management Professional (PMP), Design-

Build Institute of America (DBIA), Certified Construction Manager (CCM), or Construction Specifications Institute (CSI).

---

### **FC 36.101-2(b)(4) Optimize competition through strategic short-listing.**

Status: Unknov

FC 36.101-2(b)(4) Optimize competition through strategic short-listing.

While the FAR permits up to five offerors in phase two, consider limiting phase two to the three most highly qualified to encourage meaningful competition while reducing administrative burden. When determining and announcing the maximum number of offerors that will be selected to submit phase two proposals, the contracting officer can favor the lowest number (e.g. three) that would yield effective competition.

Developing a phase two cost proposal typically includes a firm demonstrating completion of up to 80 percent of the design work and identifying detailed space and material needs. Some in industry report that the cost of developing a full proposal for a phase two design-build contract can exceed three percent of the value of the project (see H. Rept.113-668 - Design-Build Efficiency and Jobs Act of 2014).

Also, offerors submit the best proposals when they believe their probability of win (pWin) is high enough. The maximum number of five would mean 20 percent pWin as opposed to over 33% if the number is set at three.

Provide draft RFPs to short-listed proposers for feedback and conduct confidential meetings before proposal submission to encourage innovation and address concerns.

---

### **FC 36.101-3 Government estimates.**

Status: Unknov

FC 36.101-3 Government estimates.

The government will develop its estimate based on the design. The design will either be developed by the government or by an Architect-Engineer (A-E) firm. If it is done within the government, the government employed engineer will develop the estimate based on the design  
92

Federal Acquisition Regulation (FAR) Companion

the government created. If an outside A-E firm does the design, they will also include a proposed estimate in their final design.

If using the Design-Build method, the government will establish the budget parameters when establishing the scope of work in phase one. Although the complete government estimate is not established until the final design is completed, the budget parameters will establish a general range of the estimate. Once the final design is approved and awarded, the true government estimate can be established.

---

### **FC 36.101-3 Disclose the magnitude of the construction project.**

Status: Unknov

FC 36.101-3 Disclose the magnitude of the construction project.

Disclose the target price range (not the Independent Government Estimate) in the solicitation to maximize project value in terms of quality, scope, energy efficiency, sustainability, durability, and life-cycle costs. Price range disclosure supports industry participation by enabling contractors to assess project feasibility and prevents award delays by reducing inappropriate proposals.

Including a target "design to" price range allows offerors to develop solutions within funding constraints while enabling agencies to evaluate trade-offs between cost and quality to achieve best value. Agencies should encourage project enhancements within the established price parameters, for example, by structuring them in a tiered manner, such as ?desirable? enhancements and ?if possible? additions.

---

### **FC 36.101-3 Government construction specifications.**

Status: Unknov

FC 36.101-3 Government construction specifications.

Government construction specifications, to the maximum extent practical, should conform to widely recognized standards or specifications used in construction. Specifications should clearly identify and describe the particular physical, functional, or other characteristics required, especially when brand name or equal descriptions are necessary.

---

### **FC 36.2 Construction specific information on notification of award notification.**

Status: Unknov

FC 36.2 Construction specific information on notification of award notification.

Construction award notifications should identify the solicitation and the awarded price, so it is clear which contract action the notice pertains to. In the notice, it is important for the contracting officer to articulate the required tasks that must be completed prior to commencement of the work or issuance of the notice to proceed (NTP). For instance, advise the contractor that the required payment and performance bonds must be promptly executed and returned to the contracting officer, and specify the date of commencement of work, or advise when a NTP will be issued.

---

### **FC 36.3 Postaward pre-construction orientation.**

Status: Unknov

FC 36.3 Postaward pre-construction orientation.

In addition to the best practices outlined in FC 42.3, postaward pre-construction orientations should consider the following matters of interest:

? Statutory matters, such as labor standards (FAR part 22) and subcontracting plan requirements (FAR part 19).

? Other matters of interest, such as contractual, administration (e.g., security, safety, fire and environmental protection), and construction responsibilities.

---

## **FC 36.3 Notice to Proceed.**

Status: Unknow

FC 36.3 Notice to Proceed.

Construction is unique as the contractor is not expected to commence work at the award of the contract. The contractor is not expected to begin work until the Notice to Proceed (NTP) is issued. The NTP is issued by the contracting officer when the contractor has completed certain tasks. These tasks include, but are not limited to, gaining access to the government facility where the construction will take place, obtaining the necessary performance and payment bonds, and other training and tasks required by the government.

Federal Acquisition Regulation (FAR) Companion

contract. The contractor is not expected to begin work until the Notice to Proceed (NTP) is issued. The NTP is issued by the contracting officer when the contractor has completed certain tasks. These tasks include, but are not limited to, gaining access to the government facility where the construction will take place, obtaining the necessary performance and payment bonds, and other training and tasks required by the government.

Once the contracting officer is satisfied that all the necessary tasks are completed by the contractor, the contracting officer will issue the NTP. This letter states that the contractor has the approval to start the construction and it states the timeframe in which the construction is expected to be completed. This is very important as the timeframe for completing the project begins with the issuance of the NTP and not at the time of the contract award.

---

## **FC 36.000 Plan for collaborative contract administration.**

Status: Unknow

FC 36.000 Plan for collaborative contract administration.

Design-build requires more government engagement during design development than traditional construction contracts. Establish clear processes for "design commitment" (the point at which design is confirmed to meet criteria, codes, budget, and schedule).

Define agency and design-builder roles clearly, particularly for submittal processes and quality assurance. Use "over-the-shoulder" reviews that allow informal collaboration during design development rather than formal reviews only after significant design investment.

---

## **FC 36.000 Team integration and training.**

Status: Unknow

FC 36.000 Team integration and training.

Staff projects with individuals educated and experienced in design-build best practices whose personalities are well-suited to the collaborative nature of the design-build process. Use co-location when justified by project complexity. Establish structured partnering processes and executive leadership groups to monitor project execution regularly.

## **Part 37 - Service Contracting**

---

## PART 37

---

### FC 37.001 Examples of service contracts.

Status: Unknown

FC 37.001 Examples of service contracts.

Service contracts may encompass various areas, including:

- ? Maintenance, overhaul, repair, servicing, rehabilitation, salvage, modernization, or modification of supplies, systems, or equipment.
- ? Routine recurring maintenance of real property.
- ? Housekeeping and base services.
- ? Advisory and assistance services.
- ? Operation of government-owned equipment, real property, and systems.
- ? Communications services.
- ? Architect-Engineering (see part 36).
- ? Transportation and related services (see part 47).
- ? Research and development (see part 35).

---

### FC 37.1 Outcome-based contracting.

Status: Unknown

FC 37.1 Outcome-based contracting.

Outcome-based contracting is a variation of performance-based contracting that emphasizes delivery of specific, defined outcomes through a collaborative, adaptive performance framework, 94

Federal Acquisition Regulation (FAR) Companion

rather than transactional delivery of specified services or products. The contract defines the specific performance outcomes as well as the operational methodology, decision-making protocols, and adaptive mechanisms that will govern the contractual performance partnership. Price arrangement may utilize any contract types described in this regulation, hybrid of multiple types, or an alternative contract type proposed by an offeror.

The essence of outcome-based contracting is transforming the government-contractor relationship from a transactional exchange to a strategic partnership unified around delivery of defined performance outcomes, with contractual structures that make that partnership legally binding and mutually beneficial. Rather than purchasing predetermined solutions or discrete services, the government is contracting for participation in a structured business process designed to continuously optimize mission achievement through collaborative problem-solving, shared accountability, and actual delivery. This represents a fundamental evolution beyond both traditional contracting and performance-based contracting toward true collaborative governance models.

The fundamental distinction lies in the partnership model: both parties have "skin in the game" for success or failure, creating aligned incentives that transcend the traditional buyer-seller dynamic. This partnership is built on an iterative, adaptive framework that emphasizes

continuous refinement and collaborative problem-solving throughout the contract lifecycle.

Key Distinguishing Features:

**1. Adaptive Performance Framework: While metrics matter, they serve as guideposts for**

course correction rather than rigid compliance checkboxes. The contract structure allows for metric evolution as understanding of optimal outcomes develops through performance experience. This framework incorporates regular retrospectives and performance reviews that focus on learning and adaptation rather than merely compliance measurement.

**2. Joint Problem-Solving Protocols: When performance challenges arise, both parties are**

contractually obligated to collaborate on solutions rather than defaulting to adversarial positions. This includes agreed upon protocols to modify approaches, reallocate resources, or adjust timelines in service of outcome achievement through rapid response cycles and joint decision-making processes.

**3. Shared Risk and Reward Structure: Both government and contractor share**

consequences of success or failure. The government commits resources, decision-making authority, and organizational support while the contractor commits expertise, innovation, and performance guarantees. This shared accountability creates a foundation for iterative improvement cycles where both parties are invested in continuous optimization of service delivery.

**4. Collaborative and Transparent Goal Setting: Rather than the government unilaterally**

defining requirements that contractors respond to, parties work together to meet defined outcomes aligned to programmatic objectives, success metrics, and implementation approaches. This leverages contractor expertise in solution design while ensuring government mission alignment. The collaborative and transparent approach recognizes that optimal solutions often emerge through actual delivery and incremental learning rather than upfront specification.

95

Federal Acquisition Regulation (FAR) Companion

---

## **FC 37.201-2(b) Determining if a contract is for personal services.**

Status: Unknov

FC 37.201-2(b) Determining if a contract is for personal services.

Evaluate each service requirement based on its unique facts and circumstances. As you do so, the primary consideration is whether the government will maintain relatively continuous supervision and control over the contractor's personnel. For instance, the sporadic, unauthorized supervision of only one of a large number of contractor employees might reasonably be considered not relevant to a determination of whether a contract is for personal services, while relatively continuous government supervision of a substantial number of contractor employees would be a strong consideration.

When considering whether a proposed contract is personal, consider factors such as:

? Performance on site.

? Principal tools and equipment furnished by the government.

? Services are applied directly to the integral effort of agencies or an organizational

**subpart in furtherance of assigned function or mission.**

? Comparable services, meeting comparable needs, are performed in the same or similar agencies using civil service personnel.

? The need for the type of service provided can reasonably be expected to last beyond one year.

? The inherent nature of the service, or the manner in which it is provided reasonably requires directly or indirectly, government direction or supervision of contractor employees in order to:

? Adequately protect the government's interest;

? Retain control of the function involved; or

? Retain full personal responsibility for the function supported in a duly authorized federal officer or employee.

Personal services contracts for the services of individual experts or consultants are limited by the Classification Act. In addition, the Office of Personnel Management has established requirements which apply in acquiring the personal services of experts or consultants in this manner (e.g., benefits, taxes, conflicts of interest). Coordinate with the cognizant civilian personnel office as necessary.

---

**FC 37.802-5 Strategic inclusion of ?continuity of services? and ?option to extend**

Status: Unknow

FC 37.802-5 Strategic inclusion of ?continuity of services? and ?option to extend services? clauses.

Contract awards for recurring and continuous service requirements are often delayed by factors outside the acquisition team's control, such as bid protests, disruptions to the incumbent contractor's business, or alleged bidding errors. To prevent difficult negotiations for short contract extensions, consider including FAR clauses 52.217-8, Options to Extend Services, and **52.237-3, Continuity of Services, in solicitations and contracts for services where the services** under the contract are vital and must be continued without interruption.

Together, these clauses provide up to six additional months of performance beyond the stated contract period for unforeseen delays; and up to 90 days for a smooth transition to the successor contractor or to the government.

96

Federal Acquisition Regulation (FAR) Companion

**Part 38 - Reserved**

Reserved.

**Part 39 - Acquisition of Information and Communication Technology**

---

## **PART 39**

---

### **FC 39.001 Applicability.**

Status: Unknow

FC 39.001 Applicability.

FAR part 39 emphasizes strategies that promote faster acquisition and secure deployment for information and communication technology (ITC) including information technology (IT), operational technology, emerging technology, and information systems. The definition for information and communication technology is in FAR part 2. However, the following context may be helpful in navigating the diverse ICT marketplace:

? Operational technology includes programmable systems or devices that interact with the physical environment or manage devices that interact with the physical environment. These systems or devices detect or cause a direct change through the monitoring and/or control of devices, processes, and events.

? Emerging technology includes any evolving or innovative capability (whether hardware, software, or service) that introduces new methods, tools, or efficiencies in support of mission needs. This includes technologies undergoing rapid advancement or change, and those with the potential to significantly improve operations, service delivery, and security (such as the Internet of Things, or IoT).

? Information systems can combine information technology, operational technology, and emerging technology.

? Information systems can be deployed on premises or in the cloud.

? Cloud deployments can be performed either as infrastructure, platform, or software as a service.

---

### **FC 39.001(a)(2) Strategic planning for ICT acquisitions.**

Status: Unknow

FC 39.001(a)(2) Strategic planning for ICT acquisitions.

Successful ICT acquisitions begin with thoughtful planning that extends beyond immediate technical requirements to consider long-term strategic objectives, organizational, and operational factors consistent with OMB Circular A-130, ?Managing Information as a Strategic Resource.? These planning approaches establish the foundation for technology solutions that remain viable and valuable throughout their lifecycle while meeting Federal information governance requirements.

OMB Circular A-130 establishes general policy for information governance, acquisitions, records management, open data, workforce, security, and privacy and represents a shift from viewing security and privacy requirements as compliance exercises to understanding security and privacy as crucial elements of a comprehensive, strategic, and continuous risk-based program at Federal agencies. ICT acquisition planning must align with this strategic framework by treating information as a valuable strategic resource requiring comprehensive lifecycle management.

## Federal Acquisition Regulation (FAR) Companion

? **Align acquisitions to the agency's technology roadmap:** Align the procurement to the agency's strategic technology roadmap that extends beyond immediate needs. This approach permits the agency to plan systemically for technology evolution, integration requirements, and capability maturation over time. This planning helps prevent isolated, incompatible systems and reduces total ownership costs by facilitating smoother technology transitions throughout the lifecycle. Where practical and appropriate, technology roadmaps may rely on integration with shared services that scale cost savings and value across larger Federal technology infrastructure and platforms. To ensure alignment with your agency's technology roadmap, the acquisition planner should coordinate with your agency's Chief Information Officer's Office (or similar). The agency CIO plays a central role in ensuring ICT acquisitions align with enterprise architecture, information governance policies, and strategic technology planning as mandated by A-130's framework for managing information as a strategic resource.

? **Integrate Federal information governance requirements:** ICT acquisitions must incorporate the comprehensive information governance framework established by OMB Circular A-130. This includes ensuring acquisitions support the agency's information lifecycle management, from creation and collection through processing, dissemination, and disposal. Acquisition planning should address how proposed systems will contribute to the agency's strategic information management objectives, enable appropriate information sharing, and support data-driven decision making while maintaining security and privacy protections throughout the information lifecycle.

? **Implement continuous risk-based security and privacy management:** OMB Circular A-130 emphasizes the role of both privacy and security in the Federal information life cycle through a continuous, risk-based approach rather than periodic compliance exercises. ICT acquisition planning must incorporate security and privacy considerations from the earliest planning stages, ensuring that systems are designed with appropriate safeguards and can adapt to evolving threats and requirements. This includes conducting Privacy Impact Assessments (PIAs) when acquiring systems that handle personally identifiable information and implementing the Risk Management Framework throughout the system development lifecycle.

? **Consider non-functional requirements:** Balance functional capabilities with critical non-functional requirements: security, scalability, interoperability, maintainability, accessibility, and performance metrics. These requirements often determine whether a system will not only meet user needs, but also integrate with enterprise architecture and remain viable throughout its lifecycle. Clearly articulating non-functional requirements in solicitations helps vendors propose appropriate solutions and prevents expensive modifications later.

Being familiar with key statutory requirements related to the acquisition of ICT is critical to a compliant acquisition. In addition to FAR part 39, it is important to be familiar with prohibitions as they pertain to the acquisition of ICT detailed in FAR part 40. Further applicable guidance, such as that related to the Federal Information Security Management Act (FISMA) or Section 508 of the Rehabilitation Act of 1973, can be found on CIO.gov, Section508.gov, and the National Institute of Standards and Technology Information Technology page (e.g., Federal Information

Security Management Act (FISMA) requirements). Information pertaining to statutorily required purchasing programs relevant to ICT can be found on the statutory purchasing programs page.

98

Federal Acquisition Regulation (FAR) Companion

---

## **FC 39.001(a)(2) Streamlined timeline techniques.**

Status: Unknov

FC 39.001(a)(2) Streamlined timeline techniques.

Accelerating the acquisition timeline ensures that implemented solutions remain technologically relevant and meet current mission needs. These techniques maintain procurement integrity while eliminating unnecessary delays that can undermine program success.

? Streamlined source selection. Design evaluation processes that enable award decisions within 180 days or less from solicitation release. Techniques include limiting proposal page counts; focusing on differentiating evaluation factors; using oral presentations, demonstrations, or other real-time assessments to replace written portions of the proposal; and implementing concurrent rather than sequential evaluation phases. Establish dedicated review teams with scheduled evaluation sessions rather than rely on part-time evaluators. These approaches maintain thoroughness while eliminating unnecessary delays that can render solutions outdated before implementation begins.

? Consensus-only documentation. Implement a streamlined consensus approach that eliminates individual evaluator write-ups in favor of direct team consensus documentation. This technique reduces administrative burden and timeline by having evaluators first discuss their assessments collaboratively, then document only the team's consensus findings. Instead of detailed narratives for each proposal, focus on capturing discriminating factors between proposals and clear reasons for ratings (or rankings). This approach can cut weeks from the evaluation timeline while improving evaluation quality through collaborative assessment that uses the entire team's expertise.

? Agile acquisition techniques. Apply agile principles to the acquisition process itself, not just the development methodology. Break the procurement into smaller, more manageable chunks with shorter timelines. Consider techniques like rolling admissions for vendor qualification, regular on-/off-ramping for multiple-award vehicles, and streamlined ordering procedures for prequalified providers. Capture lessons learned and continually refine acquisition approaches based on results. This creates a more responsive procurement system that can adapt to changing technology and mission needs.

---

## **FC 39.101 Management of ICT contract risk.**

Status: Unknov

FC 39.101 Management of ICT contract risk.

Information and communication technology acquisitions present unique challenges that can significantly impact mission success and taxpayer value. Unlike traditional procurements, ICT

projects involve rapidly evolving technologies, complex integrations, and cascading dependencies that can create costly problems if not properly managed. Effective risk management enables agencies to identify potential issues early and respond proactively, protecting against cost overruns, schedule delays, technical obsolescence, and solutions that fail to meet user needs.

Modern ICT acquisitions face new risks beyond traditional concerns. Schedule risks may include Artificial Intelligence (AI) integration delays and supply chain disruptions. Cost risks often stem from evolving cybersecurity requirements and frequent technology updates.

Technical risks have grown with AI implementations where agencies may lack expertise to evaluate performance or detect bias. Contract decisions typically involve balancing AI security, federal design requirements, and third-party vendor risks, while AI systems can face data

99

Federal Acquisition Regulation (FAR) Companion

poisoning attacks. These challenges tend to multiply when agencies manage multiple high-risk projects with limited oversight resources.

Effective acquisition risk management often combines proven contracting techniques with modern planning approaches. Acquisition planning should consider the government's realistic? plan B in the event a contractor fails to perform. Modular contracting can help manage such risk. Modular contracts can also break complex IT projects into smaller, manageable increments that deliver value while reducing overall risk exposure. Agencies may benefit from thorough acquisition planning that coordinates program, financial, and contracting perspectives early in the process. Many find success incorporating specific contract language for AI governance, cybersecurity attestations, and vendor risk assessments. Prototyping line items or contract structures can allow testing of technical approaches before committing to full-scale implementation. Outcome-focused contracting that emphasizes collaboration between government and contractor teams helps ensure both parties work together toward mission success rather than simply meeting contract specifications.

---

## **FC 39.102 Modular contracting.**

Status: Unknow

FC 39.102 Modular contracting.

Breaking down initiatives into manageable components reduces risk while increasing flexibility, competition, and opportunities for innovation. These strategies enable incremental capability delivery while maintaining system coherence and preventing vendor lock-in. Modular contracting is especially critical for piloting, learning from, and iterating with emerging technologies.

? Managing complex requirements. Prioritize logical separation of concerns, well-defined interfaces, and appropriate data exchange standards. This approach reduces risk by allowing incremental delivery and creating more opportunities for small, emerging technology business participation.

? Implementing modular contracting. Structure acquisitions into separate, interoperable modules rather than monolithic systems. This approach, consistent with FAR 39.102, enables incremental development and deployment of functionality, reduces risk exposure, and increases opportunities for innovation. Establish a family of contracts with

complementary scopes that can be awarded to different contractors while maintaining integration. This strategy prevents vendor lock-in while providing flexibility to adopt new technologies or approaches for individual modules.

---

## **FC 39.70 Innovative solicitation approaches.**

Status: Unknov

FC 39.70 Innovative solicitation approaches.

Modernizing solicitation practices make it easier for government and industry partners to communicate more clearly and understand each other more deeply. Innovative solicitation approaches like challenge-based acquisitions, simplified pitches, and rapid feedback loops help attract tech startups and new market entrants. These methods reduce barriers, spark fresh ideas, and make it easier for emerging companies to bring cutting-edge solutions into the government space.

? Pre-proposal discovery sessions. Schedule one-on-one discovery sessions after solicitation release, but before proposal submission, to clarify requirements and answer vendor-specific questions. Conduct these sessions after an appropriate down-select process to minimize burden and focus time efficiently. These sessions allow vendors to explore their unique solution approaches while learning about agency needs. To  
100

Federal Acquisition Regulation (FAR) Companion

maintain fairness, establish clear ground rules prohibiting discussions of pricing, ensure consistent time allocations for all offerors, and document session protocols in the solicitation. These interactions result in complete proposals that better address agency requirements and result in fewer assumptions and exceptions in proposals.

? Oral presentations. Add oral presentations to the evaluation process to assess vendor understanding, team capabilities, and solution approaches more effectively than written proposals alone. Structure these as scenario-based problem-solving exercises where the vendor might best show their approach to realistic challenges. This technique provides valuable insights into how teams think and work together while reducing proposal preparation burden and potential AI bias.

? Technical demonstrations and challenges. Request working prototypes or technical demonstrations that show vendors' actual capabilities rather than promised functionality. Establish technical challenges that all offerors address under consistent conditions, allowing side-by-side comparison of approaches and capabilities. This method reduces reliance on written claims and provides evidence of technical competence and innovation potential. However, in structuring technical demonstrations and challenges, it is important to understand the level of effort they require for industry partners, especially small businesses. Therefore, ensure the approach is appropriately structured based on the complexity, value and importance of the requirement. Regardless, ensure the evaluation criteria clearly communicate how demonstrations will influence award decisions.

---

## FC 39.70 Evaluation and negotiation innovations.

FC 39.70 Evaluation and negotiation innovations.

Modern evaluation approaches recognize that success depends on people, capabilities, and contractual commitments more than written proposals or corporate history. These techniques help agencies identify partners with the right capabilities and motivations for project success. Examples of these or similar techniques are described in the Periodic Table of Acquisition Innovations (PTAI).

? Phased down-select processes. Consider multi-phase evaluation processes that progressively narrow the competitive field through increasingly detailed assessments. Initial phases might evaluate high-level solution approaches and team qualifications, while later phases examine technical details, pricing, and implementation plans from down-selected offerors. This approach reduces the proposal preparation burden for industry while allowing agencies to focus evaluation resources on the most promising solutions. It particularly benefits IT acquisitions where in-depth technical evaluation (for instance, of coding challenges or demonstrations) may be more resource intensive.

? Evaluate team capabilities. Assess the specific capabilities the team brings to the contract. Request demos of team problem-solving abilities through technical challenges, interviews, or scenario-based exercises. This approach recognizes that in rapidly evolving technology areas, the specific knowledge and adaptability of the team members matter. Consider how you structure the contract and incentives that maintain strong teams under contract performance.

? Look beyond contract dollars equating to experience. When evaluating a contractor's experience, don't simply use the size of past contracts or the length of a contract as measures for how a contractor may perform on your requirement without

101  
Federal Acquisition Regulation (FAR) Companion  
understanding what you might lose out on.

? Negotiate performance commitments into the offer. During negotiations, transform vendor claims into contractual commitments with associated metrics and acceptance criteria, turning them from promises into part of the contractually binding offer you accept. In today's AI-enhanced proposal environment, written claims are increasingly polished but may not reflect actual capabilities. In negotiations, test the depth of vendor understanding and willingness to stand behind their assertions. Consider implementing proof periods with defined acceptance criteria before full deployment under contract. This approach protects the government from exaggerated capabilities while giving vendors appropriate flexibility in implementation approaches.

## Part 40 - Information Security and Supply Chain Security

## PART 40

---

### FC 40.1 Integrate security throughout the acquisition lifecycle.

Status: Unknown

FC 40.1 Integrate security throughout the acquisition lifecycle.

For acquisitions involving sensitive information (e.g., controlled unclassified information, classified information) or at higher risk of violating a security exclusion or prohibition (e.g., telecommunications, video surveillance, unmanned aircraft systems, foreign acquisitions), expanding the acquisition team proves valuable.

A cross-functional acquisition team composition, with roles such as those detailed in the table below, ensures comprehensive security expertise throughout the acquisition lifecycle for protecting sensitive information and implementing security prohibitions and exclusions.

Role/Position	Subject Matter	Expertise	Key Contributions
Chief Information Security Officers	Cybersecurity	Bring cybersecurity expertise to requirement development and (CISOs) or proposal evaluation	

Representatives

Supply Chain Specialists	Logistics and Industrial	Offer insights on manufacturing security risks and component authenticity verification methods
--------------------------	--------------------------	--

Legal Counsel	Regulations, Export Controls, Foreign Ownership	Help navigate complex regulatory landscapes with expertise in export controls and foreign ownership restrictions
---------------	---	--

End Users	Operations	Contribute practical perspectives on security usability
-----------	------------	---

IT Technical Evaluators	Hardware Engineering	Assess hardware tampering vulnerabilities
-------------------------	----------------------	---

102

Federal Acquisition Regulation (FAR) Companion

Role/Position	Subject Matter	Expertise	Key Contributions
Program Managers	Program Portfolio	Help ensure interoperability with existing security architecture	

This diverse team composition ensures comprehensive security expertise throughout the acquisition lifecycle for protecting sensitive information and implementing security prohibitions and exclusions.

For higher risk procurements, acquisition teams can enhance security outcomes for these critical acquisitions by incorporating appropriate controls at key decision points across the acquisition lifecycle.

For instance, during market research, teams can gather intelligence on vendor security practices, component origins, and manufacturing processes to inform requirements development.

When drafting requirements involving information and communications technology, teams

should consider building in additional security that requires offerors to demonstrate they do not pose significant supply chain risks that could adversely affect contract performance. Such language in the requirements enables teams to evaluate supply chain risk information provided by the offeror to the government, along with any other government data sources, to assess the overall supply chain risk as part of the minimum requirements for the procurement. Supply chain risk information can include:

- ? Foreign control of, or influence over, a source, product or service (e.g., foreign ownership, personal and professional ties between a source and any foreign entity, legal regime of any adversary in which a source is headquartered or conducts operations)
- ? Functionality and features of awarded products and services, including access to data and information system privileges;
- ? The ability of a source to produce and deliver products and services as expected;
- ? Any other considerations that would factor into an analysis of the security, integrity, resilience, quality, trustworthiness, or authenticity of products, services or sources; and
- ? The offerors' capacity to mitigate identified risks.

In the solicitation phase for high risk or high dollar value procurements, including evaluation criteria that reward vendors offering enhanced visibility into their supply chains and security architectures encourages industry to prioritize these elements.

During responsibility determinations, supply chain risks can be considered as part of the general standards in FAR 9.104-1 when determining whether offerors have the necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain them.

Postaward administration presents opportunities to implement ongoing verification activities, such as random sampling of delivered items, regular code reviews, or security testing to verify

103  
Federal Acquisition Regulation (FAR) Companion

compliance with contract requirements, including applicable FAR clauses (e.g., country of origin for Trade Agreements Act compliance, 15 controls within FAR 52.204-21). When contracts include requirements to mitigate supply chain risks, it is essential to continuously monitor contractor performance to identify and respond to any new and evolving threats during the contract period. If new supply chain risks are identified during contract performance, assess the severity and potential impact on the government. Based on the assessment, appropriate actions may include but are not limited to requiring corrective action, deciding not to extend the period of performance, withholding the exercise of option periods, or pursuing contract termination to protect government interest and maintain supply chain integrity.

Contract closeout offers valuable data collection points, documenting security performance to inform future acquisitions.

## **Part 41 - Acquisition of Utility Services**

FC.41.203 Navigating Utility Acquisitions with the General Services Administration

**(GSA).**

When it comes to acquiring utilities for the government within the contiguous United States

(CONUS), GSA possesses unique authorities and a deep understanding of the landscape. To ensure the most efficient and compliant approach, acquisition professionals are highly encouraged to reach out to GSA at [utilities@gsa.gov](mailto:utilities@gsa.gov) before initiating any utility-related

procurement, whether it's a formal request for assistance or simply general information to inform acquisition planning. GSA's expertise can unlock a range of options that might not be immediately apparent, potentially saving time and resources.

**Part 42 - Contract Administration and Audit Services**

---

## **PART 42**

---

### **FC 42.001 Interagency agreements.**

*Status: Unknown*

FC 42.001 Interagency agreements.

When an interagency agreement is established, the agencies are encouraged to consider establishing procedures for the resolution of issues that may arise under the agreement.

---

### **FC 42.002(b) Cognizant federal agency.**

*Status: Unknown*

FC 42.002(b) Cognizant federal agency.

If, at the end of the 5-year period, another agency has the largest dollar amount of negotiated contracts, including options, the two agencies should coordinate and determine which will assume cognizance. However, if circumstances warrant it and the affected agencies agree, cognizance may transfer prior to the expiration of the 5-year period.

---

### **FC 42.3 Contract correspondence.**

*Status: Unknown*

FC 42.3 Contract correspondence.

Correspondence concerning contract administration functions should typically be routed through the cognizant contract administration office (CAO) by the contracting officer (or other contracting agency personnel) to the contractor, with a copy provided for the CAO's records. In urgent situations where direct communication with the contractor is necessary, a copy of the correspondence should be sent to the CAO simultaneously. The CAO, in turn, should furnish

104

Federal Acquisition Regulation (FAR) Companion

the contracting office with copies of relevant correspondence exchanged between the CAO and the contractor.

---

### **FC 42.3 Visits to contractors? facilities.**

*Status: Unknown*

FC 42.3 Visits to contractors? facilities.

When government personnel plan a visit to a contractor's facility in connection with government contracts, they should notify the cognizant Contract Administration Office (CAO) in advance. This notification allows the CAO to make necessary arrangements and helps avoid redundant reviews, requests, investigations, and audits concerning contract administration functions delegated to the CAO under FAR subpart 42.3. The notification should include, at a minimum, the following information:

- ? Visitors? names, official positions, and security clearances.
  - ? Date and duration of visit.
  - ? Name and address of contractor and personnel to be contacted.
  - ? Contract number, program involved, and purpose of visit.
  - ? If desired, visitors to a contractor?s plant may request that a representative of the CAO accompany them. In any event, the CAO has final authority to decide whether a representative should accompany a visitor.
- 

### **FC 42.3 Evaluation of contract administration offices.**

Status: Unknow

FC 42.3 Evaluation of contract administration offices.

Onsite inspections or evaluations of the performance of the assigned functions of a contract administration office should be accomplished only by or under the direction of the agency of which that office is a part.

---

### **FC 42.3 Postaward orientation.**

Status: Unknow

FC 42.3 Postaward orientation.

A contract award isn?t the finish line?it?s the starting point. It is up to the contracting officer to decide whether a postaward orientation in any form is necessary. Postaward orientation (sometimes called ?kick-offs?), whether a full meeting/conference or a well-crafted letter, helps everyone involved understand the expectations, spot potential issues early, and build a solid working relationship from the start.

Remember that postaward orientation is not a substitute for the contractor fully understanding the work requirements at the time offers are submitted, and is not to be used to alter the final agreement arrived at in any negotiations leading to contract award. In other words, postaward orientation does not change what is in the contract, it simply clarifies and reinforces it to ensure the parties have a clear and mutual understanding of the contract requirements.

Postaward orientation can be especially valuable for contractors who are new to federal work, small businesses still learning the ropes, or for mission-critical contracts that are more nuanced and complex. It is most effective when held soon after award and tailored to the contract?s complexity, the contractor?s experience, delivery timeline, safety concerns, and other key factors necessary for successful delivery.

If the contract is straightforward, a letter may be all that?s needed. For more complex efforts, an in-person or virtual meeting may be a smart investment of time. Solicitations and resultant contracts should specify the requirement for a postaward orientation meeting, especially if one

105  
Federal Acquisition Regulation (FAR) Companion

would be convened in person / on-site, so that offerors can account for time and travel-related expenses.

If a postaward orientation is held, the contracting officer takes the lead and establishes the time and place, sets the agenda, brings the right stakeholders to the table, and document key

takeaways. It's also a good time to remind participants that any change to the contract can be accomplished only by formal contract modification executed by the contracting officer. Bottom line: use postaward orientation to set the tone, establish clear expectations, and reduce friction later on. It can make a big difference in successful delivery.

---

### **FC 42.3 Selecting contracts for postaward orientation.**

Status: Unknown

FC 42.3 Selecting contracts for postaward orientation.

When deciding on the necessity and form of post-award orientation, contracting officers should consider:

- ? Prior discussions and pre-award surveys;
  - ? Contract type, value, and complexity;
  - ? Product/service complexity and acquisition history;
  - ? Spare parts requirements;
  - ? Delivery urgency and program criticality;
  - ? Production cycle length;
  - ? Subcontracting extent;
  - ? Contractor's performance history and experience;
  - ? Contractor's small business status;
  - ? Contractor's small business subcontracting performance;
  - ? Safety precautions for hazardous materials/operations;
  - ? Complex financing arrangements (e.g., progress payments, advance payments, guaranteed loans).
- 

### **FC 42.3 Postaward subcontractor conferences.**

Status: Unknown

FC 42.3 Postaward subcontractor conferences.

The prime contractor is generally responsible for conducting postaward conferences with subcontractors. However, the prime contractor may invite government representatives to a conference with subcontractors, or the government may request that the prime contractor initiate a conference with subcontractors. The prime contractor should ensure that representatives from involved contract administration offices are invited.

Government representatives should recognize the lack of privity of contract between the government and subcontractors; not take action that is inconsistent with or alters subcontracts; and ensure that any changes in direction or commitment affecting the prime contractor are made by written direction of the contracting officer to the prime contractor.

---

### **FC 42.302 Contract administration environment.**

Status: Unknown

FC 42.302 Contract administration environment.

Successful mission delivery hinges on robust postaward administration. This helps to ensure successful performance, mitigates risks, and maximizes value.

When unforeseen challenges inevitably arise post-award, encouraging collaborative problem solving should be expected, not overlooked. Taking the time and effort to implement practices

106

Federal Acquisition Regulation (FAR) Companion

that will make administration more efficient enables effective adaptation, knowing when and how to pivot due to changing circumstances.

This includes managing the change process with contract modifications, continuously assessing and mitigating risks, and embracing flexibility to adjust as needed. For example, scheduling check-ins to track progress and identify risk (e.g. project tasks and blockers that are communicated daily during a scrum in the IT world or potential change orders in the construction domain), quick informal communication methods (e.g. phone calls, text, or other means to communicate in realtime) to resolve minor issues promptly and prevent escalation, and performance monitoring to drive improvement - Did we meet the target deliverable or outcome? If not, what happened? Tell me more.

Listen actively to understand different perspectives and consistently focus on collaborative solutions to overcome emerging challenges. When in doubt, get curious and ask questions that will promote better understanding and manage expectations.

---

## **FC 42.5 Distribution of documents.**

*Status: Unknown*

FC 42.5 Distribution of documents.

The contracting officer or auditor should promptly distribute executed copies of the indirect cost rate agreement to the contractor and to each affected contracting agency and should provide copies of the agreement for the contract files, in accordance with the guidance for contract modifications in FAR part 4. Copies of the negotiation memorandum prepared under contracting officer determination or audit report prepared under auditor determination should be furnished, as appropriate, to the contracting offices and government audit offices.

---

## **FC 42.8 Production surveillance and reporting.**

*Status: Unknown*

FC 42.8 Production surveillance and reporting.

The government should maintain surveillance of contractor performance as necessary to protect its interests. The contracting officer administering the contract determines the extent of surveillance. When needed, contracting officers may require contractors to submit production progress reports. Reporting requirements should be limited to essential information and take advantage of data output generated by contractor systems whenever possible. Contract administration offices should verify report accuracy and advise the contracting officer of any required action. They may also initiate written reports to alert the contracting officer (and inventory manager, if applicable) of potential or actual performance delays, providing timely advice and recommendations.

---

## **FC 42.11 Continuous performance monitoring.**

Status: Unknown

FC 42.11 Continuous performance monitoring.

Continuous performance monitoring will aid the contracting officers in preparing the required performance evaluations.

By combining targeted progress reports with monitoring from contract administration personnel (see FC 42.8), contracting officers gain a continuous, data-driven view of performance, enabling them to address issues early, make informed decisions, and ultimately contribute to accurate and quality information in CPARS to inform both continued performance under the current contract and future acquisition decisions.

107

Federal Acquisition Regulation (FAR) Companion

---

## **FC 42.1103(d) Evaluation of Federal Prison Industries (FPI) performance.**

Status: Unknown

FC 42.1103(d) Evaluation of Federal Prison Industries (FPI) performance.

Evaluation of Federal Prison Industries (FPI) performance may be used to support a waiver request (see FAR 8.304) when FPI is a mandatory source in accordance with FAR subpart 8.1. The completed evaluation should not be released to other than government personnel and the contractor whose performance is being evaluated during the period. Disclosure of such information could cause harm both to the commercial interest of the government and to the competitive position of the contractor being evaluated as well as impede the efficiency of government operations.

### **Part 43 - Contract Modifications**

No additional guidance.

### **Part 44 - Subcontracting Policies and Procedures**

---

## **FC 42.200 Plan ahead for transportation acquisition.**

Status: Unknown

FC 42.200 Plan ahead for transportation acquisition.

Integrate transportation and traffic management into your acquisition planning to secure the most advantageous outcome for the government, including timely delivery of supplies in good condition. Collaborate with the requiring activity to understand their transportation needs, supply positioning, and distribution plans, ensuring they provide specific instructions to the contracting office. Critically, engage your agency's transportation officer from the start of the process.

Instead of independently drafting solicitations or evaluating offers, collaborate with them to estimate shipping costs, assess port capabilities, and analyze the total cost of ownership, including transit time and storage. Leverage their expertise throughout the acquisition cycle,

112

Federal Acquisition Regulation (FAR) Companion

enabling you to consider all crucial transportation factors, leverage potential reduced

transportation rates (see FAR 47.104), and optimize the overall acquisition value.

Proactively inform your activities of critical lead-time requirements. Determine if Service Contract Labor Standards apply. If they do, highlight the need to obtain a Service Contract Labor Standards wage determination via the Wage Determinations at SAM.gov website (or through a direct request to the Department of Labor) before issuing a solicitation for any contract exceeding \$2,500. Additionally, remind them of the potential need to allocate time during the solicitation for offerors to inspect origin and destination locations, and for agency personnel to inspect prospective contractor facilities and equipment. Addressing these requirements early in the acquisition planning process will help prevent delays and ensure a smoother procurement.

Important Note: For acquisitions potentially involving ocean transportation, obtain assistance from your transportation activity to develop appropriate shipping instructions and delivery terms that comply with the Cargo Preference Act of 1954.

---

## **PART 44**

---

### **FC 44.000(b) Notice and consent requirements under commercial contracts.**

Status: Unknov

FC 44.000(b) Notice and consent requirements under commercial contracts.

Because the consent and advance notification requirements in FAR subpart 44.2 do not apply to prime contracts involving commercial products or commercial services, the clauses outlined in that subpart (e.g., FAR 52.244-2, Subcontracts), are generally not applicable to prime contracts for commercial products or commercial services, regardless of contract type.

FAR clause 52.244-6, Subcontracts for Commercial Products and Commercial Services, prescribed in FAR 12.205(b)(2), Table 12-3, and FAR 44.403, does not impose consent or notice requirements on the prime contractor. If maintaining specific major subcontractors identified in the proposal or quotation is crucial to the performance of the contract (e.g., commercial time-and-material contracts), the contracting officer may want to consider incorporating relevant consent or notification requirements into the contract or order.

---

### **FC 44.201-1 Consent requirements.**

Status: Unknov

FC 44.201-1 Consent requirements.

The contracting officer may require consent to subcontract even when the contractor has an approved purchasing system. This is done to protect the government. Such subcontracts may include critical systems, subsystems, components, or services. These can be identified by subcontract number or by class of items (e.g., subcontracts for engines on a prime contract for airframes).

Consent may be required for subcontracts under prime contracts for architect-engineer services. The contracting officer's written authorization for the contractor to purchase from government sources (see FAR part 8) constitutes consent.

108

Federal Acquisition Regulation (FAR) Companion

---

### **FC 44.201-3 Contracting officer's evaluation considerations.**

Status: Unknov

FC 44.201-3 Contracting officer's evaluation considerations.

When consenting to a subcontract, the contracting officer should review the request and supporting data, considering:

- ? Consistency with the contractor's make-or-buy program (FAR 15.405-2).
- ? Availability of special test equipment, equipment, or real property from government sources.
- ? Technical justification for selecting supplies, equipment, or services.
- ? Contractor compliance with prime contract requirements for small business

subcontracting (FAR part 19) and purchases from nonprofit agencies for the blind or severely disabled (FAR part 8).

- ? Adequacy of price competition or justified absence thereof.
  - ? Assessment and disposal of alternate proposals.
  - ? Sound basis for selecting and determining subcontractor responsibility.
  - ? Adequate cost/price analysis and obtaining certified/other than certified cost or pricing data.
  - ? Appropriateness of proposed subcontract type for risks and policy.
  - ? Adequate consideration for subcontracts using government-provided equipment/real property.
  - ? Accurate translation of prime contract technical requirements.
  - ? Compliance with applicable cost accounting standards.
  - ? Subcontractor exclusion status in System for Award Management (FAR subpart 9.4).
- 

### **FC 44.301 Extent of contractor purchasing system reviews.**

Status: Unknown

FC 44.301 Extent of contractor purchasing system reviews.

A contractor purchasing system review (CPSR) requires an evaluation of the contractor's purchasing system. Unless segregation of subcontracts is impracticable, this evaluation should not include subcontracts awarded by the contractor exclusively in support of government contracts that are competitively awarded firm-fixed-price, competitively awarded fixed-price with economic price adjustment, or awarded for commercial products and commercial services pursuant to FAR part 12. The considerations listed above (see FC44.201-3) should also be used to evaluate the contractor's purchasing system, including the contractor's policies, procedures, and performance under that system. Special attention should be given to?

- ? The results of market research accomplished;
- ? The degree of price competition obtained;
- ? Pricing policies and techniques, including methods of obtaining certified cost or pricing data, and data other than certified cost or pricing data;
- ? Methods of evaluating subcontractor responsibility, including the contractor's use of the System for Award Management Exclusions (see FAR part 9) and, if the contractor has subcontracts with parties on the Exclusions list, the documentation, systems, and procedures the contractor has established to protect the government's interests (see FAR part 9);
- ? Treatment accorded affiliates and other concerns having close working arrangements with the contractor;

109

Federal Acquisition Regulation (FAR) Companion

- ? Policies and procedures pertaining to small business concerns, including small disadvantaged, women-owned, veteran-owned, HUBZone, and service-disabled veteran-owned small business concerns;
- ? Planning, award, and postaward management of major subcontract programs;
- ? Compliance with Cost Accounting Standards in awarding subcontracts;

- ? Appropriateness of types of contracts used (see FAR part 16);
  - ? Management control systems, including internal audit procedures, to administer progress payments to subcontractors; and
  - ? Implementation of higher-level quality standards.
- 

### **FC 44.301-3 Disclosure of approval status.**

Status: Unknown

FC 44.301-3 Disclosure of approval status.

The contracting officer may, upon request, inform a contractor about the approval or disapproval status of a proposed subcontractor's purchasing system. However, the contractor should be cautioned that the government will not provide updates on any changes to this approval status. If the proposed subcontractor's purchasing system has not yet been reviewed, the contractor should be notified accordingly.

---

### **FC 44.301-3 Reports.**

Status: Unknown

FC 44.301-3 Reports.

The contracting officer is responsible for distributing CPSR reports, notifications regarding system approval (granting, withholding, or withdrawing), and government recommendations for improving an approved system. This includes the contractor's response to these recommendations. These documents should be distributed to the cognizant contract audit office, activities prescribed by the cognizant agency, and the contractor.

### **Part 45 - Government Property**

---

## **PART 45**

---

### **FC 45.104 Address government property loss promptly and thoroughly.**

*Status: Unknown*

FC 45.104 Address government property loss promptly and thoroughly.

When government property is lost under a contract, you should act promptly. In consultation with the property administrator, determine the extent of contractor liability based on the damages associated with the loss. Then, determine the most appropriate method for the government to recover its loss, considering options such as repair, replacement, or other forms of restitution. Document all steps taken and decisions made in the contract file to ensure transparency and accountability.

---

### **FC 45.201 Clarify property management instructions in the contract.**

*Status: Unknown*

FC 45.201 Clarify property management instructions in the contract.

If you require the contractor to follow any property management, accountability, or usage instructions beyond those already covered in FAR clause 52.245-1, Government Property, clearly spell out those additional requirements in the contract. Include these instructions either within the statement of work or as a special contract provision. Don't assume the contractor will understand unwritten expectations; explicit instructions are essential for proper property management and compliance.

---

### **FC 45.606 Oversight of contractor scrap disposal procedures of government property.**

*Status: Unknown*

FC 45.606 Oversight of contractor scrap disposal procedures of government property.

Proactively address scrap disposal of government property during acquisition planning, working with the property administrator to determine if separate processing or physical segregation of

110  
Federal Acquisition Regulation (FAR) Companion

different scrap types of property (i.e., material, equipment, special tooling, and special test equipment) is necessary. Be especially vigilant when the contract scope might result in property that is:

- ? Sensitive
- ? Contains or is contaminated with hazardous materials/wastes
- ? Classified or controlled
- ? Contains precious/strategic metals
- ? Dangerous to public health/safety

These types of scrap may require specific handling, unique disposal processes, and separate plant clearance reporting to ensure compliance and mitigate risks.

## **Part 46 - Quality Assurance**

No additional guidance.

**Part 47 - Transportation**

---

## **PART 47**

---

### **FC 47.104-1 Negotiating transportation rates.**

*Status: Unknown*

FC 47.104-1 Negotiating transportation rates.

Remember that your agency can negotiate for better transportation rates under 49 U.S.C. 10721 and 13712 in appropriate situations. However, only personnel authorized by your agency's internal procedures can conduct these negotiations. Consider negotiating when anticipating volume movements, recurring shipments between the same locations (even without high volume), or when transit arrangements could provide cost-saving benefits to the government. Always ensure that any negotiated rates are properly documented and offer a clear advantage over standard rates.

---

### **FC 47.200 Submission of transportation documents for postpayment audit.**

*Status: Unknown*

FC 47.200 Submission of transportation documents for postpayment audit.

The agency specified in the clause at FAR 52.247-67 is responsible for submitting transportation documents for postpayment audit. This involves forwarding original copies of paid freight bills/invoices, bills of lading, passenger coupons, and supporting documents to the General Services Administration (GSA) Transportation Audit Division as soon as possible after the end of each month. These documents should be sent in one package to the following address:

General Services Administration  
Transportation Audit Division (QMCA)  
Crystal Plaza 4, Room 300  
2200 Crystal Drive  
Arlington, VA 22202

It's important to include paid freight bills/invoices, bills of lading, passenger coupons, and supporting documents for first-tier subcontractors under cost-reimbursement contracts. If including these subcontractor documents in the main shipment is impractical, they may be sent

111

Federal Acquisition Regulation (FAR) Companion

to GSA in a separate package. Promptly respond to any requests from GSA for original transportation bills or other documents, ensuring the contracting agency's name is stamped or written on the face of the bill before submission.

Each shipment of transportation documents should be accompanied by a statement prepared in duplicate. GSA will acknowledge receipt by signing and returning a copy of the statement. The statement should include the following information:

- ? The name and address of the specified agency
- ? The contract number, including any alpha-numeric prefix identifying the contracting office
- ? The name and address of the contracting office

? The total number of bills submitted with the statement

? A listing of the respective amounts paid or, in lieu of such listing, an adding machine tape of the amounts paid, showing the contractor's voucher or check numbers

---

### **FC 47.200 Seeking transportation expertise.**

Status: Unknov

FC 47.200 Seeking transportation expertise.

Don't hesitate to seek transportation expertise when needed. If your civilian government activity lacks a dedicated transportation officer, or you otherwise need assistance on transportation matters, reach out to either the GSA Regional Federal Supply Service Bureau supporting your activity or the transportation element within the contract administration office designated in your contract.

For military installations, the primary point of contact is the transportation office of the contracting activity, unless another military activity has been designated as responsible. If additional support is required, military transportation offices should escalate requests to the Military Surface Deployment and Distribution Command (SDDC). Leveraging these resources improves compliance and efficiency in transportation-related aspects of your acquisitions.

---

### **FC 47.200 Leverage existing transportation contracts and agreements.**

Status: Unknov

FC 47.200 Leverage existing transportation contracts and agreements.

Before initiating a new transportation or transportation-related services procurement, first explore existing contracts and agreements established by agencies with specialized transportation contracting expertise, such as DoD and GSA. Utilizing these pre-existing contracts and agreements is generally more economical and efficient. For example, GSA offers term contracts for services like local drayage, office moves, and ocean-freight forwarding. Also consider using simplified acquisition procedures for requirements below the simplified acquisition threshold.

---

### **FC 47.200 Define clear timeframes in transportation contracts.**

Status: Unknov

FC 47.200 Define clear timeframes in transportation contracts.

Prioritize clear timeframes in your transportation contracts to avoid ambiguity and ensure effective performance. Always establish a specific expiration date or state the contract's duration. As appropriate, include the specific period for one-time jobs, a detailed schedule for major jobs with coordinated phases, and precise performance times for pickup and delivery services. For pickup and delivery, specify days and hours of operation, maximum delivery times for regular and priority services, and advance notice requirements for pickups. This level of detail minimizes misunderstandings, facilitates contract management, and helps to ensure the contractor meets the agency's transportation needs.

---

## **FC 47.207 Use of FAR part 47 clauses and provisions.**

Status: Unknown

FC 47.207 Use of FAR part 47 clauses and provisions.

Prepare solicitations and contracts for transportation or transportation-related services as prescribed elsewhere in the FAR for fixed-price service contracts, to the extent that those requirements are applicable and not inconsistent with the requirements in FAR subpart 47.2. In addition, include the provisions, clauses, and instructions prescribed in FAR 47.207.

---

### **FC 47.207-3 Provide precise and detailed shipment information.**

Status: Unknown

FC 47.207-3 Provide precise and detailed shipment information.

When preparing solicitations for transportation or transportation-related services, remember that clarity and detail are crucial. Include full details of shipping and delivery locations. For example, for the origin of shipments, instead of just stating "Various locations in California," specify "Multiple shippers within the Los Angeles metropolitan area, bounded by ZIP codes 90001-91803." **For the destination of shipments, instead of "government warehouse," provide** "Consignee: GSA Distribution Center, 123 Main Street, Anytown, CA 91234." When estimating quantity, instead of saying "Approximately 10 tons per month," include a schedule like "Estimated 10 tons per month, with a breakdown of 2 tons of steel, 3 tons of aluminum, and 5 tons of plastics, shipped weekly." Or, for a household goods move, state "Estimated aggregate weight of 50,000 lbs, based on an average of 10 shipments of 5,000 lbs each." Providing this level of detail helps to ensure accurate bids, reduce potential for disputes, and ultimately leads to more efficient and cost-effective transportation services.

113

Federal Acquisition Regulation (FAR) Companion

---

### **FC 47.207-7 Government property and carrier insurance.**

Status: Unknown

FC 47.207-7 Government property and carrier insurance.

The government generally self-insures and retains the risk of loss or damage to its property during transportation, unless the carrier is legally liable. Under special circumstances, the government may buy insurance coverage for government property or require the carrier to assume full responsibility for loss of or damage to government property in its possession and buy insurance to cover that assumed responsibility. In such cases, you should (1) confirm there is no statutory prohibition, (2) verify funds are available for insurance costs, and (3) document the special circumstances justifying the need for insurance coverage, along with the authorization for purchasing it, in the contract file.

---

### **FC 47.207-8 Discrepancy reporting.**

Status: Unknown

#### FC 47.207-8 Discrepancy reporting.

When receiving shipments, immediately inspect deliveries for discrepancies including overage, shortage, loss, damage, or any differences between what you received and what's documented on the bill of lading or transportation documents. Proper documentation and timely reporting of these discrepancies is crucial for recovering costs and maintaining accurate inventory records. Follow the established procedures outlined in 41 CFR parts 102-117 and 118 for reporting and adjusting shipment discrepancies, as these regulations provide the framework for filing claims and seeking reimbursement from carriers. Document discrepancies with photographs when possible, note specific details about quantities and condition, and report issues promptly to ensure you don't miss filing deadlines. For DoD personnel, reference DoD 4500.9-R, Defense Transportation Regulation, Part II, Chapter 210, which contains department-specific procedures. Remember that failing to properly report discrepancies may result in the government absorbing unnecessary losses that should be the carrier's responsibility.

---

#### **FC 47.305-1 Evaluation considerations.**

Status: Unknown

#### FC 47.305-1 Evaluation considerations.

Prioritize achieving the lowest overall cost to the government by considering both transportation and transportation-related costs, along with offerors' shipping and receiving facilities, during offer evaluation. To the extent feasible, encourage activities to schedule deliveries to minimize transportation costs and energy consumption. When appropriate, solicit offers on both f.o.b. origin and f.o.b. destination terms to allow for a comprehensive cost comparison. Additionally, carefully evaluate vendor shipping facilities, including their ability to consolidate and ship in economical carload or truckload lots. Simultaneously, consider the type adequacy of the consignee's receiving facilities to ensure shipping schedules can be properly accommodated. Furthermore, remember to comply with U.S.-flag vessel preference requirements in accordance with FAR subpart 47.5. For official business travel and transportation of personal effects by government personnel, refer to 46 U.S.C. 1241(a). For transporting government personnel-owned vehicles at government expense, consult 46 U.S.C. **1241(e)**.

---

#### **FC 47.305-1 Effective offer evaluation.**

Status: Unknown

#### FC 47.305-1 Effective offer evaluation.

When requesting assistance from your transportation officer in evaluating offers, ensure they receive all pertinent data for a comprehensive assessment. This includes a complete description of the commodity (including packaging), the planned award and shipment dates, the total quantity with weight and cubic content, the delivery schedule, the contract period, and potential use of transit privileges like stopoffs for loading or unloading. Equipping your transportation

114

Federal Acquisition Regulation (FAR) Companion

officer with this detailed information enables them to effectively assist in evaluating offers and identifying cost savings.

---

### **FC 47.305-1 Use current and valid freight rates for offer evaluation.**

*Status: Unknown*

FC 47.305-1 Use current and valid freight rates for offer evaluation.

When evaluating offers with transportation components, rely on your transportation officer to provide the lowest available freight rates and related charges that are or will be in effect before the expected initial shipment date and are on file or published on the date of bid opening or due date of offers. Rates that become available after the date of bid opening or due date of offers should not be used unless they cover transportation for which no prior rates existed at the time of bid opening or due date of offers. This ensures a fair and accurate evaluation based on established and verifiable transportation costs.

### **Part 48 - Value Engineering**

---

## **PART 48**

---

### **FC 48.101 Optimizing function and cost.**

Status: Unknown

FC 48.101 Optimizing function and cost.

Value Engineering (VE) is a technique that serves to eliminate unnecessary acquisition, operation, or support costs without impairing essential functions or characteristics. There are two primary approaches:

#### **1. Incentive (Voluntary) Approach:**

? The contractor uses its own resources to develop Value Engineering Change Proposals (VECPs).

? The contract provides for sharing of savings and payment of allowable costs only if a VECP is accepted.

? Aims to reduce costs without upfront government investment.

#### **2. Program Requirement (Mandatory) Approach:**

? Directed by the government which requires and funds a specific VE effort.

? The contractor performs VE to a defined scope and level of effort, priced separately in the contract.

? The government shares cost savings with the contractor (usually at a lower rate than the voluntary approach, except architect-engineer contracts, which do not permit VE sharing).

? Focuses VE efforts on areas with high potential for savings.

---

### **FC 48.101 Value Engineering (VE) principles.**

Status: Unknown

FC 48.101 Value Engineering (VE) principles.

To maximize the benefits of VE, it is a best practice to process Value Engineering Change Proposals (VECPs) objectively and expeditiously. It is often important to ensure contractors receive a fair share of the savings on accepted VECPs. Timely evaluation and equitable sharing incentivize innovation and promote continued contractor participation in VE efforts, leading to greater cost savings and improved value for the government.

---

### **FC 48.101 Tailoring VECP sharing periods and rates.**

Status: Unknown

FC 48.101 Tailoring VECP sharing periods and rates.

Contracting officers should establish distinct sharing periods and rates for each VECP incorporated into a contract, determined on a case-by-case basis. The sharing period for each VECP need not be identical; tailor the period to reflect the specific circumstances of the VECP

115  
Federal Acquisition Regulation (FAR) Companion

and the expected duration of savings. In establishing both the sharing period and sharing rate, consider the following factors, as appropriate:

- 1. Extent of the change.**
- 2. Complexity of the change.**
- 3. Development risk (e.g., contractor's financial risk).**
- 4. Development cost.**
- 5. Performance and/or reliability impact.**
- 6. Production period remaining at the time of VECP acceptance.**
- 7. Number of units affected.**

This flexibility allows for a more equitable distribution of savings and incentivizes contractors to propose VECPs with varying implementation timelines and levels of risk.

---

### **FC 48.101 Profit or fee in VECP savings.**

Status: Unknown

FC 48.101 Profit or fee in VECP savings.

When evaluating VECPs, remember that the acceptance of a VECP should not generally lead to a downward adjustment of the profit or fee on the instant contract. Furthermore, profit or fee should be excluded when calculating both instant and future contract savings resulting from the **VECP**.

Why is this important? Adjusting profit downward would disincentivize contractors from proposing VECPs, as it would directly penalize their innovation and efficiency. By excluding profit/fee from the savings calculations, you ensure a fair and transparent assessment of the VECP's true cost reduction, while maintaining the contractor's earned profit margin on the original scope of work. This approach fosters a collaborative environment where contractors are motivated to identify and propose value-enhancing changes without fear of profit erosion.

### **Part 49 - Termination of Contracts**

---

## **PART 49**

---

### **FC 49.002 Termination of commercial products or services contracts awarded under FAR**

*Status: Unknown*

FC 49.002 Termination of commercial products or services contracts awarded under FAR

#### **part 12 or contracts awarded under FAR part 13.**

FAR part 49 does not apply to contracts for commercial products or commercial services awarded under FAR part 12. While FAR part 49 can be used as guidance, the procedures for termination for the government's convenience and termination for cause are provided under FAR 12.403 and FAR 52.212-4(l) or (m) for commercial products and commercial services; or FAR 52.213-4(f) or (g) for simplified acquisitions for other than commercial products and commercial services.

---

### **FC 49.1 Use of the cost principles.**

*Status: Unknown*

FC 49.1 Use of the cost principles.

The cost principles and procedures in the applicable subpart of FAR part 31 should, subject to the general principles in FAR 49.201, be used to assert, negotiate, or determine costs relevant to termination settlements under contracts with other than educational institutions. They should also be a guide for negotiating settlements under contracts for experimental, developmental, or research work with educational institutions ( see FAR 31.104).

116

Federal Acquisition Regulation (FAR) Companion

---

### **FC 49.108-2(c) Government assistance in settling subcontracts.**

*Status: Unknown*

FC 49.108-2(c) Government assistance in settling subcontracts.

In unusual cases, the termination contracting officer (TCO) may determine, with the consent of the prime contractor, that it is in the government's interest to assist the prime contractor with settling a particular subcontract. In these situations, the government, the prime contractor, and a subcontractor may enter into an agreement covering the settlement of one or more subcontracts. In these settlements, the subcontractor is paid through the prime contractor as **part of the overall settlement with the prime contractor.**

---

### **FC 49.404 Completion by another contractor.**

*Status: Unknown*

FC 49.404 Completion by another contractor.

If the surety does not arrange for completion of the contract, the contracting officer may arrange

for completion of the work by awarding a new contract based on the same plans and specifications. The new contract may be awarded by using any appropriate contracting method or procedure.

**Part 50 - Extraordinary Contractual Actions and the SAFETY Act**

---

## **PART 50**

---

### **FC 50.205-2 SAFETY Act pre-qualification designation notice - requiring activity**

*Status: Unknown*

FC 50.205-2 SAFETY Act pre-qualification designation notice - requiring activity responsibilities.

If the program office or requiring activity determines that the technology to be acquired may qualify for SAFETY Act (the Support Anti-terrorism by Fostering Effective Technologies Act of 2002) protection, the program office or requiring activity is responsible for requesting a pre-qualification designation notice from DHS. A request for a pre-qualification designation notice should be made once the requiring activity has determined that the technology specifications or statement of work are established and are unlikely to undergo substantive modification. DHS will then determine whether the technology identified in the request either affirmatively or presumptively satisfies the technical criteria for SAFETY Act designation. The notice will authorize offerors to (i) Submit a streamlined application for SAFETY Act designation; and (ii) Receive expedited review of their application for SAFETY Act designation. Requests should be made at <http://www.SAFETYAct.gov>. Upon receipt of the pre-qualification designation notice from DHS, the program office or requiring activity should submit the documentation to the contracting officer for inclusion in the presolicitation notice.

#### **Part 51 - Reserved**

Reserved.

#### **Part 52 - Solicitation Provisions and Contract Clauses**

---

## **PART 52**

---

### **FC 52.2 Changes in provisions and clauses.**

Status: Unknown

FC 52.2 Changes in provisions and clauses.

The FAR Council incorporated all changes to FAR part 52 Solicitation Provisions and Contract Clauses under the issued model deviations for FAR parts 1-53.

117

Federal Acquisition Regulation (FAR) Companion

To improve usability, the FAR Overhaul site now hosts the full text of FAR part 52. Part 52 solicitation provisions and contract clauses that were updated, removed (and reserved), or newly-added (e.g., 52.204-90) as a result of the FAR Overhaul are marked with **?(DEVIATION DATE)?**.

As agencies issue their deviations, guidance on the respective effective date for the changed solicitation provisions and contract clauses should be provided by the respective agency.

GSA has summarized all provision and clause changes based on the effective dates of the GSA issued deviations in this GSA RFO part 52 matrix tool, which is being shared as a tool or job aid for federal agencies, federal acquisition professionals, and industry partners. A downloadable Excel version of this GSA RFO part 52 matrix tool is available on the GSA RFO acquisition policy page.

#### **Part 53 - Forms**

No additional guidance.

118

---