



FAR 101 – A Quick Tour

- Introductions
- FAR Structure
- Various Parts of the FAR
 - Focused on Unique Aspects of Contracting with US Government for Small Businesses
- Not reviewing all parts of the FAR and not in detail
 - Additional classes or counseling

- Federal Acquisition Regulations and agency supplements
 - Title 48 of the Code of Federal Regulations
 - They are law
- Applies to All Executive Agencies except parts of the Federal Aviation Administration and US Postal Service
 - Official FAR: www.acquisition.gov
 - FAA:
[www.faa.gov/airports/aip/procurement/federal contract provisions/](http://www.faa.gov/airports/aip/procurement/federal_contract_provisions/) (airport improvement)
 - USPS:
about.usps.com/manuals/spp123108/html/welcome.htm

- Table of Contents
 - Overview/Planning (Parts 1-11)
 - Acquisition Methods/Contract Types (Parts 12-17)
 - Special Programs (Parts 18-29)
 - Contract Administration (Parts 30-45)
 - Termination (Part 49)
- Simply – There Is a Logical Order

- Part 52 - Clauses and Provisions
 - Provisions in solicitations; clauses in contracts or both
 - Can be added as full text or by reference
 - Matrix in Part 53 is a great guide
- Numbering System – 52.2XX-Y
 - 52 refers to Part 52 and means it is a clause/provision
 - Numbers before 52 refer to a specific agency
 - XX refers to the applicable part of the FAR
 - Y refers to the specific number in that FAR Part
 - Example: 52.203-3

- FAR Parts 3, 9
- Topics include: gratuities, anti-kickback, whistleblowers, posters, codes of conduct
- Suspension/Debarment
 - Material Violations (Implied)
 - False Certifications/Statements
 - Formal process includes investigation and responses
 - Effect is inability to obtain prime or subcontract
- Ethics and integrity are highly valued in government contracts
 - Must act ethically and have strong ethical culture

Document Compliance!!

- 52.203-3, Gratuities
- 52.203-7, Anti-Kickback Procedures
- 52.203-13, Contractor Code of Business Ethics and Conduct
- 52.203-14, Display of Hotline Poster(s)
- 52.203-17, Contractor Employee Whistleblower Rights and Requirement To Inform Employees of Whistleblower Rights
- 52.203-16, Preventing Personal Conflicts of Interest
- 52.209-6, Protecting the Governments Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment

- **Affirmative statement/certification of compliance**
 - Upon award and annually
 - System Award Management or Proposal
 - Some apply only if checked
 - Relate to Compliance with Clauses: EEO, Affirmative Action Plan, Trafficking in Persons
- **Clauses/Provisions**
 - 52.204-8, Annual Representations and Certifications
 - 52.204-19, Incorporation by Reference of Representations and Certifications

- Independent Price Determination (FAR 52.203-2)
 - No collusion and authorized person signed proposal
- Lobbying Restrictions (FAR 52.203-11)
 - Not spend contract funds (including profit) for lobbying
- Employee Confidentiality Agreements (FAR 52.203-18)
 - Not prohibit employees from disclosing fraud
- Product Origin (Multiple)
 - Know sources of all materials for each product

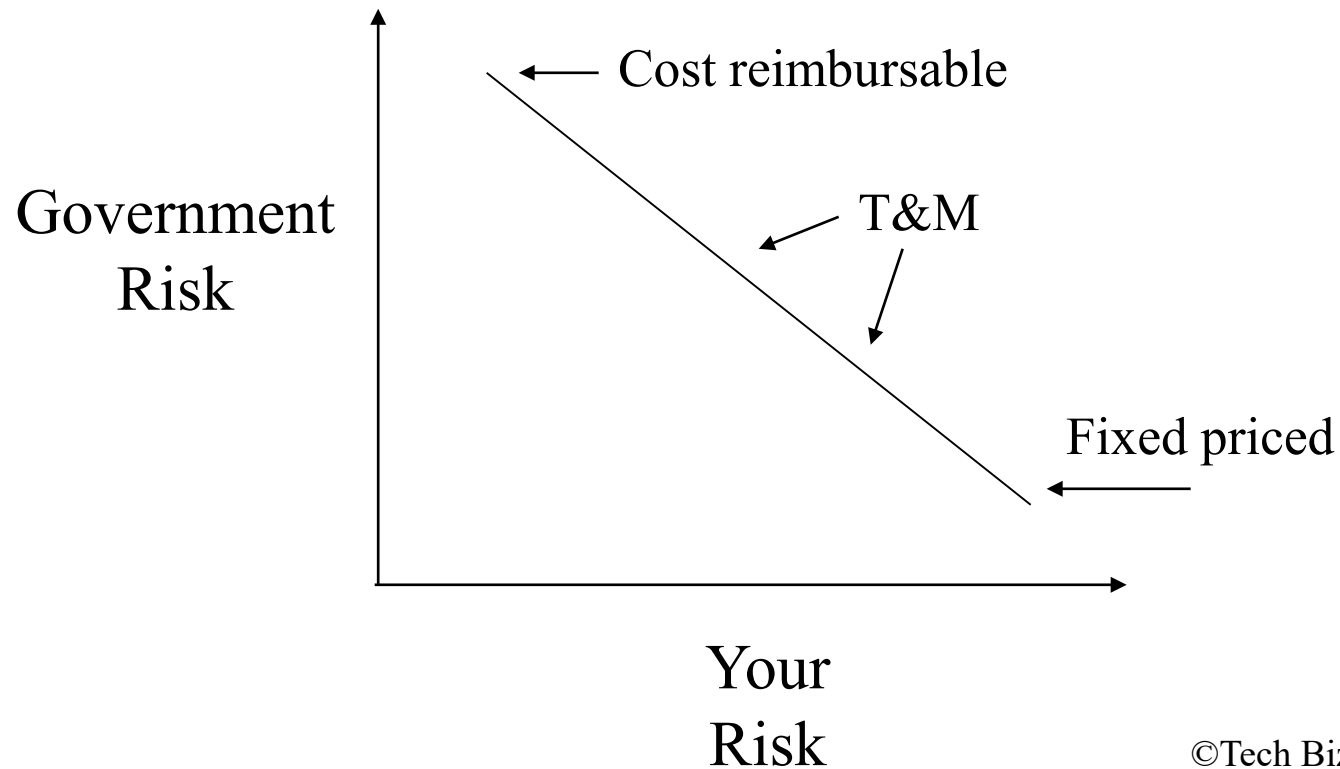
- Inverted Domestic Corporations (FAR 52.209-2)
 - Used to be domestic but now incorporated in or subsidiary of foreign
- Ownership of Company (FAR 52.204-17)
 - Know who owns your company
- Tax Liability (FAR 52.209-11)
 - Ensure company/personal taxes filed

Know Your Company's Ownership
Also – Compliance, Litigation

Contract Types

| | Fixed Price | Time/Material | Cost Reimbursement |
|------------------------|--|--|--|
| FAR Section | 16.2 | 16.6 | 16.3 |
| Definition | Firm price for a specified deliverable and not subject to adjustments based on contractor's actual costs. Note: may have adjustments for certain economic prices | Provides for acquisition of supplies and services on basis of labor hour rates and actual costs for materials | Payment of all allowable costs incurred plus profit as established by contract terms |
| Characteristics | <ul style="list-style-type: none"> • Set price • Contractor has risk of cost impacts (+/_) • Government withholds 15% until final payment | <ul style="list-style-type: none"> • Approved systems • Audit of Indirect Rates Needed • No profit on materials | <ul style="list-style-type: none"> • Price is an estimate • Government has risk of cost impacts (+/-) • Requires approved systems, especially DoD, and extensive audits |
| Pricing | Firm Fixed Price Economic Price Adjustments Price Redetermination | Hourly rate includes wages and all benefits | Cost principles apply |

- Risk Allocation is a key differentiator



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- Indefinite Delivery (FAR 16.5)
 - Used when exact times or quantities are not known
 - Three types: Indefinite Quantity, Definite Quantity, Requirements
 - Examples: Multiple Award Contracts and Federal Supply Schedules
- Undefinitized Contract Actions/Letter Contracts (FAR 16.603)
 - Used to authorize work before negotiations are complete
 - FAR 52.216-26 governs types of costs and payments allowed
- Options (FAR 17.2)
 - Unilateral right to USG to extend performance
 - Fully negotiated: price and terms in competition
 - Only modify after it has been exercised
 - If not exercised, then contract ends
- Blanket Purchase Agreements (FAR 13.303 & 16.7)
 - Are not contracts because no prices so no consideration
 - Contractors are not obligated to perform

Evaluation Methods

| | Simplified Acquisition | Invitation for Bid (IFB) | Negotiation |
|--------------------------------------|---|---|--|
| FAR Section | FAR Part 13 | FAR Part 14 | FAR Part 15 |
| Definition | Any contract below specified dollar thresholds may have simpler evaluations and contracts. Thresholds are generally: <ul style="list-style-type: none"> • Micro means < \$10,000 • Simplified Acquisition Threshold (SAT) is greater than Micro but ≤\$250,000 | Contracting method with competitive bids and public openings. Companies must be responsible and bid must be responsive. | Any method that is not IFB or Simplified. Most complicated proposals and evaluation process with pricing evaluations and written determinations. |
| Contract Types | Fixed Price | Fixed Price | All |
| Characteristics | Fewer clauses Exempt from some statutes Quick Competition | Award based on price Discussions are not needed Common for construction | Discussions are Possible Government Audit Truth in Negotiations Act |
| Pricing | Lowest Price | Lowest Price | Best Value Lowest Price Technically Acceptable (LPTA) |
| Clauses | 52.213-4 Terms and Conditions – Simplified Acquisitions (many clauses included) | Many | Numerous |
| SBIR or Small Business Unique | Set aside for small businesses if greater than Micro and less than or equal to SAT. FAR 19.502-2 | | |

- Product or Service sold commercially to the public
 - FAR 8.4, 12, 38
 - Policy is to acquire commercially when available
 - Must meet definition
- Evaluation Methods:
 - Simplified Acquisition – FAR 13.5
 - IFB (rare) – FAR 14
 - Negotiated – FAR 15
- Commerciality determination performed at prime and all subcontract tiers

Commercial Items

| | Commercial | Noncommercial |
|-----------------------------|--|---|
| FAR Section | Part 8.4, 12, 38 | Parts 13-15 |
| Product - Definition | FAR 2.101 <ul style="list-style-type: none"> • Sold or offered for sale to public • Evolved from • Modifications “of a type” • COTS (unique subset) Justification Needed | Everything Else |
| Service - Definition | FAR 2.101 <ul style="list-style-type: none"> • Installation, maintenance, repair, training • Certain ancillary • “of a type” - HARD Justification Needed | Everything Else |
| Contract Types | Fixed Price (Firm, with EPA) T&M (limited) | All |
| Strategy | Recommended for smalls if meet definition If sub – request and submit documentation Be consistent Build database of your prices sold commercially and to USG and those of competitors | If prime if FAR Part 15 – consider if pursue. Try to shape RFP Blurred lines If can't, then accept need for certification and additional compliance. |

Commercial Items

| | Commercial | Noncommercial |
|---------------------------------|--|--|
| Cost/Price Data Required | Enough to show Price Reasonableness | All and certified if >\$2M |
| Software License | Commercial with a few unauthorized paragraphs | Depends on funding source but at least restricted rights |
| Clauses | <p>52.212-4 – Contract Terms and Conditions - - Commercial Items.</p> <p>52.212-5 – Contract Terms and Conditions Required to Implement Statutes or Executive Orders -- Commercial Items</p> <p>Statutes waived at prime and even more subcontract level. FAR 12.5</p> | Numerous |
| Reps/Certs | 52.212-3, Offeror Representations and Certifications – Commercial Items | 52.204-8, Annual Representations and Certifications |

- FAR Part 19 – size standards, set-aside awards, subcontracting requirements, and much more
 - NAICS – revenues and employees
 - Program Types
 - Self certification for SB, WOSB, MOSB, HUBZone
 - VOSB/SDVOSB – self certification except VA Contracts
 - 8(a) – Approved by SBA
 - Alaskan Native Corporations
- Size Protests
 - False Certifications are Fraud

- Bundling means grouping requirements into one contract that is beyond ability of a small business to perform.
 - Simple in theory; complicated in practice
- Small Business Representatives
 - SBA for 8(a)
 - Agencies have Representatives
 - Most Large Businesses have representatives
 - Get to know the representatives
- PTAC can also help

Primes Must Subcontract to Small Businesses

- Primes must subcontract work to small businesses
 - Must have Subcontract Plan
 - Strategy for teaming is to be listed in Plan, then can't replace without contracting officer's permission
- Small businesses do not need Subcontract Plan
 - Encouraged to subcontract with other small businesses
 - Subcontract limitations not apply if "similarly situated"
- Clauses
 - 52.219-8, Utilization of Small Business Concerns
 - 52.219-9, Small Business Subcontracting Plan

- FAR Part 22 has multiple requirements with largest quantity of clauses of any FAR section.
- Examples of laws include
 - Equal Employment Opportunity
 - Veteran Reporting
 - Overtime Premiums
 - E-Verify
- Office of Federal Contract Compliance Programs
 - May audit a contractor's compliance
 - Employees may file complaints
 - <https://www.dol.gov/ofccp/>

- Wage and Compensation Laws:
 - Contract Work Hours and Safety Standards (Laborers and mechanics) – FAR 22.3
 - Wage Rate Requirements (Construction) – FAR 22.4
 - Contracts for Materials, Supplies, Articles, and Equipment (Products) – FAR 22.6
 - Service Contract Labor Standards (Services) – FAR 22.10
 - Professional Employees (Services) – FAR 22.11
 - Minimum Wage – FAR 22.19
 - Sick Leave – FAR 22.21
- Address minimum wages, maximum hours, benefits, successor interests, safety standards, and more

- Drug – Free Workplace (FAR 23.5)
 - Requires contractor to have a drug free workplace
 - Bans all federal controlled substances including marijuana
 - Exempts: Simplified, Commercial and Overseas
- Texting and Driving (FAR 23.11)
 - Contractor and subcontractors are encouraged to adopt and enforce policies that ban employees from text messaging while
 - (i) driving company-owned, company-rented or government-owned vehicles, and
 - (ii) privately-owned vehicles when on a government contract

- Supply contracts have limitations on sourcing of materials and components:
 - Buy American Act
 - Trade Agreements Act
 - Berry Amendment (DoD only)
- Government Sanctions rules
- Export/Import Rules

Know Your Supply Chain
Consult with Experts Before Buying Overseas

- Intellectual Property Rights in Government Contract Differ Significantly from Commercial
 - Must properly identify, protect and mark or lose rights
 - Rights granted to Government and Primes
 - If have unique IP, take specific class
- SBIR/STTR Unique for Small Business
 - Unique and enable commercialization of innovation
 - Extended if marked and identified as follow-on
 - Need to Mark Properly
 - FAR 52.227-20, Rights in Data – SBIR Program

- Many contracts have requirements for insurance
 - Working in Government facility
 - Cost reimbursement
 - Overseas
- Cost principles apply
 - Must include as indirect expense with few exceptions
- Work with insurance company

- Sets rules for what costs may be charged and how
 - Allowable versus unallowable
 - Direct versus indirect
- Applies to all cost contracts
 - Does not apply to fixed price or commercial
- Examples of Covered Cost Elements

Compensation

Morale and Welfare

Material

Professional/Consultant

Travel

Entertainment

Lobbying

Alcohol

- General rule – finance own operations
- Receive payment at completion (product delivery/specific tasks) or monthly (hourly services)
- Financing is available with conditions – and obligations
 - Commercial practices can be adopted
 - Milestone Based
 - Progress Payments: 85% of costs for SBs, Complex Billing, Title to Product
 - Performance Based Payments: Established events
 - Advanced Payment – frowned upon
- Do not assign contract or payments without reading FAR 32.8 carefully

- Recognizes contractors harmed if not paid on time
- Establishes rights and remedies if USG pays late
 - Payment is essentially NET 30
 - Interest accrues after 30th day – automatic
- Small Business Are Supposed to be Paid Sooner
 - Goal is payment within 15 days
 - Mandatory flowdown
 - Clauses: 52.232-40, Providing Accelerated Payments to Small Business Subcontractors and FAR 52.242-5, Payments to Small Business Subcontractors
- SBs may communicate directly with the contracting officer if prime not paying

- Addressed in FAR Part 32 but applies to all contracts
 - Know if contract is fully funded
 - Options are always subject to availability of funds
- Unique to contracting with the Government
 - Voids contracts awarded without proper authorization of funds
- Government Shutdowns
 - Fully funded contracts remain active
 - Partially funded contracts may have “stop work” order

- USG may unilaterally suspend or stop work
 - If happens, stop work and follow process
 - Not entitled to recover costs after receipt of notice
- Clauses
 - 52.242-14 -- Suspension of Work
 - 52.242-15 -- Stop-Work Order
 - 52.242-17 -- Government Delay of Work
- Usually flowed down

- Unilateral – Government has unique right to modify contract unilaterally
 - Drawings, designs, specifications
 - Method of shipping or packing
 - Place of delivery
 - Description of services
 - Time and place of performance
- Options – unilateral right to add quantities or extend performance. Not guaranteed!

- Past Performance Evaluations (FAR 42.15)
 - Your performance matters; impacts ability to obtain contracts
 - Mandatory evaluation of responsibility
 - If negative, provide well-articulated response based on facts and notify small business representative or SBA
 - Contractor Performance Assessment Reporting System (CPARS) & Past Performance Information Retrieval System (PPIRS) - <https://www.cpars.gov/>
- The Customer is Always Right
 - Respond to requests
 - Anticipate needs
 - Engage your contracting officer

Communicate – Communicate - Communicate
Document – Document - Document

- Primes oversee performance
 - Responsible for subcontractors' performance
 - Will want audit rights
- Subs have no privity with customer except:
 - Intellectual Property
 - Mandatory Disclosure
 - Failure to Pay
- Clauses:
 - 52.244-2, Subcontracts
 - 52.244-6, Subcontracts for Commercial Items

- Primes will include clauses (“Flowdowns”)
 - Some are mandatory
 - Some are optional
 - Some are good idea
 - Some only apply to prime
- Analyze Terms Carefully
 - Liability and Warranty
 - Intellectual Property
- Decide if Negotiations Needed
 - Request exceptions in proposal
 - Signature on contract or starting performance is too late

- Government may inspect all work performed
 - Includes subcontractors
- Degree of inspection differ for supplies and service
 - Inspection plans with approval points
- How recover costs differ for contract types
 - Fixed price - include in contract price

Clauses

52.246-2, Inspection of Supplies - Fixed-Price

52.246-3, Inspection of Supplies - Cost-Reimbursement

52.246-4, Inspection of Services - Fixed-Price

52.246-5, Inspection of Services - Cost-Reimbursement

52.246-6, Inspection - Time-and-Material and Labor-Hour

52.246-7, Inspection of Research and Development - Fixed-Price

52.246-8, Inspection of Research and Development - Cost-Reimbursement

52.246-9, Inspection of Research and Development (Short Form)

52.246-12, Inspection of Construction

52.246-13, Inspection - Dismantling, Demolition, or Removal of Improvements

52.246-14, Inspection of Transportation

- Government may include a warranty
 - Read carefully and ensure can meet
 - Recommended subcontractors provide similar warranty
 - Assess insurance policies
- Clauses
 - 52.246-17, Warranty of Supplies of a Noncomplex Nature
 - 52.246-18, Warranty of Supplies of a Complex Nature
 - 52.246-20, Warranty of Services

- Government chooses to self insure; not pay each contractor for insurance
- Applies if exceed simplified acquisition threshold, except:
 - Information technology, telecommunications
 - Construction and A&E services
 - Maintenance and rehabilitation of real property
 - Commercial items
- Clauses
 - 52.246-23, Limitation of Liability
 - 52.246-24, Limitation of Liability -- High-Value Items
 - 52.246-25, Limitation of Liability -- Services
- If not in contract or subcontract, request FAR or other clause

- Government has two termination options:
 - Convenience (T4C)
 - Unilateral option to terminate
 - No reason required
 - Default (T4D)
 - Must substantiate
 - Excusable delays extend schedule
 - Cure notice required; RESPOND
- Process
 - Stop work and notify subcontractors
 - Prepare Termination Proposal

- Recovery of Costs
 - T4C – costs/profit incurred; termination costs/profit; and profit on terminated work
 - T4D – work completed and accepted
- T4D has a Negative Impact on Company
 - Poor Past Performance
 - Return progress payments
 - Loss of profit
 - Liable for reprocurement costs

- Fixed Price Clauses
 - 52.249-2, Termination for Convenience of the Government (Fixed-Price)
 - 52.249-8, Default (Fixed-Price Supply and Service)
 - 52.249-9, Default (Fixed-Price Research and Development)
- Cost Reimbursement Clauses
 - 52.249-6, Termination (Cost-Reimbursement)
 - 52.249-14, Excusable Delays

Topics Not Addressed

- Competition Process (Parts 5 & 6)
- Acquisition Planning (Parts 7, 9, 10, & 11)
- Required Sources (Part 8)
- Emergency Acquisitions (Part 18)
- Environmental/Safety (Part 23)
- Privacy Act and Freedom of Information Act (Part 24)
- Cost Accounting Standards (Part 30)
- Special Categories:
 - Major Systems (Part 34)
 - Research and Development (Part 35)
 - Construction (Part 36)/Bonds (Part 28)
- Service Contracting (Part 37)
- Federal Supply Schedule (Part 38)
- Information Technology Services (Part 39)
- Utility Services (Part 41)
- Cost Audits, Novations (Part 42)
- Government Property (Part 45)
- Quality Assurance (Part 46)
- Transportation (Part 47)
- Value Engineering (Part 48)
- Extraordinary Contractual Action (Part 50)
- Use of Government Sources (Part 51)



Karri L. Palmetier

Karri@palmetierlaw.com

(303) 697-8914

(317) 397-7344

www.palmetierlaw.com