

# The Federal Acquisition Regulations and Defense Contracting: An Overview

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# Federal Acquisitions Regulations (FAR)

- Governs the acquisition of goods & services for the federal government
- Purpose is to deliver the best value goods and services to the (federal) customer
- Is codified in CFR 48 so it has the full force and effect of law
- While FAR does not technically distinguish between Procurement and Acquisition, some services consider an Acquisition to be for non-commercial goods and services, and a Procurement for commercial goods and services. The Army considers a Procurement the agreement supporting the Acquisition process
- FAR applies to contracts; it does not apply to grants

# FAR: Overview

The Federal Acquisition Regulation (FAR) is the primary acquisition regulation governing all federal acquisition within the executive branch of the Government. The FAR is intended to provide for coordination, simplicity, and uniformity in the Federal acquisition process. The FAR, along with the DoD FAR Supplement (DFARS), are tools for the contracting professional.

# The FAR is Organized in to 53 Parts

Sub chapter	Parts:	Covers:
A	1-4	General & Administrative
B	5-12	Acquisition Planning
C	13-18	Contracting Methods & Contract Types
D	19-26	Socio-Economic Programs*
E	27-33	General Contract Requirements
F	34-41	Special Categories of Contracting
G	42-51	Contract Management
H	52-53	Terms & Conditions (Contract Clauses) and Forms

# The Federal Acquisitions Regulations (FAR)

The FAR is 2,200 printed pages, so go to the Farsite (<http://farsite.hill.af.mil/>) to look up clauses.

# FAR Clauses Change over time

Note the date following the clauses cited below:

## Section I - Contract Clauses

### CLAUSES INCORPORATED BY REFERENCE

52.202-1	Definitions	NOV 2013
52.203-3	Gratuities	APR 1984
52.203-5	Covenant Against Contingent Fees	MAY 2014
52.203-7	Anti-Kickback Procedures	MAY 2014

# How Agencies Implement the FAR

Within the FAR, government agencies are granted the authority to determine how it will implement and supplement the regulations.

Many, but not all government agencies follow the far structure and use a numeric prefix to designate its own implementation of the clause (e.g., Health & Human Services uses a “3” to denote HHSAR)

# **FAR -- Part 5**

## **Publicizing Contract Actions**

(FAC 2005-95)  
(13 January 2017)

### **5.000 -- Scope of Part.**

This part prescribes policies and procedures for publicizing contract opportunities and award information.

### **5.001 -- Definition.**

“Contract action,” as used in this part, means an action resulting in a contract, as defined in [Subpart 2.1](#), including actions for additional supplies or services outside the existing contract scope, but not including actions that are within the scope and under the terms of the existing contract, such as contract modifications issued pursuant to the Changes clause, or funding and other administrative changes.

### **5.002 -- Policy.**



# HHSAR Part 305—Publicizing Contract Actions

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## [Part 305—Publicizing Contract Actions](#)

- [Subpart 305.3—Synopsis of Contract Awards](#)
    - [305.303 Announcement of contract awards.](#)
  - [Subpart 305.5—Paid Advertisements](#)
    - [305.502 Authority.](#)
  - [Subpart 305.70—Publicizing Requirements Funded From the Affordable Care Act Prevention and Public Health Fund](#)
    - [305.7001 Scope.](#)
    - [305.7002 Applicability.](#)
    - [305.7003 Publicizing preaward.](#)
    - [305.7004 Publicizing postaward.](#)
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## Part 305—Publicizing Contract Actions

Authority: 5 U.S.C. 301; 40 U.S.C. 121(c)(2).

### Subpart 305.3—Synopsis of Contract Awards

#### 305.303 Announcement of contract awards.

(a) **Public announcement.** The contracting officer shall report awards, not exempt under Federal Acquisition Regulation (FAR) [5.303](#), to the Office of the Assistant Secretary for Legislation (Congressional Liaison Office.)

### Subpart 305.5—Paid Advertisements

#### 305.502 Authority.

Written approval at least one level above the contracting officer shall be obtained prior to placing advertisements or notices in newspapers.

### Subpart 305.70—Publicizing Requirements Funded From the Affordable Care Act Prevention and Public Health Fund

### **52.203-3 Gratuities.**

As prescribed in [3.202](#), insert the following clause:

#### **GRATUITIES (APR 1984)**

**(a)** The right of the Contractor to proceed may be terminated by written notice if, after notice and hearing, the [agency](#) head or a designee determines that the Contractor, its [agent](#), or another representative -

**(1)** Offered or gave a gratuity (e.g., an entertainment or gift) to an officer, official, or [employee](#) of the Government; and

**(2)** Intended, by the gratuity, to obtain a contract or favorable treatment under a contract.

**(b)** The facts supporting this determination may be reviewed by any court having lawful jurisdiction.

**(c)** If this contract is terminated under paragraph (a) above, the Government is entitled -

**(1)** To pursue the same remedies as in a breach of the contract; and

**(2)** In addition to any other damages [provided](#) by law, to exemplary damages of not less than 3 nor more than 10 times the cost incurred by the Contractor in giving gratuities to the [person](#) concerned, as determined by the [agency](#) head or a designee. (This subparagraph (c)(2) is applicable only if this contract uses money appropriated to the Department of Defense.)

# Prescriptions

## **3.202 Contract clause.**

The contracting officer shall insert the clause at [52.203-3](#), Gratuities, in solicitations and contracts with a value exceeding the simplified acquisition threshold, except those for personal services and those between military departments or defense agencies and foreign governments that do not obligate any funds appropriated to the Department of Defense.

[[61 FR 39200](#), July 26, 1996]



Clauses to Watch Out For:

## 52.222-50 Combating Trafficking in Persons.

As prescribed in [22.1705\(a\)\(1\)](#), insert the following clause:

### COMBATING TRAFFICKING IN PERSONS (MAR 2015)

**(a) Definitions.** As used in this clause -

*Agent* means any [individual](#), including a director, an officer, an [employee](#), or an independent contractor, authorized to act on behalf of the organization.

*Coercion* means -

(1) Threats of serious harm to or physical restraint against any [person](#);

(2) Any scheme, plan, or pattern intended to cause a [person](#) to believe that failure to perform an act would result in serious harm to or physical restraint against any [person](#); or

(3) The abuse or threatened abuse of the legal process.

*Commercial sex act* means any sex act on account of which anything of value is given to or received by any [person](#).

*Commercially available off-the-shelf (COTS) item* means -

(1) Any item of supply (including construction material) that is -

(i) A [commercial item](#) (as defined in paragraph (1) of the [definition](#) at [FAR 2.101](#));

(ii) Sold in substantial quantities in the commercial marketplace; and

(iii) Offered to the Government, under a contract or [subcontract](#) at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in [46 U.S.C. 40102\(4\)](#), such as agricultural products and petroleum products.

*Debt bondage* means the status or condition of a debtor arising from a pledge by the debtor of his or her personal services or of those of a [person](#) under his or her control as a security for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined.

*Employee* means an [employee](#) of the Contractor directly engaged in the performance of [work](#) under the contract who has

## 52.222-54 Employment Eligibility Verification.

As prescribed in [22.1803](#), insert the following clause:

### EMPLOYMENT ELIGIBILITY VERIFICATION (OCT 2015)

**(a) Definitions.** As used in this clause -

*Commercially available off-the-shelf (COTS) item* -

**(1)** Means any item of supply that is -

**(i)** A [commercial item](#) (as defined in paragraph (1) of the [definition](#) at [2.101](#));

**(ii)** Sold in substantial quantities in the commercial marketplace; and

**(iii)** Offered to the Government, without modification, in the same form in which it is sold in the commercial marketplace; and

**(2)** Does not include bulk cargo, as defined in [46 U.S.C. 40102\(4\)](#), such as agricultural products and petroleum products.

Per [46 CFR 525.1\(c\)\(2\)](#), “bulk cargo” means cargo that is loaded and carried in bulk onboard ship without mark or count, in a loose unpackaged form, having homogenous characteristics. Bulk cargo loaded into intermodal [equipment](#), except LASH or Seabee barges, is subject to mark and count and, therefore, ceases to be bulk cargo.

*Employee assigned to the contract* means an [employee](#) who was hired after November 6, 1986 (after November 27, 2009, in the Commonwealth of the Northern Mariana Islands), who is directly performing [work](#), in the [United States](#), under a contract that is required to include the clause prescribed at [22.1803](#). An [employee](#) is not considered to be directly performing [work](#) under a contract if the [employee](#) -

**(1)** Normally performs support [work](#), such as indirect or overhead functions; and

**(2)** Does not perform any substantial duties applicable to the contract.

*Subcontract* means any contract, as defined in [2.101](#), entered into by a [subcontractor](#) to furnish [supplies](#) or services for performance of a prime contract or a [subcontract](#). It includes but is not limited to purchase orders, and [changes](#) and modifications to purchase orders.

*Subcontractor* means any supplier, distributor, vendor, or firm that furnishes [supplies](#) or services to or for a prime Contractor

## **252.204-7000 Disclosure of information.**

As prescribed in 204.404-70(a), use the following clause:

### **DISCLOSURE OF INFORMATION (OCT 2016)**

**(a) The Contractor shall not release to anyone outside the Contractor's organization any unclassified information, regardless of medium (e.g., film, tape, document), pertaining to any part of this contract or any program related to this contract, unless -**

**(1) The Contracting Officer has given prior written approval;**

**(2) The information is otherwise in the public domain before the date of release; or**

**(3) The information results from or arises during the performance of a project that involves no covered defense information (as defined in the clause at DFARS 252.204-7012, Safeguarding Covered Defense Information and Cyber Incident Reporting) and has been scoped and negotiated by the contracting activity with the contractor and research performer and determined in writing by the contracting officer to be fundamental research (which by definition cannot involve any covered defense information), in accordance with National Security Decision Directive 189, National Policy on the Transfer of Scientific, Technical and Engineering Information, in effect on the date of contract award and the Under Secretary of Defense(Acquisition, Technology, and Logistics) memoranda on Fundamental Research, dated May 24, 2010, and on Contracted Fundamental Research, dated June 26, 2008 (available at DFARS PGI 204.4).**

**(b) Requests for approval under paragraph (a)(1) shall identify the specific information to be released, the medium to be used, and the purpose for the release. The Contractor shall submit its request to the Contracting Officer at least 10 business days before the proposed date for release.**

**(c) The Contractor agrees to include a similar requirement, including this paragraph (c), in each subcontract under this contract. Subcontractors shall submit requests for authorization to release through the prime contractor to the Contracting Officer.**

**(End of clause)**



## **52.204-21 Basic Safeguarding of Covered Contractor Information Systems.**

As prescribed in [4.1903](#), insert the following clause:

### **BASIC SAFEGUARDING OF COVERED CONTRACTOR INFORMATION SYSTEMS (JUN 2016)**

**(a) Definitions.** As used in this clause -

*Covered contractor information system* means an [information system](#) that is owned or operated by a contractor that processes, stores, or transmits [Federal contract information](#).

*Federal contract information* means [information](#), not intended for public release, that is [provided](#) by or generated for the Government under a contract to develop or deliver a product or service to the Government, but not including [information provided](#) by the Government to the public (such as on public Web sites) or simple transactional [information](#), such as necessary to process [payments](#).

*Information* means any communication or representation of knowledge such as facts, [data](#), or opinions, in any medium or form, including textual, numerical, graphic, cartographic, narrative, or audiovisual (Committee on National Security Systems Instruction (CNSSI) 4009).

*Information system* means a discrete set of [information](#) resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of [information](#) ([44 U.S.C. 3502](#)).

*Safeguarding* means measures or controls that are prescribed to protect [information](#) systems.

**(b) Safeguarding requirements and procedures.**

**(1) The Contractor shall apply the following basic [safeguarding](#) requirements and procedures to protect covered contractor [information systems](#). Requirements and procedures for basic [safeguarding](#) of covered contractor [information systems](#) shall include, at a minimum, the following security controls:**

**(i) Limit [information system](#) access to authorized users, processes acting on behalf of authorized users, or devices (including other [information](#) systems).**

**(ii) Limit [information system](#) access to the types of transactions and functions that authorized users are permitted to execute.**

**252.204-7012 Safeguarding covered defense information and cyber incident reporting.**

As prescribed in 204.7304c, use the following clause:

**SAFEGUARDING COVERED DEFENSE INFORMATION AND CYBER INCIDENT REPORTING (OCT 2016)**

**(a)Definitions.** As used in this clause -

*Adequate security* means protective measures that are commensurate with the consequences and probability of loss, misuse, or unauthorized access to, or modification of information.

*Compromise* means disclosure of information to unauthorized persons, or a violation of the security policy of a system, in which unauthorized intentional or unintentional disclosure, modification, destruction, or loss of an object, or the copying of information to unauthorized media may have occurred.

*Contractor attributional/proprietary information* means information that identifies the contractor(s), whether directly or indirectly, by the grouping of information that can be traced back to the contractor(s) (e.g., program description, facility locations), personally identifiable information, as well as trade secrets, commercial or financial information, or other commercially sensitive information that is not customarily shared outside of the company.

*Controlled technical information* means technical information with military or space application that is subject to controls on the access, use, reproduction, modification, performance, display, release, disclosure, or dissemination. Controlled technical information would meet the criteria, if disseminated, for distribution statements B through F using the criteria set forth in DoD Instruction 5230.24, Distribution Statements on Technical Documents. The term does not include information that is lawfully publicly available without restrictions.

*Covered contractor information system* means an unclassified information system that is owned, or operated by or for, a contractor and that processes, stores, or transmits covered defense information.

*Covered defense information* means unclassified controlled technical information or other information, as described in the Controlled Unclassified Information (CUI) Registry at <http://www.archives.gov/cui/registry/category-list.html>, that requires safeguarding or dissemination controls pursuant to and consistent with law, regulations, and Government-wide policies,

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