

SUBCHAPTER A—GENERAL

PART 201—FEDERAL ACQUISITION REGULATIONS SYSTEM

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AUTHORITY: 41 U.S.C. 421 and 48 CFR chapter 1.

SOURCE: 56 FR 36284, July 31, 1991, unless otherwise noted.

Subpart 201.1—Purpose, Authority, Issuance

201.103 Applicability.

The FAR and the Defense Federal Acquisition Regulation Supplement (DFARS) also apply to purchases and contracts by DoD contracting activities made in support of foreign military sales or North Atlantic Treaty Organization cooperative projects without regard to the nature or sources of funds obligated, unless otherwise specified in this regulation.

201.104 Issuance.

201.104-3 Copies.

Copies of the DFARS in loose-leaf and CFR form may be purchased from the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325. Purchase of a copy of DFARS includes a subscription for Defense Acquisition Circulars.

Subpart 201.2—Administration

201.201 Maintenance of the FAR.

201.201-1 The two councils.

(c) The composition and operation of the DAR Council is prescribed in DoD Directive 5000.35, Defense Acquisition Regulatory System.

(d)(i) Departments and agencies process proposed revisions of FAR or DFARS through channels to the Director of the DAR Council. Process the proposed revision as a memorandum in the following format, addressed to the Director, DAR Council, OUSD(A&T), 3062 Defense Pentagon, Washington, DC 20301-3062; datafax (703) 602-0350:

I. Problem: Succinctly state the problem created by current FAR and/or DFARS coverage and describe the factual and/or legal reasons necessitating regulatory change.

II. Recommendation: Identify the FAR and/or DFARS citations to be revised. Attach as TAB A a copy of the text of the existing coverage, conformed to include the proposed additions and deletions. Indicate deleted coverage with dashed lines through the current words being deleted and insert proposed language in brackets at the appropriate locations within the existing coverage. If the proposed deleted portion is extensive, it may be outlined by lines forming a box with diagonal lines drawn connecting the corners.

III. Discussion: Include a complete, convincing explanation of why the change is necessary and how the recommended revision will solve the problem. Address advantages and disadvantages of the proposed revision, as well as any cost or administrative impact on Government activities and contractors. Identify any potential impact of the change on automated systems, e.g., automated financial and procurement systems. Provide any other background information that would be helpful in explaining the issue.

IV. Collaterals: Address the need for public comment (FAR 1.301(b) and subpart 1.5), the Paperwork Reduction Act, and the Regulatory Flexibility Act (FAR 1.301(c)).

V. Deviations: If a recommended revision of DFARS is a FAR deviation, identify the deviation and include under separate TAB a justification for the deviation, which addresses the requirements of 201.402(3). The justification should be in the form of a memorandum for the USD(A&T)DP.

(ii) The public may offer proposed revisions of FAR or DFARS by submission of a memorandum, in the format (including all of the information) prescribed in paragraph (d)(i) of this subsection, to the Director of the DAR Council.

[56 FR 36284, July 31, 1991, as amended at 60 FR 61591, Nov. 30, 1995; 61 FR 50451, Sept. 26, 1996]

Subpart 201.3—Agency Acquisition Regulations

201.301 Policy.

(a) DoD implementation and supplementation of the FAR is issued in the Defense Federal Acquisition Regulation Supplement (DFARS) under authorization and subject to the authority, direction, and control of the Secretary of Defense.

(b) When FEDERAL REGISTER publication is required for any policy, procedure, clause, or form, the department or agency requesting USD(A&T) approval for use of the policy, procedure, clause, or form (see 201.304(1)) must include an analysis of the public comments in the request for approval.

[56 FR 36284, July 31, 1991, as amended at 60 FR 61591, Nov. 30, 1995]

201.303 Publication and codification.

(a)(i) The DFARS is codified under chapter 2 in title 48, Code of Federal Regulations.

(ii) To the extent possible, all DFARS text (whether implemental or supplemental) is numbered as if it were implemental. Supplemental numbering is used only when the text cannot be integrated intelligibly with its FAR counterpart.

(A) Implemental numbering is the same as its FAR counterpart, except when the text exceeds one paragraph,

the subdivisions are numbered by skipping a unit in the FAR 1.104–2(b)(2) prescribed numbering sequence. For example, three paragraphs implementing FAR 19.501 would be numbered 219.501 (1), (2), and (3) rather than (a), (b), and (c). Three paragraphs implementing FAR 19.501(a) would be numbered 219.501(a) (i), (ii), and (iii) rather than (a) (1), (2), and (3). Further subdivision of the paragraphs follows the prescribed numbering sequence, e.g., 219.501(1)(i)(A)(1)(j).

(B) Supplemental numbering is the same as its FAR counterpart, with the addition of a number of 70 and up or (S–70) and up. Parts, subparts, sections, or subsections are supplemented by the addition of a number of 70 and up. Lower divisions are supplemented by the addition of a number of (S–70) and up. When text exceeds one paragraph, the subdivisions are numbered using the FAR 1.104–2(b)(2) prescribed sequence, without skipping a unit. For example, DFARS text supplementing FAR 19.501 would be numbered 219.501–70. Its subdivisions would be numbered 219.501–70 (a), (b), and (c).

(C) Subdivision numbering below the 4th level does not repeat the numbering sequence. It uses italicized Arabic numbers and then italicized lower case Roman numerals.

(D) An example of DFARS numbering is in Table 1–1, DFARS Numbering.

(iii) Department/agency and component supplements must parallel the FAR and DFARS numbering, except department/agency supplemental numbering uses subsection numbering of 90 and up, instead of 70 and up.

TABLE 1–1—DFARS NUMBERING

FAR	Is implemented as	Is supplemented as
19	219	219.70
19.5	219.5	219.570
19.501	219.501	219.501–70
19.501–1	219.501–1	219.501–1–70
19.501–1(a)	219.501–1(a)	219.501–1(a)(S–70)
19.501–1(a)(1)	219.501–1(a)(1)	219.501–1(a)(1)(S–70)

201.304 Agency control and compliance procedures.

Departments/agencies and their component organizations may issue acquisition regulations as necessary to implement or supplement the FAR or DFARS.

(1) Approval of the USD(A&T) is required, before inclusion in a department/agency or component supplement or any other contracting regulatory document such as a policy letter, or clause book, of any policy, procedure, clause, or form which—

(i) Has a significant effect beyond the internal operating procedures of the agency; or

(ii) Has a significant cost or administrative impact on contractors or offerors.

(2) The USD(A&T) has delegated authority to the USD(A&T)DP to approve or disapprove the policies, procedures, clauses, and forms subject to paragraph (1) of this section.

(3) Approval of USD(A&T)DP is required for any class deviation (as defined in FAR subpart 1.4) from the FAR or DFARS, before its inclusion in a department/agency or component supplement or any other contracting regulatory document such as a policy letter or clause book.

(4) Each department and agency shall develop and, upon approval by USD(A&T)DP, implement, maintain, and comply with a plan for controlling the use of clauses other than those prescribed by FAR or DFARS.

(5) Departments/agencies submit requests for the USD(A&T) and USD(A&T)DP approvals required by this section through the Director of the DAR Council.

(6) Revisions to the DFARS are issued through Defense Acquisition Circulars or Departmental Letters.

(i) Defense Acquisition Circulars—

(A) Are issued on a quarterly basis to all recipients of the DFARS.

(B) Are published in the FEDERAL REGISTER.

(C) Include, in addition to DFARS revisions, policies, directives, and informational items.

(D) Include the effective dates for use of the revisions, policies, or directives. The effective date means the date on which the revisions, policies, or direc-

tives must be applied. Unless stated otherwise in the circular, any new or revised clauses, provisions, or forms must be included in solicitations issued on or after that date.

(ii) Departmental Letters—

(A) Are issued as necessary to the departments and agencies when time is of essence in disseminating a revision, policy, or directive.

(B) Are effective until the revision, policy, or directive is superseded by publication of the material in a Federal Acquisition Circular, Defense Acquisition Circular, or other directive or is specifically withdrawn.

[56 FR 36284, July 31, 1991, as amended at 60 FR 61591, Nov. 30, 1995]

Subpart 201.4—Deviations From the FAR**201.402 Policy.**

(1) The Director of Defense Procurement, Office of the Under Secretary of Defense (Acquisition & Technology), USD(A&T)DP, is the approval authority within the DoD for—

(i) Any individual deviation from—

(A) FAR/DFARS Section 3.104, Procurement integrity;

(B) FAR/DFARS Subpart 27.4, Rights in Data and Copyrights;

(C) FAR/DFARS Subpart 31.1, Applicability (contract cost principles);

(D) FAR/DFARS Subpart 31.2, Contracts with Commercial Organizations; or

(E) FAR/DFARS Part 32, Contract Financing (except 32.7, 32.8, and the payment clauses prescribed by 32.1).

(ii) Any class deviation.

(2) Individual deviations.

(i) Except as provided in paragraph (2)(ii) of this section, individual deviations, other than those in paragraph (1)(i) of this section, must be approved in accordance with the department/agency plan prescribed by 201.304(4).

(ii) Contracting officers outside the United States are authorized to deviate from prescribed non-statutory FAR and DFARS clauses when contracting for support services, supplies, or construction, with the governments of North Atlantic Treaty Organization (NATO) countries or other allies (as described in 10 U.S.C. 2341(2)), or with United Nations or NATO organizations.

This authority shall be exercised only if such governments or organizations will not agree to the standard clauses.

(3) Submit requests for deviation approval through department/agency channels to the approval authority in paragraph (1) or (2), as appropriate. Submit deviations which require USD(A&T)DP approval through the Director of the DAR Council. At a minimum, each request must—

(i) Identify the department/agency, and component if applicable, requesting the deviation;

(ii) Identify the FAR or DFARS citation from which a deviation is needed, state what is required by that citation, and indicate whether an individual or class deviation is requested;

(iii) Describe the deviation and indicate which of paragraphs (a) through (f) of FAR 1.401 best categorizes the deviation.

(iv) State whether the deviation will have a significant effect beyond the internal operating procedures of the agency and/or a significant cost or administrative impact on contractors or offerors, and give reasons to support the statement;

(v) State the period of time for which the deviation is required;

(vi) State whether approval for the same deviation has been received previously, and if so, when;

(vii) State whether the proposed deviation was published (see FAR subpart 1.5 for publication requirements) in the FEDERAL REGISTER and provide analysis of comments;

(viii) State whether the request for deviation has been reviewed by legal counsel, and if so, state results; and

(ix) Give detailed rationale for the request. State what problem or situation will be avoided, corrected, or improved if request is approved.

[56 FR 36284, July 31, 1991, as amended at 60 FR 61591, Nov. 30, 1995; 61 FR 50451, Sept. 26, 1996]

201.403 Individual deviations.

See approval requirements in 201.402.

201.404 Class deviations.

See approval requirements in 201.402.

Subpart 201.6—Contracting Authority and Responsibilities

201.602 Contracting officers.

201.602–2 Responsibilities.

Contracting officers may designate qualified personnel as their authorized representatives to assist in the technical monitoring or administration of a contract. A contracting officer's representative (COR)—

(1) Must be a Government employee, unless otherwise authorized in agency regulations.

(2) Must be qualified by training and experience commensurate with the responsibilities to be delegated in accordance with department/agency guidelines.

(3) May not be delegated responsibility to perform functions at a contractor's location that have been delegated under FAR 42.202(a) to a contract administration office.

(4) May not be delegated authority to make any commitments or changes that affect price, quality, quantity, delivery, or other terms and conditions of the contract.

(5) Must be designated in writing, and a copy furnished the contractor and the contract administration office,—

(i) Specifying the extent of the COR's authority to act on behalf of the contracting officer;

(ii) Identifying the limitations on the COR's authority;

(iii) Specifying the period covered by the designation;

(iv) Stating the authority is not re-delegable; and

(v) Stating that the COR may be personally liable for unauthorized acts.

(6) Must maintain a file for each contract assigned. This file must include, as a minimum—

(i) A copy of the contracting officer's letter of designation and other documentation describing the COR's duties and responsibilities; and

(ii) Documentation of actions taken in accordance with the delegation of authority.

201.602-70 Contract clause.

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

201.603 Selection, appointment, and termination of appointment.**201.603-2 Selection.**

(1) Pursuant to 10 U.S.C. 1724, in order to qualify to serve as a contracting officer with authority to award or administer contracts for amounts above the simplified acquisition threshold, a person must—

(i) Have completed all mandatory contracting courses required for a contracting officer at the grade level, or in the position within the grade of the General Schedule in which the person is serving;

(ii) Have at least two years experience in a contracting position;

(iii) Have—

(A) Received a baccalaureate degree from an accredited educational institution;

(B) Completed at least 24 semester credit hours, or equivalent, of study from an accredited institution of higher education in any of the following disciplines: Accounting, business finance, law, contracts, purchasing, economics, industrial management, marketing, quantitative methods, and organization and management; or

(C) Passed an examination considered to demonstrate skills, knowledge, or abilities comparable to that of an individual who has completed at least 24 semester credit hours, or equivalent, of study from an accredited institution of higher education in any of the disciplines in paragraph (1)(iii)(B) of this subsection; and

(iv) Meet such additional requirements, based on the dollar value and complexity of the contracts awarded or administered in the position as may be established by the Secretary of Defense.

(2) The requirements in 201.603-2(1)(iii) do not apply to any employee who, as of October 1, 1991, had at least 10 years experience in acquisition positions, in comparable positions in other government agencies or the private

sector, or in similar positions in which the individual obtained experience directly relevant to the field of contracting.

(3) The requirements in 201.603-2(1) do not apply to any employee for purposes of qualifying to serve in the position in which the employee is serving on October 1, 1993, or any other position in the same grade and involving the same level of responsibilities as the position in which the employee is serving on that date.

(4) Waivers may be authorized. Information on waivers is contained in DoD Manual 5000.52-M, Career Development Program for Acquisition Personnel.

[58 FR 28463, May 13, 1993, as amended at 62 FR 34121, June 24, 1997]

201.603-3 Appointment.

Certificates of Appointment executed under the Armed Services Procurement Regulation or the Defense Acquisition Regulation have the same effect as if they had been issued under FAR.

PART 202—DEFINITIONS OF WORDS AND TERMS

AUTHORITY: 41 U.S.C. 421 and 48 CFR chapter 1.

Subpart 202.1—Definitions**202.101 Definitions.**

Contracting activity for DoD also means elements designated by the director of a defense agency which has been delegated contracting authority through its agency charter. DoD contracting activities are—

DEPARTMENT OF DEFENSE

Real Estate and Facilities Directorate,
Washington Headquarters Services
Defense Evaluation Support Activity
Department of Defense Office of Dependents
Schools
Office of Civilian Health and Medical Program of the Uniformed Services

ARMY

Contract Support Agency
Office of the Deputy Chief of Staff for Procurement, Headquarters, U.S. Army Materiel Command
Armament Munitions and Chemical Command