THESIS

HOW IS THE FEDERAL ACQUISITION REGULATION GOING TO AFFECT FUTURE ACQUISITION MANAGERS

by

Alfons Carl Marczynski

September 1980

Thesis Advisor: M.L. Sneiderman

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20. (continued)

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How is the Federal Acquisition Regulation Going to Affect Future Acquisition Managers

by

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Submitted in partial fulfillment of the requirements for the degree of

MASTER OF SCIENCE IN MANAGEMENT

from the
NAVAL POSTGRADUATE SCHOOL
September 1980

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ABSTRACT

The objectives of this research are: (1) to review the initial development and drafting process of the Federal Acquisition Regulation (FAR), (2) to determine the extent of progress that has been achieved thus far, (3) to identify some of the handicaps now being encountered in the drafting of the FAR, (4) to evaluate and compare the FAR coverage in light of what it will supersede and (5) to evaluate the impact of these elements on future acquisition managers.

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I. INTRODUCTION

A. OBJECTIVES OF RESEARCH

The objectives of this research were: (1) to review the initial development and drafting process of the Federal Acquisition Regulation (FAR), (2) to determine the extent of progress that has been achieved thus far, (3) to identify some of the handicaps now being encountered in the drafting of the FAR, and (4) to evaluate and compare some of the FAR coverage in light of what it will supersede.

B. RESEARCH QUESTIONS

In conducting this project the following questions were addressed:

1. How did the FAR come about?; how is it being drafted?; and how is it apt to affect future acquisition managers?
2. What are some of the handicaps encountered in the drafting of the FAR?
3. What will and will not be included in the FAR and what the agency implementing and supplementing regulations will be?
4. Is the FAR making acquisition policy?
5. How successful is the FAR in complying with the recommendations of the Commission on Government Procurement and will it halt the proliferation of agency acquisition regulations?
C. RESEARCH METHODOLOGY

The information presented in this paper was obtained from the currently available literature on the subject of the FAR. This literature base includes Office of Federal Procurement Policy (OFPP) and Office of the Secretary of Defense (OSD) directives, texts of Congressional hearings [19, 20], one study performed by the Logistics Management Institute (LMI) [11] and reports of the General Accounting Office (GAO). Additional information was obtained through interviews with key personnel at OFPP, the Federal Acquisition Regulation Project Office (FARPO) and the General Services Administration (GSA). Further information, peripheral data and insight was gained by the writer through assignment to the FARPO for approximately one year.

D. SCOPE OF THE STUDY

The scope of this study is limited to the Federal sector with emphasis on DOD. All literature, statements, opinions and comments with very minor exception were either obtained from Federal agencies' documents or made by Federal employees'. Comments from the private sector were not included since phase two of the drafting process, where industry comments will be reviewed and considered for inclusion in the final FAR coverage, has not yet started. This area could possibly be considered in future follow-on studies.
E. ORGANIZATION OF THE STUDY

This thesis contains four chapters. Chapter One has stated the objectives of the thesis, presented research questions that were addressed and provided the methodology that was employed in performing the research. It further outlined the scope and described the organization of the thesis.

Chapter Two presents the background and development of the FAR. It defines what the FAR is and is not, what it will and will not contain and what it will replace. It traces the FAR's development from the Commission's on Government Procurement recommendations (COGP) to its present status, and reviews the significant problems encountered in the drafting process.

Chapter Three assesses the impact on acquisition policy that the FAR may project and presents some examples of FAR coverage for comparison with the current regulations, the Defense Acquisition Regulation (DAR) and the Federal Procurement Regulation (FPR).

Chapter Four evaluates the probable success of the FAR and outlines the conclusions drawn from the material presented.
II. BACKGROUND

A. CREATION AND FUNCTIONS OF THE OFFICE OF FEDERAL PROCUREMENT POLICY

The Commission on Government Procurement in its report to Congress of December 31, 1972 characterized the Federal procurement regulatory framework as a "burdensome mass and maze of procurement and procurement-related regulations, including numerous levels of supplementing and implementing regulations, too many primary sources of regulations and numerous collateral procurement-related regulations, issued independently of, but nevertheless affecting the procurement process and organization." Additionally, the report criticized the existing procurement system as having no effective overall procedures for coordinating, controlling and standardizing regulations. There appeared to be no one in charge of government wide management of procurement regulations. The Commission's recommendation (A-10) dealing specifically with this issue was to "establish a system of Government-wide coordinated, and to the extent feasible, uniform procurement regulations under the direction of the Office of Federal Procurement Policy (OFPP), which will have the overall responsibility for development, coordination and control of procurement regulations." [1:38]

Congress responded to the commission's first (A-1) recommendations and passed Public Law 93-400, the OFPP Act, in
September 1974 which created OFPP and required it to establish a system of coordinated and, to the extent feasible, uniform procurement regulations for the executive agencies in accordance with applicable laws. Congress also amended Public Law 95-507, the Small Business Act and the Small Business Investment Act so that it authorized and directed the Administrator for Federal Procurement Policy "to promulgate a single, simplified, uniform Federal procurement regulation and to establish procedures for insuring compliance with such provisions by all Federal agencies." Further impetus to regulatory reform was added by the Federal Acquisition Act Bill (S-5) introduced in the 96th Congress by Senator Chiles [9]. If enacted, the Bill will provide authority and direction for the issuance of a single, simplified and uniform regulation [8]. Additionally, President Carter in his overall program for regulation reform has directed easing the burden of Federal regulations, simplifying them, writing in plain English, consolidating and reducing their number. The obvious intent is to reduce the paperwork burden and the associated costs. Similar recommendations have been expressed by the Federal Paperwork Commission and other Congressional interests.

1. OFPP Functions

Section 6(d) of P.L. 93-400 as amended in October of 1979 lists the functions of the Administrator of OFPP [17]. These are:
1. reviewing the recommendations of the Commission on Government Procurement to determine those recommendations that should be completed, amended or rejected, and to propose the priority and schedules for completing the remaining recommendations.

2. developing a system of simplified and uniform procurement policies, regulations, procedures, and forms;

3. establishing criteria and procedures for an effective and timely method of soliciting the viewpoints of interested parties in the development of procurement policies, regulations, procedures, and forms;

4. promoting and conducting research in procurement policies, regulations, procedures and forms, through the Federal Acquisition Institute which shall be located within the Office and directed by the Administrator;

5. establish through the Federal Procurement Data Center, which shall be located in the General Services Administration and acting as executive agent for the Administration, a computer based information system for collecting, developing, and disseminating procurement data which takes into account the needs of the Congress, the executive branch and the private sector;

6. recommending and promoting, through the Federal Acquisition Institute, programs of the Office of Personnel Management and executive agencies for recruitment, training, career development and performance evaluation of procurement personnel;

7. developing for the inclusion in the uniform procurement system to be submitted under section 8(a), standard contracts and contract language in order to reduce the Government's costs of procuring goods and services, as well as the private sector's cost of doing business with the Government; and

8. providing leadership and coordination in the formulation of executive branch positions on legislation relating to procurement. [16]

To comply with the above direction the OFPP undertook in January 1978 a most ambitious project of acquisition regulatory reform ever undertaken within the Federal Government [12]. This project supports President Carter's demands
for regulatory reform and the Office of Management and Budget's (OMB) emphasis on streamlining management, as related to Federal procurement.

The product of this effort will be a new Federal Acquisition Regulation System applicable to all Federal executive agencies. The foundation for this new system will be the Federal Acquisition Regulation (FAR), presently in the final drafting stages.

B. THE PURPOSE OF THE FEDERAL ACQUISITION REGULATION

The FAR will replace the Federal Procurement Regulations (FPR) and major portions of the Defense Acquisition Regulation [3] to become the sole regulation governing Federal acquisition. To the extent feasible the FAR will bring about uniformity in all regulatory coverage except that made inconsistent by the existing statutes. When published the FAR will be the single uniform regulation applicable to all executive agencies governing the acquisition of: (a) property (supplies) except real property, (b) services, (c) research and development, and (d) construction, alteration, repair, and maintenance of real property. The FAR will not regulate grants and cooperative agreements, or contracts using only nonappropriated funds. "... FAR provides coordination, simplicity and uniformity in the Federal acquisition process. It arrests and reduces the proliferation of acquisition regulations." [14,15]
The uniform regulation will specify for all executive agencies those policies, procedures, solicitation provisions, contract clauses, and contracting forms that can and should be the same for all agencies. Compared to the DAR and FPR the current primary acquisition regulations, the FAR will contain some policy changes and some new policies. Even though, making or changing acquisition policies is not the intent of the FAR, some changes will inevitably result as a by product. These changes result from: (a) resolving differences between current regulations, (b) implementing some COGP recommendations, and (c) simplifying and updating DAR and FPR coverage [14].

C. OFPP TASK GROUP ON ACQUISITION-FINDINGS ON THE FAR

A recent task group study reported the following about the FAR: [14:39]

Adoption of the FAR will eliminate the FPR, because the FAR will fulfill for all agencies the functions currently performed by the FPR for agencies other than DOD and NASA. It will also change the nature of the DAR and the NASA Procurement Regulations from “ree-standing, complete regulations to greatly reduced agency acquisition regulations implementing and supplementing the FAR. Other agency regulations that supplement the FPR will also be reduced, since the FAR will be more comprehensive than the current FPR.
A major source of increased uniformity is that the FAR will include many subjects now covered by the DAR, but not by the FPR. Examples include options, multi-year contracting, organizational conflicts of interest, value engineering, contractor purchasing systems reviews, expert and consultant services, duty and customs and production surveillance and reporting. In other cases, such as Government property and quality assurance, the FAR will provide more comprehensive coverage of subjects for which the FPR provides limited coverage. The FAR will also cover some subjects such as acquisition and distribution of commercial products and major system acquisitions, not previously covered, as such, in either the DAR or FPR.

For most subjects on which both the FAR and FPR already provide comprehensive coverage, the DAR and FPR are identical or very similar. There are some differences resulting from statutes. In some cases, such as the differences between negotiation authorities under 10 U.S.C. 2304 and under 41 U.S.C. 253, the FAR will cover both statutes and specify the differences. In others, such as cost accounting standards, the FAR will extend by policy to civil agencies, sometimes in modified form, statutory requirements that apply to Defense contracts. Similar policy extensions have been previously used in the FPR.

An area of considerable potential affect on contracting officers is presented by the following finding of the Task Group.
The FAR will cover delegation or withholding of contract administration functions and responsibilities. In areas that cut across contractor organizations and multiple contracts, the FAR will provide for the cognizant contract administration agency to act under a uniform rule structure for all agencies. Examples include settlement of indirect costs (overhead), contractor purchasing system reviews, and waiver of Government surveillance requirements.

The FAR will include fewer contract clauses than the DAR but more than the FPR. Some DAR clauses are peculiar to DOD. Others are being combined or made alternates to basic clauses. The FAR will provide uniform solicitation provisions and contract clauses for common contract types and purposes. It will prescribe clearly defined alternates when necessary to accommodate varying situations. The FAR will prescribe a uniform method of incorporating solicitation provisions and contract clauses by reference that applies not only to those prescribed in the FAR, but also to any prescribed by agency level acquisition regulations. It will also prescribe a uniform contract format for use in most solicitations and contracts. In addition, selected DOD forms, such as those for documenting pre-award surveys, are being revised and converted to standard forms, and existing standard forms for solicitations and contracts are being reviewed and updated.
D. THE FEDERAL ACQUISITION REGULATION PROJECT OFFICE

The Federal Acquisition Regulation Project Office (FARPO) was created in January 1978 under the direction and guidance of OFPP [5]. Since the new Federal Acquisition Regulation covers both civilian and DOD procurements it was only natural that both sides have a part in this undertaking. The Office of Management and Budget tasked OSD and GSA to take leading roles in the preparation of the regulation. Because GSA already had a Federal procurement regulations staff, it was decided to merely add on the additional workload to the existing staff and hope for the best. On the DOD side there was no existing office that could easily absorb the new task, except perhaps the ASPR committee (now DAR), instead FARPO was established by OSD as a focal point for all action required to accomplish the task. OSD then directed each of the services and Defense Logistics Agency (DLA) to provide senior procurement personnel on a loan basis for a period from one to two years [4]. As a result the project office is staffed by procurement, legal and editorial experts from all services and DLA. Counting all personnel the office originally consisted of 40 personnel ranging in grade from GS-3 to GS-15 and from 0-3 to 0-6. Figure 2.1 is an organization chart that will aid in clarifying the organization structure and figure 2.2 the work flow.
DEPUTY UNDERSECRETARY OF DEFENSE FOR R & E (ACQUISITION POLICY)
DALE W. CHURCH

OFFICE OF THE DIRECTOR
(CONTRACTS & SYSTEM ACQUISITION)
DALE R. BABIONE

FEDERAL ACQUISITION REGULATION
PROJECT OFFICE (FARPOD)
PROJECT MANAGERS
CAPT. VINCENT J. PISTOLESSI, USN
COL. JOHN D. BRINKHARD, USAF
SECRETARY PAMELA AVERY
696-5016

ASSISTANT PROJECT MANAGER
(FOR ADMINISTRATION)
LT. A. C. HARCYNKI, SC, USN
696-5016

CLERICAL SUPPORT STAFF
MANDA LYNCH  JANE MOORE
PENNY KNIGHT  JAN RADCLIFF
PAULA BRADER  CHRISTINE BROWN

A - COST & PRICING
ANTHONY DELUCCHI - NAVY
DOUG BAKER - NAVY
CEREDITH MURPHY - ARMY
WALTER SCHILLER - DLA
696-5000

B - CONTRACT MANAGEMENT
JOHN LAMP - ARMY
ENORED LABRODE - NAVY
WILLIAM PETERS - NAVY
LOU SHECILER - DLA
696-5003

C - SYSTEMS ACQUISITION/PLANNING
JOHN TAPPY - NAVY
SUE BING - DLA
GARRY STEWART - ARMY
ALLEN TAYLOR - AF
696-5006

D - NEGOTIATED ACQUISITIONS
ETHA GUENTHER - NAVY
IRVING LEBRAMAN - DLA
THOMAS PENNEY - NAVY
TIM CRAWFORD - AF
696-5009

E - FOREIGN ACQUISITIONS & FORMS/CLAUSES
ROBERT COLE - DLA
FRANCES DEECLAM - ARMY
KIM MINTZER - NAVY
BERNARD SINGER - AF
NEIL MCCney - NASA
696-5012

FIGURE 2-1

CURRENT AS OF JUNE 1979
A general overview of the work flow is as follows; the five drafting panels write the DOD FAR material which is then reviewed by a panel consisting of high level policy members, legal and editorial specialists to insure technical, legal and editorial adequacy [6]. After each DOD section of the regulation is drafted, reviewed internally and coordinated with GSA, the proposed FAR material is submitted to OFPP, which after further review sends it out for public comment and official agency input. As can be imagined, this is a sizable undertaking and has taken more time than initially predicted [7].

From the inception of the project, it was envisioned that a sizable clerical support staff would be required to keep up with the voluminous amounts of draft material needing typing and retyping throughout the various review and comment phases of a draft. Initially each drafting panel was assigned a secretary to take care of their respective clerical needs. This arrangement worked until the workload of each panel exceeded the capabilities of the typist. Prior to reaching this point an effort was started to investigate the availability of word processing systems that could be used by the office and that would require the minimum time to install and operate [21]. Several systems were available and appeared to offer promises of faster processing and the ability to deal with vast amounts of input data. However, before a decision was reached on this task, it was learned that OFPP, had a small contract for word processing and preferred that the FAR
project offices add their requirements to its contract. Thus it was most expedient to add other customers to the current contract and lease the additional required equipment. By looking at the work flow chart, figure 2.2, and figure 2.1, the organization chart, it is not self evident that the word processing staff was a vital link in the workflow of the project office. Normally the bulk of the work was generated by the five drafting panels who submitted in hand written roughs to the word processing center for initial input. Special input forms were used to insure proper storage and later retrieval of material. After input a copy would be printed and returned to the drafting panel which would review and revise it until a satisfactory draft was ready for the review panel. The review panel would revise and, in some cases, rewrite the original version and have it stored in the system. After several reiterations of this process through the editors and finally the project managers a final official version of the draft would emerge.

As can be expected each time the document came to word processing for revision, it was on an urgent job order with required due time/date that probably had passed or couldn't be attained. This was especially true the closer the specific project was to getting reviewed by the project managers.

Because of the size, complexity and urgency of the project the computer based word processing system was used by DOD, GSA and OFPP. Once the initial operator and equipment problems
were resolved the system proved to be a valuable asset to the efficient operation of the project offices. The word processing system facilitates draft revisions, search, storage for historical purposes, variable formatting and composition for final printing by the Government Printing Office (GPO). [23]

E. THE FEDERAL ACQUISITION REGULATION SYSTEM

The Federal Acquisition Regulation will be the first single uniform acquisition regulation to be developed and used by the Federal Government. It applies to all Federal acquisitions of property and services with appropriated funds.

The FAR is designed to bring greater coordination, simplicity and uniformity into the Federal acquisition process and to reduce proliferation of diverse and inconsistent acquisition regulations. It is expected that through its use millions of dollars will be saved and doing business with the Government will be easier. The FAR will be published as Chapter 1 of Title 48 of the Code of Federal Regulations. The remaining chapter of Title 48 will be assigned to agency implementing and supplementing regulations.

Provisions in the FAR (Subpart 1.3) have been established to both control the issuance of agency regulations and limit their number. Specific guidelines are provided as to the type of regulations that agencies cannot issue. However, one weakness in this area that was pointed out in the latest GAO report on the recommendations of the Commission on Government
Procurement is that the FAR does not clearly state the kinds of regulations that may be issued. Thus there remains some doubt as to the effectiveness in controlling future regulation proliferation. [2:10]

An OFPP survey and study of Executive Agency procurement regulations further verified the commission's conclusions as well as further quantified the extent of the procurement regulation proliferation problem. [13] This study located 877 different sets of procurement related regulations totaling 64,570 pages currently being used by executive agencies, departments and bureaus. The OFPP survey reflected a total absence of regulatory management of lower level procurement regulations throughout the Executive Branch. The intent of the FAR system is to consolidate, rewrite and substantially reduce or replace these lower level regulations. The system will allow a limited number of regulations issued by the agencies to implement the FAR where implementation is essential to agency operations. There is a general prohibition throughout the regulation system against changing, restatement or paraphrasing of higher level regulatory coverage. Additionally, all lower level regulations within the FAR system will be reviewed and approved at a higher level and published in Code of Federal Regulations. They will parallel the FAR in format and numbering system and will be subject to the same public participation rules as the FAR itself.
The OFPP Survey and Study proposed seven recommendations to provide an effective mechanism to control and limit acquisition regulation proliferation. These recommendations provided the foundation for Part 1 of the FAR—Federal Acquisition Regulation System.

According to the study an effective control mechanism should include the following elements: [13]

1. A single government wide system of acquisition regulations encompassing all policies and procedures necessary for Federal officials to perform their acquisition functions, without reference to any other regulatory documents outside of the system;

2. A single format, arrangement and numbering system for all acquisition regulations with implementing and supplementing regulations numbered to correspond with the coverage being implemented and supplemented;

3. A general prohibition throughout the regulation system against changing, restatement or paraphrasing of higher level regulatory covering;

4. An ongoing system of active oversight over implementing and supplementing regulations including specific higher level authorization for the issuance of such regulations and higher level review and approval of proposed regulations prior to issuance;

5. Publication of all acquisition regulations in the Code of Federal Regulations under a single Title, to facilitate oversight and public accessibility;

6. Implementation within the acquisition regulations of those particular socio-economic and other collateral requirements which have the effect of regulating the acquisition process; and

7. Consolidation and standardization of common regulatory coverage at the highest practicable level within the regulation system.

Compliance with the FAR and conversion of the FAR system will entail an extensive amount of work and will take a long
time. Major executive departments and agencies will have to start from the outset in determining unique regulatory requirements, authorizing the issuance of essential implementing regulations, developing those regulations within the FAR structure and issuing them through the Federal Register. The final product should be a coordinated and rational government-wide system of acquisition regulations in keeping with the Commission on Government Procurement recommendations.

F. PROBLEMS IN DRAFTING THE FAR

One of the difficulties in producing a single uniform regulation is that two statutes have to be accommodated. Acquisitions for DOD and NASA are carried out under the Armed Services Procurement Act 10 U.S.C. 2304(a) while the civilian agencies are governed by the Federal Property and Administrative Service Act, 41 U.S.C. 252(c). The Chiles Bill (S-5) which is still pending in Congress would establish a single statute for all of the Federal Government. Until the bill is passed those provisions not constrained by current law in S-5 are being incorporated in the FAR [24,25].

The COGP in its report noted that it had found more than 30 troublesome inconsistencies between the two Acts and cited that fact among the reasons supporting enactment of a new consolidated acquisition statute such as S-5 [1]. Many of the statutory differences have been resolved in the DAR and FPR through adoption of common regulatory policy. For example,
the FPR adopted requirements governing Truth in Negotiations (PL 87-653), the requirements for Cost and Pricing Data, even though that Act applies only to defense agencies.

Different statutory requirements add to the problems of drafting the FAR and have to be recognized. A good example of this is found in the authority to negotiate contracts.

Agencies operating under 10 U.S.C. have authority to negotiate in the interest of national defense or industrial mobilization, or for technical or specialized supplies requiring substantial initial investment or an extended period of preparation for manufacture. Agencies under 41 U.S.C. do not have this authority. In addition the COGP pointed out in its report that there were several differences between 10 U.S.C. and 41 U.S.C. involving circumstances under which determinations and findings were required when formal advertising was not used. These differences have since been resolved through adoption of common regulatory policy and reflect this in the FAR. It is realized that when S-5 or a similar bill passes portions of the FAR already drafted will have to be revised to conform to the new statute [22].

Extensive research was done to evaluate the possibility of adopting commercial practices in the FAR. The services of Professor John Whelan of the Hastings College of Law were used to assist in analyzing the feasibility of adopting portions of the Uniform Commercial Code (UCC). It is clear that the UCC cannot be incorporated into the FAR in any wholesale
fashion; application will have to be made on a selective basis. Much of the UCC is not directly applicable to Government contracting, however, some possibilities have been identified. For example, possible changes to clauses covering inspection and acceptance and warranties. These changes would have significant effects including assigning more risk to the contractor than under existing clauses [18]. The potential result of such changes requires careful evaluation and an impact study before they are introduced in the FAR.

The drafters of the FAR are using zero base analysis and writing which has contributed to the slow progress the FAR has achieved thus far [6]. This zero basing concept will result in a regulation that is simple, clear and understandable.

Basic questions asked for this task include:

Is the material necessary? Is it stated clearly? Is it required by law? Can it be stated in fewer words? Is it organized properly? If a complete rewrite is constrained by statute or otherwise an attempt is made to improve the coverage by better organization and clearer writing. Whether the material is completely rewritten or improved by better organization and editing, it is further analyzed to see if it can be combined or relocated in a way that will be more helpful to the user of the FAR. [18]
III. SELECTED COMPARISONS AND EXAMPLES OF FAR COVERAGE

A. COMPARISON OF FAR COVERAGE TO THE DAR AND FPR

This section looks at two subparts of the FAR, 15.4 - Solicitation and Receipt of Proposals and Quotations and 3.4 Contingent Fees. Each of these subparts has been chosen as representative of the extensive rewriting, zero basing and organizing of material that is involved in the drafting of the FAR. The final product being much easier to understand and follow. Improvements in brevity, organization and clarity are achieved through the rigorous process of reviewing and revising. Improvements in currency and internal consistency as well as citations to external documents are also made.

In writing the FAR, the project offices rigorously examine, compare, and account for all coverage contained in the DAR and FPR, preserve the historical basis for the FAR represented by the DAR and FPR and document the source and rationale for any changes. Other agency regulations, such as the NASA PR and DOE PR, statutes, executive orders, Comptroller General decisions and policy letters are fully considered to insure compatibility. [14]

1. FAR 15.4 - Solicitation and Receipt of Proposals and Quotations

By reviewing the proposed FAR 15.4 table of contents, it becomes evident that a new uniform contract format is being presented (Exhibit 3-1). Standard Form 33 Table of Contents has been revised to correspond to the new format (Exhibit 3-2).
### 3. FEDERAL PROCUREMENT REGULATIONS (FPR)

#### Subpart 15.4—Solicitation and Receipt of Proposals and Quotations

<table>
<thead>
<tr>
<th>Code</th>
<th>Subpart 15.4—Solicitation and Receipt of Proposals and Quotations</th>
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<tbody>
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<td>General.</td>
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<td>Solicitation mailing lists.</td>
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<tr>
<td>15.404</td>
<td>Solicitations for information or planning purposes.</td>
</tr>
<tr>
<td>15.405</td>
<td>Solicitations for information or planning purposes.</td>
</tr>
<tr>
<td>15.406</td>
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<td>Receipt of proposals and quotations.</td>
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<td>Issuance of solicitation.</td>
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**Commentary:**

1. This subject provides policies and procedures (a) for preparing and issuing requests for proposals and quotations, and any amendments thereto and (b) for receiving and handling proposals and quotations. Evaluation of proposals and quotations and subsequent actions will be covered elsewhere in Part 15.

---

**EXHIBIT 3-1**
In advertised solicitations "offer" and "offeror" shall be construed to mean bid and bidder.

FOR INFORMATION CALL [phone & telephine no] (the above call)

OFFER (must be fully completed by offeror)

EXHIBIT 3-2
The description of a uniform contract format in FAR 15.406-1 as well as the general instructions for the content of each part and section of the new format will provide increased Government-wide standardization in solicitations and contracts. Part IV of the uniform contract format groups solicitation representations and instructions and provides for removal of this part at the time of contract award and incorporating by reference its salient features in the distributed copies of the contract, thus saving both reproduction and mailing costs. (Exhibit 3.3)

To add further uniformity and clarity to the procurement process FAR 15.407 does not provide for an alternate procedure for consideration of late proposals as allowed in FPR 1-3.802-2. FAR coverage provides only for the basic provision currently in both the DAR and FPR regarding late proposals. OFPP's rationale for this treatment is twofold, first by stipulating one treatment of late proposals it will insure consistent Government wide application. In addition, by eliminating the alternative method of considering late proposals the risks of protests or unfair treatment is substantially reduced.

Another significant proposed change in the FAR coverage is in dealing with Standard Form (SF) 33 and 33A. The FAR coverage will eliminate solicitation provisions from SF 33 and eliminate SF 33A completely. This is in keeping with the general attempt to eliminate provisions and clauses from
4. Code

5. Federal Acquisition Regulation (FAR)

15.405 Solicitation for information or planning purposes.

When information necessary for planning purposes may not be obtained from potential sources by more economical and less formal means, the contracting officer may determine in writing that a solicitation for information or planning purposes is justified. Each such solicitation shall include on its face the provision at 52.215-3, Solicitation for Information or Planning Purposes. The cost of responding to a solicitation for information or planning purposes may be allowable under 31.205-5.

15.406 Preparing requests for proposals and requests for quotations.

15.406-1 Uniform contract format.

(a) Contracting officers shall prepare solicitations and resulting contracts using the uniform contract format outlined in Table 15-2 in the maximum practicable extent. The format facilitates preparation of the solicitation and contract, as well as reference to and use of those documents by offerors and contractors. The uniform contract format is optional for acquisitions outside the United States, its possessions, territories, and Puerto Rico. It does not apply to the following:

(1) Basic agreements (see 16.602).

(2) Construction and architect-engineer contracts (see Part 36).

(3) Shipbuilding (including design, construction and conversion), ship overhauls, and ship repairs.

(4) Subcontracts.

(b) Solicitations in which the uniform contract format applies shall include Parts I, II, III, and IV. Upon award, contracting officers shall not physically include Part IV in the resulting contract, but shall retain in their contract file Section XII, Representations, certifications, and other statements of offeror or quoters, as completed by the contractor. Award by acceptance of a proposal on the award portion of FP 32 or FP 32A incorporates Section XII in the resulting contract. Contracts resulting from FP 32 or otherwise requiring a bilateral document shall incorporate Section XII by reference in the signed contract.

EXHIBIT 3-3
**1. Defense Acquisition Regulation (DAR/ASFP)**

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**Part II—Contract Clauses**

| I    | Contract clauses |

**Part III—List of Documents, Exhibits, and Other Attachments**

| J    | List of documents, exhibits, and other attachments |

**Part IV—Representations and Instructions**

| K    | Representations, certifications, and other statements of offers or quotes |
| L    | Instructions, conditions, and notices to offers or quotes |
| M    | Evaluation factors for award |

**COMMENTARY:**

1. Table 15.2 is based on the DAR table of contents for the uniform contract format (UCF) approved for DOD's use on the SF13. Part I of the UCF is located as the final part to reduce paperwork in the preparation of a competing contract through incorporation of Part I into the contract by reference.

**EXHIBIT 3-3 (continued)**
standard forms except those for small business. The rationale as stated in FAR 15.4 commentary is: [10]

The practice of printing provisions and clauses on standard forms has resulted in the obsolescence of portions of the forms and the need for corrective alterations and additions in solicitations and contracts for long periods while the forms were revised, printed and distributed. In some cases solicitation provisions and contract clauses printed on the forms are not prescribed and set forth elsewhere in the DAR and FPR or are prescribed in the regulation in a longer version than the condensed version printed on the form. The FAR will enhance incorporation of solicitation provisions and contract clauses by reference. Its uniform contract format will tend to standardize the general location of material in solicitations and contracts. In addition, advances in reproduction and computer technology are increasing the availability, and lowering the costs of alternative means of preparing solicitations and contracts. Since most acquisitions, other than small purchases, require at least some provisions or clauses in addition to those now preprinted on standard forms, we consider that those provisions and clauses that need to be printed in full text can be more efficiently printed, along with those peculiar to the acquisition or organization involved, by automated means or by reproduction at the contracting office or other appropriate level within the agencies.

2. FAR 3.4 Contingent Fees

Subpart 3.4 of the FAR deals with contingent fees. It prescribes policies and procedures that restrict contingent fee arrangements for soliciting or obtaining Government contracts to those authorized by 10 U.S.C. 2306(b) and 41 U.S.C. 254(a). These laws further provide that in case of breach or violation of the warranty by the contractor the Government may annul the contract without liability or deduct from the contract price the full amount of the contingent fee. This subpart has had a major rewrite and its final product
represents a successful effort in achieving better organization of material, clearer and more understandable coverage, as well as concise guidance for the contracting officer in how to evaluate and review contingent fee representations and arguments submitted by the contractors (Exhibit 3-4). [10]

B. COVERAGE ADDED BY THE FAR

1. Coverage not in the DAR or FPR

The primary examples of totally new coverage that is not in either the DAR or the FPR is the inclusion of coverage on Major System Acquisitions (FAR 34) and the Acquisition and Distribution of Commercial Products (ADCOP) (FAR 11). Since the coverage on major systems acquisition has not yet been published, only the coverage on ADCOP is presented as an example of new material.

The OFPP first issued the policy on the ADCOP in May of 1976. This resulted from one of the recommendations of the Commission on Government Procurement (D-6) which stated that OFPP should be assigned responsibility "for policies to achieve greater economy in the procurement, storage and distribution of commercial products used by the Federal agencies."

This part sets forth policies and procedures to allow agencies to take advantage of the efficiencies of the commercial market place and to prevent the development of duplicative and overlapping Government systems for the procurement and supply of common commercial products. Specific objectives of this part are to: [10]
1. DEFENSE ACQUISITION REGULATIONS (DFAR/DFARS)

2. Code

3. DFAR PROCUREMENT REGULATIONS (DFAR)

4. Code

5. DFAR PROCUREMENT REGULATIONS (DFAR)

3.005 Award before receipt of SF 119.

Contracting Officers may award formally advertised contracts before receipt of SF 119 or the statement in response to the contracting officer’s request, the chief of the contracting office shall determine whether to make further efforts to secure the SF 119 or statement as to initiate appropriate actions under 3.409.

3.007 Failure or refusal to furnish SF 119.

If the prospective contractor fails or refuses to furnish SF 119 or the statement in response to the contracting officer’s request, the chief of the contracting office shall determine whether to make further efforts to secure the SF 119 or statement or to initiate appropriate actions under 3.409.

3.008 Evaluation of SF 119.

3.008-1 Responsibilities.

(a) The contracting officer shall evaluate the SF 119 and all related information to determine:

(1) Whether a contingent fee arrangement exists between the prospective contractor and a person or company other than a full-time bona fide employee working solely for the prospective contractor, and

(2) Whether a contingent fee arrangement exists, whether it meets the statutory exception permitting contingent fee arrangements with bona fide employees or agencies.

(b) The contracting officer’s evaluation, conclusion, and any proposed actions shall be reviewed at a level above the contracting officer.

3.008-2 Evaluation criteria.

(a) Improper influence. By definition (see 3.401), a bona fide employee of the Contracting Officer’s agency, acting in his or her official capacity, may not exert improper influence to solicit or obtain Government contracts. If the contracting officer determines that there is a reasonable basis to conclude that improper influence has been or will be exerted or proposed, the employee or agency shall not be considered a bona fide employee.

(b) Bona fide employees. If employees may be bona fide, but not work on a full-time basis, then a reasonable basis for the contractor’s employment may be used. A reasonable basis for employment may be necessary for the contractor to meet the requirements of paragraph 3.008(a), and the contracting officer may be considered a bona fide employee unless the employee is not bona fide, the contracting officer shall...

COMMENTARY

5. FAR 1.400-1.097 has been added to state clearly the contracting officer’s responsibilities for evaluating SF 119 and determining whether a contingent fee arrangement merits the statutory exception. Review above the contracting officer is required if a condition because different judgments may be required and the contracting officer may be the person at whom any attempts at improper influence are directed.

EXHIBIT 3-4
| 1. DEFENSE ACQUISITION REGULATION (DAR/ASA) |
| 2. Code |
| 3. FEDERAL ACQUISITION REGULATION (FAR) |

(DAR 1-505.3, par. 22)
(DAR 1-505.4, par. 23-124)

1. Compare the employment arrangement to the definition of bona fide employer in 1.401;
2. Consider the criteria in subparagraphs (c)(1), (2), and (5) below, as applicable, and;
3. Consider the continuity of employment. The employment must constitute some continuity and not be solely for
   obtaining one or more Government contracts;
4. Bona fide agency. In determining whether an agency is
   bona fide, the contracting officer shall compare the
   arrangement, in its entirety, to the definition of bona fide
   agency in 1.401. In interpreting the words "established
   commercial or selling agency maintained by a contractor for
   the purpose of securing business," the contracting officer
   shall consider the following factors, but must recognize
   that no single factor or combination dictates a particular
   overall conclusion.
5. The fee should not be inequitable or exorbitant when
   compared to the services performed or to customary fees for
   similar services related to commercial business;
6. The selling agency should have adequate knowledge of
   the contractor's products and business, as well as other
   qualifications necessary to sell the products or services on
   their merits;
7. The contractor and the agency should have a continuing
   relationship or, in newly established relationships, should
   contemplate future continuity;
8. The agency should be an established concern that has
   existed for a considerable period, or be a newly established
   going concern likely to continue in the future;
9. While an agency that continues its selling activities to
   Government contracts is not disqualified, the fact that
   an agency represents the contractor in both Government and
   commercial sales should receive favorable consideration.

EXHIBIT 3-4 (continued)
1. reduce acquisition lead time;
2. ensure the acquisition of products that meet users needs;
3. increase competition for Government contracts;
4. strengthen the commercial industrial base;
5. reduce unnecessary Government investment in inventories and accompanying storage, handling, and distribution costs; and
6. take advantage of commercial quality assurance, warranties, and installation, maintenance, and repair services.

This part goes a long way towards insuring economy and efficiency in the Federal procurement process. It requires agencies to conduct market research and analysis prior to selecting an acquisition strategy for commercial products. It further requires the use of acceptable commercial products and commercial distribution systems (Exhibit 3-5).

2. **Coverage that is in the DAR but not the FPR**

To improve the uniformity of Federal procurements, the FAR will replace the FPR completely. In doing so the new regulation will satisfy all the requirements previously filled by the FPR. The FAR will expand on the FPR by including the following in its coverage: organizational conflicts of interest (FAR 9.5), multi-year contracting (FAR 17.1), options (FAR 17.2), customs and duty (FAR 25), expert and consulting services (FAR 37), contractor purchasing system reviews (FAR 44), production surveillance and reporting (FAR 42.11), and value engineering (FAR 48).
11.600 Market research and analysis.

(a) Conceptually, market research and analysis are conducted to ascertain the availability of commercial products that meet the needs and to identify the market practice of firms engaged in producing, distributing, and supporting such products. This research and analysis should also provide information to aid in selecting an acquisition strategy (see 11.101(b)).

(b) Requirements. (1) Agencies shall conduct market research and analysis on a continuing basis for repetitive needs or when initial acquisition of similar items is anticipated. For new requirements, agencies shall conduct a special or ad hoc market research and analysis.

(2) Market research and analysis shall be conducted unless the responsible agency has designated the applicable indefinite product description or one to which the exemption in 11.646(b) does not apply. However, market research and analysis may be conducted for the purpose of revising such product descriptions to incorporate state-of-the-art improvements and other necessary changes.

(3) The degree of market research and analysis will vary from brief and limited to broad and intensive, depending upon such factors as urgency, estimated dollar value, complexity, and past experience.

(c) Responsibilities. Agencies shall assign responsibilities for conducting market research to the coordinated teams of management, technical, and contracting personnel. Market research teams shall ensure that (1) all inquiries and contacts with industry are made by or coordinated with appropriate contracting officers, (2) data acquired are not given unfair advantage, and (3) market research results are documented.

(d) Precontracting information. Market research and analysis shall provide the following information, as appropriate:

(1) The availability of products suitable to meet the need as is or with minor modification.

(2) The terms and conditions, including price levels, seasonal price fluctuations, if any, and warranty practices under which commercial sales of such products are made.

(3) The requirements of any controlling laws and regulations.
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<td>(a) The performance characteristics and quality of available commercial products, including quality control and test procedures followed by the manufacturers.</td>
<td>(d) The distribution and support capabilities of potential sources, including alternative arrangements and cost estimates.</td>
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<td>(b) Information on the satisfaction of commercial market needs by similar needs, such as airlines, public utilities, hospitals, and manufacturers.</td>
<td>(e) The potential cost of modifying commercial products to meet particular needs where required.</td>
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<td>(c) The current state of the art of the product being reviewed.</td>
<td>(f) Information on the current state of the art of the product being reviewed.</td>
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<td>(g) Information on the current state of the art of the product being reviewed.</td>
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11.005 Acceptability.

(a) The acceptability of commercial products to meet Government needs should be decided on the basis of quality, reliability, performance, product life, and logistics support requirements.

(b) Where a defined Government need cannot be met precisely by an available commercial product, consideration shall be given in relaxing the specified need on to acquiring a modified commercial product. When product modifications are considered, a cost/benefit trade-off analysis shall be made. Factors to be considered in this analysis include:

1. An estimate of the cost of modification and impact on supply support requirements, compared with the estimated costs of a Government-specified item;

2. Delivery schedule for modified commercial products, compared with those required for a Government-specified item; and

3. The impact on competition in current and planned acquisitions.

(c) When user needs previously fulfilled by acquisition of products produced under detailed specifications are to be fulfilled by acquisition of commercial or commercial-type products under this part II, the contracting officer must consider the impact on previous procurement, particularly those that are small or disadvantaged business concerns. Provided that they meet user needs, products previously produced and acquired under detailed specifications shall continue to be considered for acquisition for a reasonable, limited period in order to give producers time to develop commercial markets. The contracting officer shall determine the period to be allowed on a case-by-case basis after consultation with the previous producer, technical individuals, and the activity's small and disadvantaged business utilization specialists.

11.006 Evaluation and award.

(a) Adequate market research and analysis will establish either the practicability of making an award on price alone or the need to consider other factors. When other factors are to be considered, the evaluation criteria shall permit consideration of the benefits to be derived by trade-offs, where feasible, among product capability, performance, price, delivery, logistics costs, and operation and support costs.

(b) Government testing and Government-established autonomous quality assurance requirements shall be held to a minimum when market research and analysis reveals that products have demonstrated acceptability and reliability in meeting...
FAR 42.11 Production Surveillance and Reporting applies to all contracts for supplies and services, including research and development and overhaul and repair contracts but excludes facilities and construction contracts. This part has been simplified and made somewhat briefer and yet provides the necessary policy and procedural guidance for the contracting officer. It emphasizes that the responsibility for proper contract performance rests with the contractor with the Government maintaining the necessary surveillance to protect its interests (Exhibit 3-6).

C. FAR COVERAGE THAT IS MORE EXTENSIVE

Both the DAR and the FPR have coverage on Government property, however, the FPR provides only very limited coverage of the topic. The FAR (FAR 45) coverage is much more inclusive and will satisfy the requirements of all Federal agencies. It prescribes policies and procedures for providing Government property to contractors and contractors use, management, and record keeping related to such property. By examining the table of contents of Part 45 of the FAR, it becomes evident that material from DAR Sections 13, 24, DAR Appendices B and C and FPR 1-8.5 has been greatly consolidated and reorganized as Part 45 of the FAR (Exhibit 3-7).

D. COVERAGE NOT INCLUDED IN THE FAR

The FAR will not prescribe policies or procedures that are unique to a single agency or department. Those specific
procedures and policies will have to be covered in agency acquisition regulations. These agency regulations will not be allowed to repeat or conflict with the FAR. They may include specific delegation of authority and internal organizational and procedural matters necessary to carry out FAR policies and procedures.

Exhibits 3-8 and 3-9, Coverage on Multi-year Contracting and Options respectively, illustrate those portions of the DAR (Column 1) that will not be included in the FAR, (coded OS in column 2) because the material deals strictly with the Department of Defense.
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### Commentary:

Production surveillance is a function of contract administration. Since the coverage is brief, it does not warrant a separate part; therefore it is included as a subset of FAR Part 42, Contract Administration.

**EXHIBIT 3-6**
SECTION III: GOVERNMENT PROPERTY

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45.106-3 Laundry and dry cleaning and demolition contracts.

COMMENTARY:

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### Commentary

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## Defense Acquisition Regulation (DAR/ASPB)

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### Commentary

*See FAR 45.502-1(c), Page 38*
*See FAR 45.103, Table of Contents, Page 1.*
*See FAR 45.302-5, Table of Contents, Page 1.*
*See FAR 45.407, Table of Contents, Page 5.*
*See FAR 45.115, Table of Contents, Page 1.*
*See FAR 45.302-6 and 4, Page 4 and 45.403, Page 5.*
*See FAR 45.105, Table of Contents, Page 1.*

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**EXHIBIT 3-7 (continued)**
## 1. DEFENSE ACQUISITION REGULATION (DAR/ASPR)

### APPENDIX B: GOVERNMENT PROPERTY IN POSSESSION OF CONTRACTORS

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**Commentary:**

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  - 45.504 Identification.
  - 45.505 Description of Government property.

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    - 45.506-3 Quantitative and monetary control.

- **Part 6 - Care, maintenance, and utilization**
  - 45.507 Care, maintenance, and utilization.
    - 45.507-1 Contractor's maintenance program.

- **Part 7 - Property in possession of subcontractors**
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- **Part 8 - Audit of property control systems**
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**COMMENTARY:**

EXHIBIT 3-7 (continued)
DEFENSE ACQUISITION REGULATION (DAR/AASPR)

1.427 (a) Definitions of terms contained in the multi-year contract may be used in multi-year contracts or used by the Government to obtain materials or services for the Government at a discount from the manufacturer or producer. The discount may be used in the multi-year contract unless the discount is not applicable to the Government. A multi-year contract may be modified to include the advance approval of the Chief of the Purchasing Office.

(b) In any event, all modifications will be made in an amount sufficient to meet the requirements of the contract. The amount may be modified as necessary to meet the requirements of the contract.

(c) The chief in 7-1003.33.a and (b) shall be included in all contracts for the procurement of materials under the multi-year procurement method, except as provided in 1-322.6 and 1-322.9.

1-322.6 Multi-Year Procurement of Services Under Public Law 90-378

(a) Under Public Law 90-378 (10 U.S.C. 3004), the Department of Defense is authorized to make multi-year procurements for the following major services to be performed under the 50-405 Procurement Act and the District of Columbia to procure services which are not in excess of the Five-Year Defense Program and for which funds are limited by statute for obligations during the fiscal year to which the contract is awarded.

(i) Support, maintenance, and support of aircraft, ships, vehicles, and other highly complex military equipment.

(ii) Procurement activities including high quality subcontracting (for example, subcontract for services of another organization, foreign language translation, and the like).

(iii) Low volume (for example, support maintenance, in-place maintenance, low transportation, repair collection and disposal).

(b) The performance period specified in the solicitation shall not exceed the end of the fiscal year to which the contract is awarded.

(c) The contract shall be included in all contracts for the procurement of services under the multi-year procurement method, except as provided in 1-322.6 and 1-322.9.

1-322.9 Multi-Year Procurement of Services Under Public Law 91-441

(a) Except as provided in 312 of Public Law 91-441, the Department of Defense is authorized to make multi-year contracts for periods of not more than three years for supplies and services required for the maintenance and operation of family housing for which funds would otherwise be available only within the fiscal year for which appropriated. Such procurements shall be made only when they are consistent with the policies and satisfy the requirements set forth in 1-322.6 for supply contracts and 1-322.8 and 1-322.9 for service contracts (except as provided in (b) and (c) below). The performance period specified in the solicitation shall not exceed the end of the fiscal year.

(b) The contract shall be included in all contracts for the procurement of supplies or services under this paragraph 1-322.9 on a multi-year basis.

(c) The chief in 7-1003.33.a and (d) shall be included in all contracts for the procurement of services under this paragraph 1-322.9 on a multi-year basis.

2. Code

3. FEDERAL PROCUREMENT REGULATIONS (FPR)

4. Code

5. FEDERAL ACQUISITION REGULATION (FAR)

EXHIBIT 3-8
1. DEFENSE ACQUISITION REGULATION (DAR/PACR)

17.207 Exercise of options.

(a) In the exercise of option provisions, contracting officers shall provide the written notice to the contractor within the time period specified in the contract.

(b) When the contract provides for economic price adjustment and the contractor requests revision of price pursuant to such provision, the contractor applies only to the option quantity, the effect of economic price adjustment on prices under the option must be determined before the option is exercised.

(c) Options should be exercised only if determined that

(1) Funds are available;

(2) The requirement covered by the option fulfills the Government's need;

(3) The exercise of the option is the most advantageous method of fulfilling the Government's need, price and factors in (1) and (2) above considered;

(4) Prices are provided; or

(5) A specification is proposed that offers a better price than that offered by the option if the contracting officer determines that the option price will be the best price available, he should not use the method of testing the market but should use one of the methods in (1), (2), or (3) above.

EXHIBIT 3-G
IV. CONCLUSIONS

A. PREFACE

This chapter answers the questions that were posed in the introduction of this thesis and provides conclusions that have been drawn from the material presented in this paper. Additionally, the impact on the acquisition manager is evaluated with each question.

B. RESEARCH QUESTION 1

HOW DID THE FAR COME ABOUT? HOW IS IT BEING DRAFTED? AND HOW IS IT APT TO AFFECT FUTURE ACQUISITION MANAGERS?

1. Answer

The FAR got its initial start from the recommendation of the Commission on Government Procurement (A-10) which was:

[1:38]

"Establish a system of Government-wide coordinated and to the extent feasible, uniform procurement regulations under the direction of the Office of Federal Procurement Policy, which will have overall responsibility for development, coordination, and control of procurement regulations.

The FAR is being drafted by two project offices, one at GSA (FPR staff) and the other at DOD (FARPO). It is written by drafting teams/panels consisting of highly skilled and experienced procurement personnel. It is reviewed by an expert policy, legal, and editorial staff and then further analyzed by experienced and competent project managers for any other possible improvements.
2. Potential impact on the acquisition manager

The FAR coverage on Government property as previously presented in Chapter III is a representative example of FAR coverage that will make the job of those dealing with Government property significantly easier. The substantial reorganization and consolidation of this coverage, from four sections of the DAR and one FPR section into one FAR part is a noteworthy accomplishment in itself. The consolidation without dilution of content is significant [25].

3. Conclusion

Minor impact on acquisition managers, both government and civilian contractors is expected.

C. RESEARCH QUESTION 2

WHAT ARE SOME OF THE HANDICAPS ENCOUNTERED IN THE DRAFTING OF THE FAR?

1. Answer

Some of the handicaps under which the FAR is being drafted include:

a. The existence of two separate major procurement statutes that had to be complied with [24,25];

b. The initial scope of the project was grossly underestimated [21,22];

c. The establishment of an overly optimistic time schedule which may have induced drafters to do less than the required research for FAR coverage [22]; and
d. The Project Officers did not get to select their initial staff, instead personnel were detailed to the project office who, after a short time on the job, became disillusioned with their assigned portion of the FAR coverage and chose to transfer from the project office [23].

2. Impact on the acquisition manager

In spite of the above handicaps encountered during the drafting of the FAR, the project managers have been able to work around and with the handicaps. However, the continuous slippage of the forecasted completion schedule has provided critics of the FAR with ammunition against the lack of progress achieved thus far. Instead of having the new regulation to work with in 1980 the acquisition managers can expect a quality product in 1981.

3. Conclusion

No anticipated impact on acquisition managers, however when the document is finally released acquisition managers will question with broad implication the document in light of the length of its gestation period.

D. RESEARCH QUESTION 3

WHAT WILL AND WILL NOT BE INCLUDED IN THE FAR AND WHAT WILL THE AGENCY IMPLEMENTING AND SUPPLEMENTING REGULATIONS BE?

1. Answer

The FAR will provide coverage of material that is applicable to all Federal agencies. However, it will not
include coverage that is unique to one agency. All single agency unique material is intended to be in agency regulations [25].

Additionally, the FAR will reduce the size of the current procurement regulations from approximately 5000 pages (based on estimates of 3000 pages of DAR, 1000 pages of FPR and 1000 pages of NASA PR) to 2500 pages (based on estimates of 1000 pages for the FAR, 1000 for the DAR and 500 for the NASA PR).

2. **Impact on the acquisition manager**

   The acquisition manager in the Federal Government whether on the DOD side or the Federal agencies side will now be able to work with and be guided by a single, uniform regulation that is applicable to all Federal Agencies. This may provide greater mobility for procurement personnel between the various agencies and DOD and at the same time provide more continuity in procedures and policies between jobs in the two sectors. Also the sheer size reduction as well as the reduction in the number of regulations should make the procurement job that much more manageable.

3. **Conclusion**

   Minor adverse impact on acquisition manager and potentially can be a force for an improved working environment.
E. RESEARCH QUESTION 4

IS THE FAR MAKING ACQUISITION POLICY?

1. **Answer**

   The FAR will make acquisition policy in some cases through resolution of differences between the DAR and FPR coverage through simplification and through the addition of new material [25].

   The FAR represents an extensive effort, part of this effort consisted of zero basing both the FAR text coverage and the clauses that pertain to the coverage. There is some risk involved in rewriting clauses since they are subject to much interpretation during litigation and also since a large library of precedents has been established. However, to simplify the regulation without simplifying the associated clauses would represent only an incomplete effort. The current FAR (Part 52) will have clauses that are much easier to interpret and follow and still retain their original intent. For those instances where reference to previous versions of the clauses is required the FAR will provide the necessary derivation history with each clause. Each clause will be annotated as to its derivation (whether DAR, FPR or New) and the extent of rewriting that was done (whether completely rewritten, almost verbatim or verbatim).

2. **Impact on the acquisition manager**

   Even though the FAR may make acquisition policy in some cases, those policies will have been in existence in
various documents, policy letters or circulars. The FAR will serve to bring these together, put them in focus and, where differences existed previously, it will resolve these and present one policy that will apply across the Federal establishment. Furthermore, the FAR will make the application and use of clauses much easier for acquisition managers.

3. Conclusion

Major impact on acquisition manager will occur.

F. RESEARCH QUESTION 5

HOW SUCCESSFUL IS THE FAR IN COMPLYING WITH THE RECOMMENDATIONS OF THE COMMISSION ON GOVERNMENT PROCUREMENT AND WILL IT HALT THE PROLIFERATION OF AGENCY ACQUISITION REGULATIONS?

1. Answer

The FAR has satisfied approximately twenty of the COGP recommendations. [2:99] The FAR's success in halting future regulation proliferation will depend largely on how rigorously the FAR Council monitors and enforces agency regulations. The prohibition requirement against repeating, paraphrasing or conflicting with the FAR, coupled with the requirement that agency regulations be reviewed and approved at a level above the agency, should serve as strong deterrents of agency regulations. The requirement to have agency regulations published in the Code of Federal Regulations as well as have them subject to public comment will also aid in keeping their numbers down.
The way the FAR is being drafted provides for public comment only after the coverage has been thoroughly researched, reviewed and agreed to by OFPP. Once the drafted material is published in the Federal Register it is anticipated that only minor revisions will be required as a result of public comments. Granted the public comments are towards the end of the drafting process and only after a version of the draft has been approved. Thus perhaps it would lead some to be concerned about whether their comments are too late and whether they should not have been involved in earlier stages of the drafting process. The author believes involvement of the public in the drafting process any earlier than presently scheduled would only hinder the project's effort and add to further delays. Making comments on rough draft material that is subject to major revision prior to its final version would not be a very effective way to write a regulation that has to satisfy numerous statutes, public laws and OFPP policy guidelines. It seems much more prudent to review material that complies with all statutes and guidelines and has been well written. Comments are apt to be fewer and hopefully more substantive. All comments will be thoroughly reviewed and those deemed appropriate will be incorporated in the final FAR draft. The project manager's desire for a high quality product will more than welcome and incorporate any comments that will improve the FAR.
2. **Impact on the acquisition manager**

Although the FAR system will make it more difficult to issue agency acquisition regulations in the future, it still allows the issuance of agency regulations if they meet the established criteria. The process of public review and the publication of all agency regulations in Title 48 of the Code of Federal Regulations will facilitate the effort to halt the proliferation of acquisition regulations.

3. **Conclusion**

Minor impact on acquisition manager, however, the public review process may make non-government acquisition managers perceive a greater input to their destiny and yield very positive results.

G. **SUMMARY**

From the above conclusions it becomes evident that the impact on the acquisition manager in the way he conducts business will be minor to moderate at most. The FAR will not radically change the way procurement is being done, it will merely provide those involved with a better regulation with which to do their job. Those acquisition managers that are familiar with the current acquisition regulations will have no problems in transitioning to the FAR, since the basic procedures and policies have not been changed, only improved and made more comprehensible. With adequate forewarning prior to the implementation of the FAR a smooth conversion
period with minimal disruption to ongoing work can be expected.
LIST OF REFERENCES


10. Federal Acquisition Regulation; draft coverage released through August 1980.

11. Logistics Management Institute, task order RE805 under OUSD Contract MDA 903-77-C0370, Content of the FAR - Criteria for Inclusion, 4 April 1978.


23. Interview with Captain M. Flanigan, USNR, FARPO Editor, 28 June 1980.


25. Interview with Colonel J. D. Slinkard, USAF, FARPO Project Manager, 28 June 1980.
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