A Primer for Departmental Administrators

Understanding the FAR
Presenters

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  Contract & Grant Analyst
  Electrical & Computer Engineering

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  Purchasing

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  Senior Sponsored Projects Officer
  Office of Research – Sponsored Projects
Topics

- The Basics of the FAR
- Administrative Responsibilities for Departmental Administrators
What is the FAR?

The Basics
FAR 1.101: Purpose.

The Federal Acquisition Regulations System is established for the codification and publication of uniform policies and procedures for acquisition by all executive agencies. The Federal Acquisition Regulations System consists of the Federal Acquisition Regulation (FAR), which is the primary document, and agency acquisition regulations that implement or supplement the FAR.
What is the FAR?

- Federal Acquisition Regulations
  - Title 48 of the Code of Federal Regulations (CFR)
  - Government-wide procurement (contract) regulations
- Individual agencies have their own implementation of the FAR
  - Defense Federal Acquisition Regulations (DFAR)
    - Army FAR (AFAR), Air Force FAR (AFFAR), etc...
  - Department of Energy Acquisition Regulations (DEAR)
  - Other agencies...
FAR 1.102: Statement of guiding principles for the Federal Acquisition System.

(a) The vision for the Federal Acquisition System is to deliver on a timely basis the best value product or service to the customer, while maintaining the public’s trust and fulfilling public policy objectives.
Scenarios where the FAR will come into play...

- Proposals
  - Submission of a proposal to a Federal agency where a contract is requested as the funding mechanism
  - Submission of a proposal as a subcontractor, where prime is requesting a contract as the funding mechanism
    - Typically the case when a for-profit is the prime
Awards

- Federal agency awards a contract as the funding mechanism
  - Can be in response to a contract proposal **OR** a grant proposal
- A Subcontract is issued by a prime contractor that incorporates the FAR from their prime contract
FAR 1.105-2 Arrangement of regulations.

(a) *General.* The FAR is divided into subchapters, parts (each of which covers a separate aspect of acquisition), subparts, sections, and subsections.
How is the FAR organized?

- **Subchapter A—General**
  - Parts 1 – 4

- **Subchapter B—Competition and Acquisition Planning**
  - Parts 5 – 12

- **Subchapter C—Contracting Methods and Contract Types**
  - Parts 13 – 18

- **Subchapter D—Socioeconomic Programs**
  - Parts 19 – 26

- **Subchapter E—General Contracting Requirements**
  - Parts 27 – 33

- **Subchapter F—Special Categories of Contracting Requirements**
  - Parts 34 – 41

- **Subchapter G—Contract Management**
  - Parts 42 – 51

- **Subchapter H—Clauses and Forms**
  - Parts 52 – 53
How is the FAR organized? Agency Implementations...

- Prefix numbering in clauses is consistent with the Chapter within the Title 48 of the CFR that the agency is assigned
  - Defense FAR (DFAR) – Chapter 2 of 48 CFR
    - Clause Numbering: 2xx
    - 252.227-7013 – Rights in Technical Data -- Noncommercial Items
  - Air Force FAR (AFFAR) – Chapter 53 of 48 CFR
    - Clause Numbering: 53xx
    - 5352.215-9000 – Facility clearance
  - Health & Human Services AR (HHSAR) - Chapter 3 of 48 CFR
    - Clause Numbering: 3xx
    - 352.270-13 – Tobacco-free facilities
Where do I find the FAR?

- Federal Site: https://www.acquisition.gov/far/
- Air Force Site http://farsite.hill.af.mil/
## A Contract Subject to the FAR

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How to look up & interpret a FAR clause

- FAR Clause 52.216-7
  Allowable Cost and Payment (DEC 2002)
  *(Delete from paragraph (a) the words “Subpart 31.2” and replace with Subpart 31.3”)*
How to look up & interpret a FAR clause
How to look up & interpret a FAR clause

52.216-7 – Allowable Cost and Payment.

As prescribed in 16.507(a), insert the following clause:

Allowable Cost and Payment (Dec. 2002)

(a) Invoicing.

(1) The Government will make payments to the Contractor when requested as work progresses, but (except for small business concerns) not more often than once every 2 weeks, in amounts determined to be allowable by the Contracting Officer in accordance with Federal Acquisition Regulation (FAR) Subpart 31.2 in effect on the date of this contract and the terms of this contract. The Contractor may submit to an authorized representative of the Contracting Officer, in such form and reasonable detail as the representative may require, an invoice or voucher supported by a statement of the claimed allowable cost for performing this contract.

(2) Contract financing payments are not subject to the interest penalty provisions of the Prompt Payment Act. Interim payments made prior to the final payment under the contract are contract financing payments, except interim payments if this contract contains Alternate I to the clause at 52.212-25.

(3) The designated payment office will make interim payments for contract financing on the __________ [Contracting Officer insert day as prescribed by agency head; if not prescribed, insert “30th”] day after the designated billing office receives a proper payment request. In the event that the Government requires an audit or other review of a specific payment request to ensure compliance with the terms and conditions of the contract, the designated payment office is not compelled to make payment by the specified due date.

(b) Reimbursing costs.

(1) For the purpose of reimbursing allowable costs (except as provided in subparagraph (b)(2) of this clause, with respect to pension, deferred profit sharing, and employee stock ownership plans contributions), the term “costs” includes only --

(i) Those recorded costs that, at the time of the request for reimbursement, the Contractor has paid by cash, check, or other form of actual payment for items or services purchased directly for the contract;

(ii) When the Contractor is not delinquent in paying costs of contract performance in the ordinary course of business, costs incurred, but not necessarily paid, for --

(A) Supplies and services purchased directly for the contract and associated financing payments to subcontractors, provided payments determined due will
How to look up & interpret a FAR clause

52.216-7 -- Allowable Cost and Payment.

As prescribed in 16.307(a), insert the following clause:

Allowable Cost and Payment (Dec. 2002)

(a) Invoicing.

(1) The Government will make payments to the Contractor when requested as work progresses, but (except for small business concerns) not more often than once every 2 weeks, in amounts determined to be allowable by the Contracting Officer in accordance with Federal Acquisition Regulation (FAR) Subpart 31.2 in effect on the date of this contract and the terms of this contract. The Contractor may submit to an authorized representative of the Contracting Officer, in such form and reasonable detail as the representative may require, an invoice or voucher supported by a statement of the claimed allowable cost for performing this contract.

(2) Contract financing payments are not subject to the interest penalty provisions of the Prompt Payment Act. Interim payments made prior to the final payment under the contract are contract financing payments, except interim payments if this contract contains Alternate I to the clause at 52.232-25.
How to look up & interpret a FAR clause

Subpart 31.2 -- Contracts With Commercial Organizations

31.201 -- General.

31.201-1 -- Composition of Total Cost.

(a) The total cost, including standard costs properly adjusted for applicable variances, of a contract is the sum of the direct and indirect costs allocable to the contract, incurred or to be incurred, plus any allocable cost of money pursuant to 31.205-10, less any allocable credits. In ascertaining what constitutes a cost, any generally accepted method of determining or estimating costs that is equitable and is consistently applied may be used.

(b) While the total cost of a contract includes all costs properly allocable to the contract, the allowable costs to the Government are limited to those allocable costs which are allowable pursuant to Part 31 and applicable agency supplements.

31.201-2 -- Determining Allowability.

(a) A cost is allowable only when the cost complies with all of the following requirements:

1. Reasonableness.
2. Allocability.
3. Standards promulgated by the CAS Board, if applicable; otherwise, generally accepted accounting principles and practices appropriate to the circumstances.
4. Terms of the contract.
Subpart 31.3 -- Contracts With Educational Institutions

31.301 -- Purpose.

This subpart provides the principles for determining the cost of research and development, training, and other work performed by educational institutions under contracts with the Government.

31.302 -- General.

Office of Management and Budget (OMB) Circular No. A-21, Cost Principles for Educational Institutions, revised, provides principles for determining the costs applicable to research and development, training, and other work performed by educational institutions under contracts with the Government.

31.303 -- Requirements.

(a) Contracts that refer to this Subpart 31.3 for determining allowable costs under contracts with educational institutions shall be deemed to refer to, and shall have the allowability of costs determined by the contracting officer in accordance with, the revision of OMB Circular A-21 in effect on the date of the contract.

(b) Agencies are not expected to place additional restrictions on individual items of cost.

Subparts 31.4 -- 31.5 -- [Reserved]

Subpart 31.6 -- Contracts with State, Local, and Federally Recognized Indian Tribal Governments
Interpretation of FAR Clause 52.216-7 Allowable Cost and Payment (DEC 2002) 
(Delete from paragraph (a) the words “Subpart 31.2” and replace with Subpart 31.3”)

- Establishes that OMB Circular A-21 applies to the contract (Cost Principles for Educational Institutions)
Administrative Responsibilities under the FAR

FAR Clauses
Contract Proposals

- If being submitted in response to a Request for Proposal (RFP) or Request for Quote (RFQ):
  - Request that RFP or RFQ be sent to SPO for review at least two weeks prior to submission deadline
    - In many instances, RFPs or RFQs contain contract provisions that need to be agreed to prior to proposal submission
Items to be aware of:

- Concept of COMPETITION
- For anticipated subcontractors, need to solicit formal proposal from each
  - Any specialized information needed from us for submission may be also needed from each sub
  - SPO can assist with formulation of RFP
- ...

OMB Circular A-110: Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education

http://www.whitehouse.gov/omb/circulars/a110/a110.html
FAR vs. OMB Circular A-110

**FAR**
- Applicable to Federal Contracts
- Contains all the administrative requirements for all types of entities (contractors)
- Individual clauses are listed in their full text in contract, or are individually incorporated by reference

**OMB CIRCULAR A-110**
- Applicable to Federal Grants & Cooperative Agreements
- Contains all the administrative requirements, specifically for educational institutions
- Text is incorporated by reference into grant or cooperative agreement
FAR vs. OMB Circular A-110

FAR

OMB CIRCULAR A-110
Equipment Provisions

- FAR Clause 52.245-1
  Government Property (JUN 2007)
  Alternate II
Alternate II switches out the language in (e)(3) of the clause with requirements that are written specifically for educational institutions/non-profits.

By default (even with the Alternate), title to equipment purchased under Federal contracts vests with the Government.

- UC title is sometimes successfully negotiated
Requirements for Contractor-Acquired Property (Government title) and Government-Furnished Property

- Must be used only for the contract under which it was purchased or provided
- Prior authorization is needed before an individual equipment item can be used on another Government contract
- The Government decides how the equipment is to be disposed of at end of contract (returned to them, kept by contractor, etc.)
In all instances:
- Prior approval is needed for equipment purchases not in the approved budget

Note:
- Definition of Equipment
  - Acquisition Cost of greater than $5,000
  - Useful life of greater than one year
Limitation of Funds Notification

- FAR Clause 52.232-20
  Limitations of Cost (APR 1984)
- FAR Clause 52.232-22
  Limitation of Funds (APR 1984)
Limitation of Funds Notification

- PI & Department track expenditures on awards subject to requirement
- When expenditures reach level which requires Sponsor notification, letter is prepared and signed by PI
- Letter is sent to SPO for institutional endorsement and submission to Sponsor
Limitation of Funds

UNIVERSITY OF CALIFORNIA, SANTA BARBARA

[Date]

[Addressee]

Reference: [Award number, PI, Title]

Subject: FAR Clause 52.232-22 Limitation of Funds [or appropriate citation for a grant, cooperative agreement, subcontract etc.]

Dear [Name],

In accordance with the provisions of Federal Acquisition Regulation (FAR) Clause 52.232-22, the Regents of the University of California, Santa Barbara (hereinafter “UCSB”) provides notice that the costs we expect to incur under the above-referenced [contract, subcontract, cooperative agreement, grant] in the next sixty (60) days, when added to all costs previously incurred will exceed 75 percent (75%) of the total amount so far allotted to this referenced [contract, subcontract, cooperative agreement, grant].

As of [date of last financial statement, ledger etc.], UCSB has expended $_______, or ____% of the available subcontract funding for [period of availability of funding].

If you should have any questions, please feel free to contact me at (805) 893-XXXX or via e-mail at [PI e-mail address].

Sincerely,

[PI name]

[Approval Signature]

Kevin S. Stewart
Sponsored Projects Officer
Office of Research
University of California
Santa Barbara, CA 93106
Tel: (805) 893-4034
Fax: (805) 893-2611
sewalt@research.ucsb.edu
Changes in Subcontracting

- FAR Clause 52.244-2
  Subcontracts (JUN 2007)
Changes in Subcontracting

- Provision can require prior sponsor approval to issue certain types of subcontracts.
- In contract, check that clause listing does not include any alterations to section (d)
  - e.g.: Subcontracts for engines
- If prior approval is needed, request should be drafted by Dept/PI and sent to SPO for review/endorsement/submission to sponsor
Termination

- FAR Clause 52.249-5
  Termination for Convenience of the Government (Educational and Other Nonprofit Institutions) (SEP 1996)
Termination

- Government has the ability to immediately terminate all or part of a contract
- Letter is issued ("Notice of Termination"), specifying termination date and extent
- Subcontracts may also need to be terminated
- Contractor will need to submit a "termination settlement proposal" within one year of termination
- Government will reimburse for cost incurred up to time of termination, as well as noncancellable commitments
Stop Work Order

- FAR Clause 52.245-15
  Stop Work Order (AUG 1989)
Stop Work Order

- Government has the ability to require contractor to immediately stop work (all or part)
- Formal notification is provided by Gov’t, period can be up to 90 days.
- Contractor must take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage
Stop Work Order

- If the Stop Work Order is canceled or the period of the order or any extension thereof expires, the contractor is to resume work.
  - If the time required to complete the work and/or the contractor’s costs are increased as a result of the Stop Work Order, contractor can submit request for adjustment to period of performance and/or cost
  - Contractor must assert its right to the adjustment within 30 days after the end of the period of work stoppage.
Technical Data/Computer Software

- DFAR Clause 252.227-7013
  Rights in Technical Data—Noncommercial Items (NOV 1995)
- DFAR Clause 252.227-7014
Contractor is required to deliver technical data and/or computer software to the Government with unlimited rights for them to “use, modify, reproduce, perform, display, release, or disclose... and to authorize others to do [the same]” unless:

- At proposal stage: Any technical data or computer software for which rights are to be limited is disclosed with contract proposal
- At award stage: Any technical data or computer software for which rights is to be limited is addressed in the contract negotiations
Technical Data/Computer Software

- When identifying technical data and/or computer software for which the Gov’t is not to have unlimited rights, need to have:
  - Data/Software to be furnished with restrictions
  - Basis for Assertion (Most common: developed solely/primarily at private expense)
  - Asserted Rights Category (Different levels of restrictions on the Government’s ability to “use, modify, reproduce...”)
  - Name or Person/Entity asserting rights
Identification and Assertion of Restrictions on the Government's Use, Release, or Disclosure of Technical Data.

The Contractor asserts for itself, or the persons identified below, that the Government's rights to use, release, or disclose the following technical data should be restricted—

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<tr>
<th>Technical Data to be Furnished With Restrictions*</th>
<th>Basis for Assertion**</th>
<th>Asserted Rights Category***</th>
<th>Name of Person Asserting Restrictions****</th>
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*If the assertion is applicable to items, components, or processes developed at private expense, identify both the data and each such item, component, or process.

**Generally, the development of an item, component, or process at private expense, either exclusively or partially, is the only basis for asserting restrictions on the Government's rights to use, release, or disclose technical data pertaining to such items, components, or processes. Indicate whether development was exclusively or partially at private expense. If development was not at private expense, enter the specific reason for asserting that the Government's rights should be restricted.

***Enter asserted rights category (e.g., government purpose license rights from a prior contract, rights in SBIR data generated under another contract, limited or government purpose rights under this or a prior contract, or specifically negotiated licenses).

****Corporation, individual, or other person, as appropriate.

Date

Printed Name and Title

Signature

(End of identification and assertion)
Verification of Government’s ability to have unlimited rights to technical data and/or computer software needs to be provided by our PI.

Verification also needs to be obtained from all subcontractors (if a contract proposal is being submitted, this should be included in their subcontract proposal).
Invention Reporting

- DFAR Clause 252.227-7039
  Patents – Reporting of Subject Inventions
  (APR 1990)
Invention Reporting

- Interim (every twelve months) and final patent reporting required
- Reporting is required whether or not there are inventions to report
- Typically accomplished using the DD Form 882
**Invention Reporting**

**REPORT OF INVENTIONS AND SUBCONTRACTS**


The public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Department of Defense, Contract and Agreement Information Directorate (0900-0010). Respondents should be aware that notwithstanding any other provision of law, no person shall be subject to any penalty for failing to comply with a collection of information if it does not display a currently valid OMB control number.

Please do not return your completed form to the above organization. Return completed form to the contracting officer.

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<td>c.</td>
<td>NAME OF GOVERNMENT FIRM CONTRACTOR</td>
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<td>e.</td>
<td>TYPE OF REPORT (if any)</td>
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**SECTION I - SUBJECT INVENTIONS**

5. "SUBJECT INVENTIONS" REQUIRING TO BE REPORTED BY CONTRACTOR/SUBCONTRACTOR (if "none," as stated)

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**SECTION II - SUBCONTRACTS**

6. SUBCONTRACTS AWARDED BY CONTRACTOR/SUBCONTRACTOR (if "none," as stated)

<table>
<thead>
<tr>
<th>Field</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>a.</td>
<td>NAME OF SUBCONTRACTOR</td>
</tr>
<tr>
<td>b.</td>
<td>CONTRACT NUMBER</td>
</tr>
<tr>
<td>c.</td>
<td>SUBCONTRACT NUMBER</td>
</tr>
<tr>
<td>d.</td>
<td>PATENT RIGHTS</td>
</tr>
<tr>
<td>e.</td>
<td>DESCRIPTION OF WORK TO BE PERFORMED UNDER SUBCONTRACTS</td>
</tr>
<tr>
<td>f.</td>
<td>SUBCONTRACT DATES</td>
</tr>
</tbody>
</table>

**SECTION III - CERTIFICATION**

7. CERTIFICATION OF REPORT BY CONTRACTOR/SUBCONTRACTOR (if required, as indicated)

<table>
<thead>
<tr>
<th>Field</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>a.</td>
<td>SMALL BUSINESS</td>
</tr>
<tr>
<td>b.</td>
<td>X NONPROFIT ORGANIZATION</td>
</tr>
</tbody>
</table>

I certify that the reporting party has procedures for prompt identification and timely disclosure of "Subject Inventions," that such procedures have been followed and that all "Subject Inventions" have been reported.

<table>
<thead>
<tr>
<th>Field</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>a.</td>
<td>NAME OF AUTHORIZED CONTRACTOR/SUBCONTRACTOR</td>
</tr>
<tr>
<td>b.</td>
<td>TITLE</td>
</tr>
<tr>
<td>c.</td>
<td>SIGNATURE</td>
</tr>
<tr>
<td>d.</td>
<td>DATE SIGNED</td>
</tr>
</tbody>
</table>

DD FORM 882, JUL 2005

PREVIOUS EDITION IS OBSOLETE.
Small Business Concerns

- FAR 52.219-8
  Utilization of Small Business Concerns
  (May 2004)

  “Small Business concerns shall have the maximum practicable opportunity to participate in performing contracts let by any Federal agency”
What is a Small Business Concern?

- A “for-profit” business entity with its place of business located in the U.S., is independently owned and operated and is not dominant in its field of operation.

- The size standards are determined by:
  - # of employees
  - based on the company’s average annual gross receipts

The Small Business Administration (SBA) includes the table of size standards in the Small Business Size Regulations, 13 CFR 121.201 at:  [http://www.sba.gov/size](http://www.sba.gov/size)
Categories of Small Businesses

- Small Business
- Woman-Owned
- Veteran-Owned
- Service-Disabled Veteran Owned
- Small Disadvantaged*
- HUBZone*

* = MUST be certified by the SBA
FAR Clause 52.219-9
Small Business Subcontracting Plan (APR 2008)
FAR19.7: Required for all federally contracted projects expected to exceed $550,000 ($1 Million for construction)

A Plan’s primary objective is to identify and project a percentage of dollars that can be subcontracted to the various small business categories on federally funded research contracts

Target expenditure goals include direct expenses: equipment, supplies and services (including travel)

A Plan is established either at proposal stage or as part of the award negotiations

The funding agency must approve the Plan, including its target goals, BEFORE funds can be released

Once the Plan has been approved, it becomes part of the University’s contract with the federal funding agency

Semi-annual reports are submitted to the agencies reflecting subcontracting progress
To streamline the development of a Plan, provide the following information to Lisa Klock at lisa.klock@purc.ucsb.edu:

- Detailed Scope or Statement of Work/Technical Proposal
- Detailed budget by option year
- Detailed list of proposed equipment, products and services to be purchased including the name of all potential suppliers
- All Sub Contractor information

Lisa will work directly with Department Representative and/or PI to set the targeted goals for each small business group according to the funding agency’s requirements.

Upon completion and approval of the Plan between the PI and Accounting Services & Control, the Plan will be forwarded to the Sponsored Projects Officer for submission to the funding agency.

If the goals set forth in the Plan are not acceptable to the funding agency, the Sponsored Projects Officer will notify the Purchasing Department to re-evaluate the Plan and obtain the necessary goals.

Please allow 10 business days for the development of a Small Business Subcontracting Plan!
Plan Reporting

- Actual subcontracting accomplishments are reported by the Purchasing Department on a semi-annual basis through the web-based Government-wide electronic Subcontracting Reporting System (eSRS)

- Accomplishments are calculated based on Data Warehouse spend analysis

- Upon submission of the report(s) through the eSRS, the PI, Department Representative, SPO, and, if applicable, subcontractor will receive electronic notification the Plan has been reported

- An agency could question or reject a report if goals are not achieved, which could result in award fees being suspended or ceased

- The Purchasing Department may contact the department needing explanation as to why goals are not met or at zero. If goals are zero, the eSRS requires a mandatory explanation.
There are 2 types of reports submitted:

- **ISR – Individual Subcontracting Report**
  - Provides inception-to-date subcontracting information for each prime and immediate subcontractor
  - Reporting Periods:
    - 1\textsuperscript{st}: Oct 1 – March 31 and 2\textsuperscript{nd}: Oct 1 – Sept 30

- **SSR – Summary Subcontract Report**
  - Provides an annual summary of subcontracts awarded \textit{per agency} that required a Plan for the previous fiscal year
  - This information is used for the SBA Subcontracting Achievement Report prepared for the President and Congress March 1\textsuperscript{st} of every year
  - Reporting Periods:
    - For civilian agencies (non-DoD); annual submission Oct 1 – Sept 30
    - For DoD and NASA, 1\textsuperscript{st}: Oct 1 – March 31 and 2\textsuperscript{nd}: Oct 1 – Sept 30
“Suggested Small Business Vendors” list provided by Purchasing upon completion of Plan

UCSB Vendor Database

Small business suppliers used by colleagues or other departments

Lisa Klock, Purchasing Department, x: 4073

Purchasing website: http://www.busserv.ucsb.edu/purchasing/goods_services/sbp.htm
Any Questions?