

Federal Contracting: Contract Compliance and Regulations Impacting the Supply Chain

Presented By:

Daryl Zahn, CFCM, President, NCMA-Wisconsin Chapter

Manager, Contracts & Compliance, DRS Power & Control Technologies, Inc.

Compliance and Federal Contracting

- Doing business with the Federal Government can be a benefit for businesses in many instances.
 - US Federal Government is the largest buyer of goods & services in the world
 - Good payment record
- Doing business with the Federal Government does require special adherence to rules, regulations, laws.
- This session will discuss **just a few** of the concepts and issues that need to be reviewed by Contractors doing business with Federal Government. Always stay vigilant and alert to what the environment is telling us, and what is in the contracts.

What is Compliance:

- Cambridge Dictionary:
 - Compliance: the act of obeying an order, rule, or request
- Merriam-Webster:
 - the act or process of doing what you have been asked or ordered to do : the act or process of complying—

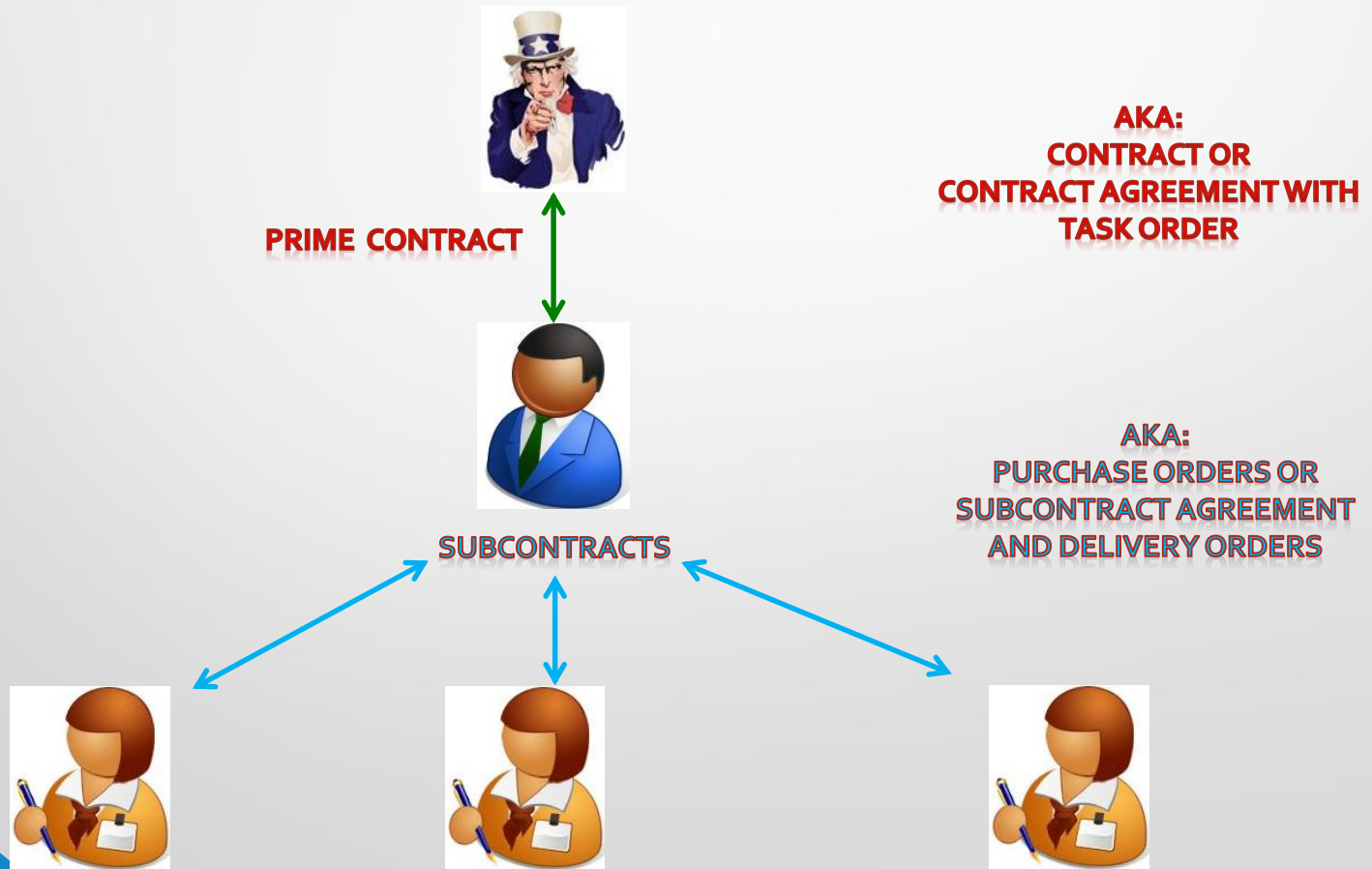
Worst Case Scenarios

- Criminal and Civil Proceedings for Noncompliance
- A Contractor that is found to not be Compliant could face Suspension or Debarment (FAR 9.04)
 - Suspension for a set time from doing businesses with the Federal Government, including as a subcontractor
 - Suspension shall be for a temporary period pending the completion of investigation and any ensuing legal proceedings, unless sooner terminated by the suspending official or as provided in this subsection
 - Debarment constitutes debarment of all divisions or other organizational elements of the contractor, unless the debarment decision is limited by its terms to specific divisions
 - Debarment shall be for a period commensurate with the seriousness of the cause(s). Generally, debarment should not exceed 3 years, except that—
 - (i) Debarment for violation of the provisions of the Drug-Free Workplace Act of 1988 (see [23.506](#)) may be for a period not to exceed 5 years;

How is Compliance Required

- A Contractor comes under requirements to comply with Federal Requirements upon entering into a contractual agreement with a Federal Contracting Agency as a Prime, or enters into a contractual agreement with a Company requiring work to be performed within a Federal dollar stream.
 - Government agency issues Contract to a 'Prime' Contractor
 - Prime Contractor issues Purchase Orders to 1st tier 'Subs'
 - Subs issue orders to addition tiers of the supply chain

Federal Contracting Terminology



Definition: Contract

FAR PART 2

- “Contract” means a mutually binding legal relationship obligating the seller to furnish the supplies or services (including construction) and the buyer to pay for them. It includes all types of commitments that obligate the Government to an expenditure of appropriated funds and that, except as otherwise authorized, are in writing. In addition to bilateral instruments, contracts include (but are not limited to) awards and notices of awards; job orders or task letters issued under basic ordering agreements; letter contracts; orders, such as purchase orders, under which the contract becomes effective by written acceptance or performance; and bilateral contract modifications. Contracts do not include grants and cooperative agreements covered by 31 U.S.C.6301, *et seq.* For discussion of various types of contracts, see [Part 16](#).

Federal Procurement Contracting

- Governed by the Federal Acquisition Regulation (FAR) and any Agency specific supplements.
 - i.e. Defense Acquisition Regulation Supplement (DFARS)
- FAR 1.01: 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.

Main Precept of Contracts

- Contractor / Buyer are agreeing to everything as noted in the contract.
 - Scope, Price, Schedule, Terms & Conditions, Clauses-Regulations
- Federal Contracting:
 - COMPLIANCE to contract requires compliance to not just the Scope of Work / specifications for the supply or service, but ALL the surrounding regulations, terms and conditions.
 - Special Requirements to doing business with the US Government
 - Employment Restriction: issues: How and who to Employ –
 - Accounting issues
 - Business Practices
 - Auditing

Regulations related to Manufacturing

- Where are they found?
 - Government Prime Contracts: Section I of the Solicitation/Contract

SOLICITATION, OFFER AND AWARD		1. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 700)		RATING	PAGE OF PAGES		
2. CONTRACT NUMBER	3. SOLICITATION NUMBER	4. TYPE OF SOLICITATION <input type="checkbox"/> SEALED BID (IFB) <input type="checkbox"/> NEGOTIATED (RFP)		5. DATE ISSUED	6. REQUISITION/PURCHASE NUMBER		
7. ISSUED BY		CODE	8. ADDRESS OFFER TO (if other than Item 7)				
NOTE: In sealed bid solicitations "offer" and "offeror" mean "bid" and "bidder".							
SOLICITATION							
9. Sealed offers in original and _____ copies for furnishing the supplies or services in the Schedule will be received at the place specified in Item 8, or if hand-carried, in the depository located in _____ until _____ local time _____ (Hour) _____ (Date)							
CAUTION - LATE Submissions, Modifications, and Withdrawals: See Section L, Provision No. 52.214-7 or 52.215-1. All offers are subject to all terms and conditions contained in this solicitation.							
10. FOR INFORMATION CALL:		A. NAME	B. TELEPHONE (NO COLLECT CALLS) AREA CODE NUMBER EXT.		C. E-MAIL ADDRESS		
11. TABLE OF CONTENTS							
(X)	SEC.	DESCRIPTION	PAGE(S)	(X)	SEC.	DESCRIPTION	PAGE(S)
PART I - THE SCHEDULE							
	A	SOLICITATION/CONTRACT FORM			I	CONTRACT CLAUSES	
	B	SUPPLIES OR SERVICES AND PRICES/COSTS			J	LIST OF ATTACHMENTS	
	C	DESCRIPTION/SPECS./WORK STATEMENT		PART IV - REPRESENTATIONS AND INSTRUCTIONS			
	D	PACKAGING AND MARKING			K	REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF OFFERORS	
	E	INSPECTION AND ACCEPTANCE			L	INSTRS., CONDS., AND NOTICES TO OFFERORS	
	F	DELIVERIES OR PERFORMANCE			M	EVALUATION FACTORS FOR AWARD	
	G	CONTRACT ADMINISTRATION DATA					
	H	SPECIAL CONTRACT REQUIREMENTS					
OFFER (Must be fully completed by offeror)							
NOTE: Item 12 does not apply if the solicitation includes the provisions at 52.214-16, Minimum Bid Acceptance Period.							
12. In compliance with the above, the undersigned agrees, if this offer is accepted within _____ calendar days (60 calendar days unless a different number is inserted by the offeror) from the date for receipt of offers specified above, to furnish and/or all items upon which prices are offered at the rates set forth in the							

Specific Regulations that impact the supply chain

- EVERYTHING in the Federal Acquisition Regulation (FAR) and any Agency Specific Supplement that is called out in a contract is an impact. It must be complied with.
 - Defense Federal Acquisition Regulation Supplement (DFARS)
 - Department of Veterans Affairs Acquisition Regulation (VAAR)
 - General Services Administration Acquisition Regulation (GSAR)
 - Department of Homeland Security Acquisition Regulation (HSAR)
 - Etc. (29 separate agency supplements)
- The listing on the following pages are some of the more 'popular' requirements and regulations that have impact to the suppliers to the Federal Government:

Doing Business with the Federal Government - Special Requirements

- System for Award Management (S.A.M.)
 - Requires a Commercial and Government Entity (CAGE) Code.
 - Certifications and representations
 - Executive Compensation

Contractor Code of Business Ethics and Conduct

- **MANDATORY DISCLOSURE COMPLIANCE RULE FAR 52.203-13**
 - FAR [52.203-13](#), Contractor Code of Business Ethics and Conduct, is required in solicitations and contracts if the value of the contract is expected to exceed \$5.5 million and the performance period is 120 days or more. Updated/increased in 2008 : requires a [contractor code of business ethics](#) and conduct, an internal control system, and disclosure requirements of certain violations of criminal law, the False Claims Act (FCA), and significant overpayments. See also FAR 52.203 -13

Contractor Code of Business Ethics and Conduct

- Contractor System requirements
 - The FAR case (2006-007) originating from DHS issued a clause for hotline posters, keeping the overseas and commercial items exemption. The FAR case went further by making the ethics aspect mandatory and adding it onto the hotline poster clause.
 - The final rule had two clauses: one for the Contractor Code of Business Ethics and Conduct and another for the Display of Hotline Poster(s). The introductory paragraph, which provides an exception if the contract is for the acquisition of commercial items under Part 12 or will be performed entirely outside the United States, applies to both clauses.
 - The policy states that all Government contractors must conduct themselves with the highest degree of integrity and honesty, and should have a written code of business ethics and conduct.
 - All contractors should also have an employee business ethics and compliance training program and an internal control system that are suitable to the size of the company, facilitate timely discovery and disclosure of improper conduct in connection with Government contracts, and ensure corrective measures are promptly instituted and carried out.

Doing Business with the Federal Government – Employment Issues

- **52.222-54 – Employment Eligibility Verification.**
 - B: the Contractor shall—
 - (i) *Enroll*. Enroll as a Federal Contractor in the E-Verify program within 30 calendar days of contract award;
 - (ii) *Verify all new employees*. Within 90 calendar days of enrollment in the E-Verify program, begin to use E-Verify to initiate verification of employment eligibility of all new hires of the Contractor, who are working in the United States, whether or not assigned to the contract, within 3 business days after the date of hire

The Department of Labor Office of Federal Contract Compliance Programs (OFCCP)

- The purpose of the OFCCP is to ensure that businesses with contracts of at least \$10,000 with the Federal government do not discriminate and that they take affirmative action in hiring.
- When an employer has at least fifty (50) employees and enters into a contract for at least \$50,000 annually to supply goods or services to the federal government or to supply goods or services to a government contractor and such goods or services are necessary, in whole or in part, to fulfill a government contract, the contractor must implement and maintain a written affirmative action plan.
- There are a number of different (and detailed) requirements, such as:
 - The development of a written **affirmative action plan**
 - The creation of an internal audit and reporting system
 - The posting of several notices of non-discrimination and employees' rights under the laws as overseen by the OFCCP
 - The retention of certain employment records
 - The filing of an annual EEO-1 report with the **Equal Employment Opportunity Commission (EEOC)**

Drug Free Workplace

- The Drug-Free Workplace Act of 1988 (“DFWA”) requires certain federal contractors to agree to provide drug-free workplaces as a condition of receiving a contract from a federal agency. Contractors are subject to the requirements of the DFWA of 1988 if the contract with the government is valued at \$100,000 or more, will be performed in the United States, and the primary purpose of the contract is something other than the acquisition of commercial items.

Labor Wage Acts: Davis Bacon/Service Contract Acts (Statutory: Also see FAR 52.222)

- The Davis-Bacon Act (“DBA”) is a federal law, which establishes the requirement for paying prevailing wages on projects involving the construction, alteration, or repair (including painting and decorating) of public buildings or public works. For contracts over \$2,000,
 - 1. Prevailing Wage Requirement
 - 2. Record Keeping Requirement
 - 3. Certified Payroll-Reporting Requirement
 - 4. Notice Requirements:
 - Contractors or subcontractors who performs work covered by the DBA/DBRA must post an “Employee Rights Under the Davis-Bacon Act” poster at the work site.
 - The Service Contract Act requires that area prevailing determinations and minimum fringe benefit payment requirements be paid by covered contractors. Contractors/Subcontractors performing services through federal contracts in excess of \$2,500 to pay service workers no less than the prevailing wage rates and fringe benefits found in the area where the services are being provided, based on each worker’s job classification.

Accounting Issues

- FAR Part 16 discusses the Contract Types that the Federal Government can utilize in contracts:
 - Fixed Price (includes FFP, Fixed Price with other Fee options)
 - Cost Reimbursable (includes Cost Sharing to Cost Plus other fee options)
 - Time & Material Contracts
- If Contracts are to be for anything other than Firm Fixed Price an Approved Accounting system will probably be required.
- Depending on size of Contractor, and number of covered contracts, a Contractor may have to comply with Cost Accounting Standards (CAS)
 - Not required
 - Modified CAS
 - Full CAS.

Business Systems

- DoD requires Proper Business systems be in place for covered contracts / contractors:
 - The six business systems include the following
 - Accounting (252.242-7006)
 - Estimating (252.215-7002)
 - Material Management & Accounting System (MMAS) (252-242-7004)
 - Earned Value Management (EVM) (252.234-7002)
 - Purchasing (252.244-7001)
 - Property (252.245-7003)
 - Proposed rule (July 15, 2014) will potentially require contractors to self-certify compliance and also to obtain independent CPA audits relative to the contractor compliance with three of six DFARS business systems.
 - On April 1, 2014, the Federal Register included a proposed DOE (Department of Energy) rule which is modeled after the DoD rule and will likely become applicable to certain DOE contracts once the rule is final

Conflict of Interest

- FAR 3.1101: “Personal conflict of interest means a situation in which a covered employee has a financial interest, personal activity, or relationship that could impair the employee’s ability to act impartially and in the best interest of the Government when performing under the contract.”
- Found in FAR subpart 9.5—Organizational and Consultant Conflicts of Interest
 - Organizational conflict of interest means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the Government, or the person’s objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage. (Source: FAR 2.101)

False Claims Act (31 U.S.C. §§ 3729–3733)

- The False Claims Act (“FCA”) protects against fraud in federally funded contracts or programs. The FCA prohibits a person or entity from knowingly presenting, or causing to be presented, a fraudulent claim for payment or approval to the federal government and from knowingly making, using or causing to be made a false record or statement to get a false or fraudulent claim paid or approved.

Mandatory Disclosure of Wrongdoings

- FAR Clause 52.203-13 ("the rule"), 48 CFR §52.203-13.
 - The mandatory disclosure rule requires Federal contractors to disclose in writing situations for which they have credible evidence of a potential violation of the civil False Claims Act or Federal criminal law involving fraud, conflict of interest, bribery, or gratuity. The FAR requires that the contractor make disclosures to the respective OIG for the agency or Department that was party to the contract or order. In addition, contractors are also required to disclose credible evidence of "significant overpayments."

Audits

- All of the Compliance requirements, put in place the need for Audits to prove the compliance:
 - Financial/Accounting requirements
 - Performed by appropriate financial audit agencies
 - DoD – utilizes Defense Contract Audit Agency (DCAA)
 - Other Agencies will utilize their own Auditors, or can hire DCAA
 - Other Compliance Requirements will be audited by appropriate Government agencies/auditing groups:
 - Department of Labor: HR issues such as EEO compliance
 - Specific Contract requirements
 - Agency personnel
 - Defense Contract Management Agency DCMA

Specific Regulations that impact the supply chain

- Contractor Qualifications – Part 9
- Commercial Items FAR 12
- How to propose = Far 14 Sealed Bidding; Far 15 negotiated proposals
 - DLA online bidding, others.
- Socio Economic Programs
 - FAR Part 19: Small business items – Plans, set asides, etc.
- Government Property – FAR part 45

Specific Regulations that impact the supply chain

- Buy American Act 52.225 (**DFARS 252.225-7000**)
 - – Trade Agreements FAR 52.225.4
- 52.243-Changes -1 Fixed-Price;-2 Cost Reimbursable -3 Time & Materials
 - Government can make unilateral changes within the general scope
- Terminations 52.249
 - For Convenience
 - For Default

Specific Regulations that impact the supply chain


- Audits,
 - 52.214-26-- Audit and Records-- Sealed Bidding
 - 52.215-2-- Audit and Records Negotiation
- DFARS, 252.225-7014 "Preference for domestic specialty metals"
- Conflict Minerals (Securities & Exchange Commission)
 - Frank / Dodd act
- Approved Accounting systems for T&M or Cost Reimbursable.
 - DFARS 252.242-7006 (a) (1) Defines an Acceptable Accounting System as: "a system that complies with the system criteria in paragraph (c) of this clause to provide reasonable assurance that— (i) Applicable laws and regulations are complied with; (ii) The accounting system and cost data are reliable; (iii) Risk of misallocations and mischarges are minimized; and (iv) Contract allocations and charges are consistent with billing procedures."

And Others...

- As noted at the beginning of this session, it is incumbent that the parties adhere to ALL provisions, terms, scope of a contract.
- This session was a set of issues that come into play with a Federal Government customer or working as subcontractor within a 'Federal procurement'
- Each concept could be a session in and of itself, which obviously can't be covered in a single session.
- There are significant other concepts that must be considered if doing business with the Federal Government:
 - Terminations
 - Changes
 - Government Property
 - Intellectual Property
 - On and on and on.

Audience Participation Time:

- Questions?

A decorative graphic in the top-left corner consisting of several overlapping diagonal lines in shades of blue and grey.

Thank you for your attention!