



# FAR - DFARs CASES CY2019

NCMA-Wisconsin

End of Year Federal Contractor Update Meeting

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# FAR / DFARs CY2019

- ▶ 2019 FARSITE (farsite.hill.af.mil) has been discontinued.
- ▶ New look created for ACQUISITION.GOV:
  - ▶ <https://www.acquisition.gov/content/regulations>

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## Regulations

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<a href="#">Chapter 99 (CAS)</a>	<a href="#">TRANSFARS</a>	<a href="#">DTAR</a>	<a href="#">JAAR</a>
<a href="#">DFARS</a>	<a href="#">AGAR</a>	<a href="#">EDAR</a>	<a href="#">JAR</a>
<a href="#">AFARS</a>	<a href="#">AIDAR</a>	<a href="#">EPAAR</a>	<a href="#">LIFAR</a>
<a href="#">AFFARS</a>	<a href="#">CAR</a>	<a href="#">FEHBAR</a>	<a href="#">NFS</a>
<a href="#">MP</a>	<a href="#">DEARS</a>	<a href="#">GSAM/R</a>	<a href="#">NRCAR</a>
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# FAR / DFARs CY2019

- ▶ ACQUISITION.GOV → NEW LOOK / NEW FEEL / SAME FAR & DFARs THAT WE LOVE.

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## FAR

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Chapter 99 (CAS)

Full FAR Download in Various Formats

FAC Number	Effective Date	HTML	XML	PDF	Word	EPub	iTunes	Kindle
FAC 2020-02	12-23-2019							

Browse FAR Part/Subpart and Download in Various Formats

Parts/Subparts	HTML	XML	Print
<a href="#">Part 1 - Federal Acquisition Regulations System</a>			
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# FAR / DFARs CY2019

## Remember the section 809 Panel

- ▶ Section 809 Panel created in response to NDAA 2016 concluded its mission on 7/15/2019
  - ▶ Interim and 3 reports over 2 years issued with recommendations to primarily improve DoD procurements, but broad enough to impact all Federal procurements.
  - ▶ 99 recommendations made-As of 7/15/2019:
    - ▶ 15 recommendations implemented
      - ▶ 27 total actions including sub-recommendations
    - ▶ 11 additional were in the queue for Congressional action
- ▶ IMPACT OF SECTION 809 Panel is...???
  - ▶ May depend on where you sit in the industry.
  - ▶ Some impacts may remain to be seen
    - ▶ Center of Acquisition Innovation-Recommended - in the NDAA to create this at the Naval Postgraduate School

# Overview: FAR/DFARS Administration

## Federal Acquisition Regulation (FAR)

- ▶ FAR is overseen by 2 councils working together under the Office of Procurement Policy (OFPP)
  - ▶ Defense Acquisition Regulatory Council (DARC) chaired by DOD with NASA
  - ▶ Civilian Agency Acquisition Council (CAAC) chaired by General Services Administration (GSA)
    - ▶ GSA leads the FAR Secretariat to track case load / status of FAR update requirements

## Defense Federal Acquisition Regulation Supplement (DFARS)

- ▶ DFARS is administered by the Department of Defense (DoD)

# Overview: FAR/DFARS Administration

- ▶ Standard practice: FAR Changes are published as PROPOSED in the Federal Register and “the Public” is offered to review and comment
- ▶ After the proper time-span for comments has elapsed, the FAR Councils will do one of the following:
  - ▶ Publish the FAR update as FINAL with no changes to the proposed rule
  - ▶ Publish the FAR updates as FINAL with minor updates to the proposed rule based on comments received
  - ▶ Update and re-publish a Proposed FAR update based on comments
  - ▶ Publish Interim Rules while proposed updates are returned to public for further comments

# Overview: FAR/DFARS Administration

- ▶ FAR “Cases” are tracked based on a numbering scheme:
  - ▶ First four digits are the Government Fiscal Year
  - ▶ Last four digits are the sequential number of case issued
  - ▶ i.e. FAR case 2019-0002 is the second case issued in FY19
  
- ▶ DFARS “Cases” are tracked based on similar scheme:
  - ▶ First four digits are the Government Fiscal year
  - ▶ Last four digits begin with “D” for DOD followed by sequential number of case issued
  - ▶ i.e. DFARS case 2019-D002 is the second case issued in FY19

# Keeping Current with FAR/DFARS and Other Issues

- ▶ Federal Register:
  - ▶ <https://www.federalregister.gov/>
- ▶ Pay options
- ▶ Free review options
  - ▶ National Contract Management Association (NCMA)
  - ▶ <http://www.wifcon.com/rules.html>
- ▶ Open FAR / DFARS Cases:
  - ▶ [http://www.acq.osd.mil/dpap/dars/far\\_case\\_status.html](http://www.acq.osd.mil/dpap/dars/far_case_status.html)
  - ▶ [http://www.acq.osd.mil/dpap/dars/case\\_status.html](http://www.acq.osd.mil/dpap/dars/case_status.html)



**Open FAR Cases  
as of 12/20/2019**

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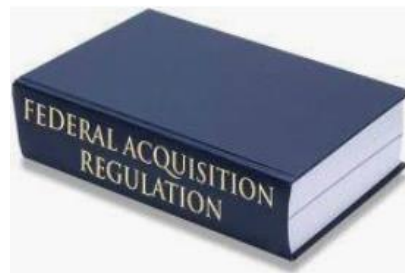
**Open DFARS Cases  
as of 12/20/2019**

1:43:31PM



# General Suggestion:

- ▶ If a Proposed Rule will affect your company,
  - ▶ Read the proposal, do your best to understand the ramifications
  - ▶ Put together the best thought out statement of issues
  - ▶ Send comments to the noted locations, by the specified dates.
- ▶ Professional Organizations such as NCMA, NDIA and others work in an advocacy role for their members. Keeping current memberships in these organizations allow your company to work with them as well.



# 2019 FAR / DFARs UPDATES

- ▶ Dates Covered in this review: Jan 1, 2019 - Dec 26, 2019
  - ▶ FAR:
    - ▶ FINAL RULES PUBLISHED: 10
    - ▶ INTERIM RULES PUBLISHED: 1
    - ▶ PROPOSED RULES PUBLISHED: 24
  - ▶ DFARs:
    - ▶ FINAL RULES PUBLISHED: 46
      - ▶ 11 of these to repeal/cancel DFARs requirements
      - ▶ 12 are related to clauses for consistency in terms usages and clarifications
    - ▶ INTERIM RULES PUBLISHED: 1
    - ▶ PROPOSED RULES PUBLISHED: 22

# *CAVEAT: Notice for Reviewing Regulation Changes:*

- ▶ IF a ruling appears to have impact on your business, find and read the rule, don't just go with my high level bullets!
- ▶ What is important and non-important to me and my business may not be important to you and your business.
  - ▶ Business Size Standards impact whether a rule may or may not be important
    - ▶ Changes to Cost Accounting Standards, Truthfulness In Negotiations, etc. may not impact smaller businesses per size standards
    - ▶ Changes to Small Business Administration rules may not impact larger businesses.
  - ▶ Similar Concepts for type of business -
    - ▶ Manufacturing verses Service provider
  - ▶ Many regulation updates are directions to buying commands and Government Contracting personnel.
    - ▶ Impact is on what they can do, and may not change anything that a business would need to do.

# FAR Final/Interim Rules: CY2019 Highlights

- ▶ FAR Case 2017-006: (6/12/19) Exception From Certified Cost or Pricing Data Requirements-Adequate Price Competition
  - ▶ addresses the exception from certified cost or pricing data requirements when price is based on adequate price competition
- ▶ FAR Case 2018-017: (Interim-8/13/19) Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment
  - ▶ Effective 8/13/19 - restricts procurement from several sources (FBI findings of sources connected to governments of covered foreign countries)
- ▶ FAR Case 2019-006: (9/10/19) Update of "Affiliates" and Section 8(a) Clauses
  - ▶ Subpart 2.1, Definitions, is amended to revise the definition of "affiliates" to include references to the unique definitions of that term in 9.403 and 19.101. (deleting existing language and replacing it with a reference to SBA's regulations on determining affiliation)
  - ▶ The clauses at FAR 52.219-12 and 52.219-17 are amended to delete from each clause the paragraph requiring 8(a) contractors to obtain approval from SBA and the contracting officer prior to subcontracting the performance of any contract requirements.

# FAR Final/Interim Rules: CY2019 Highlights

- ▶ FAR Case 2018-010: (9/10/19) Use of Products and Services of Kaspersky Lab
  - ▶ Interim rule was made a final ruling
- ▶ FAR Case 2018-008: (10/10/19) Definition of Commercial Item
  - ▶ FAR 2.101 Commercial item Paragraph (8) is now: “ nondevelopmental item, if the procuring agency determines the item was developed exclusively at private expense and sold in substantial quantities, on a competitive basis, to multiple State and local governments or to multiple foreign governments”
  - ▶ Under this rule, for the first time, NDIs that are developed exclusively at private expense and sold in substantial quantities to multiple foreign governments may be treated as commercial items.
- ▶ FAR Case 2013-002: (11/22/19) Reporting of Nonconforming Items to the Government-Industry Data Exchange Program
  - ▶ This rule *requires* contractors to screen and report major or critical nonconformances in order to reduce the risk of counterfeit and other nonconforming items entering the supply chain and impacting the performance of mission critical items where item failure could result in loss of high value items or loss of life.
  - ▶ GIDEP now required outside of DoD requirements.

# FAR Proposed Rules: Items to watch:

- ▶ Proposed FAR Case 2018-007: (6/24/2019) Applicability of Inflation Adjustments of Acquisition-Related Thresholds
  - ▶ Replaces numerical values, throughout the FAR text, that are based on the value of the micro-purchase threshold or the simplified acquisition threshold with the term “micro-purchase threshold” or “simplified acquisition threshold”
  - ▶ Adds a statement at FAR 15.403-4 to explain that if a clause refers to the certified cost or pricing data threshold, and if the threshold is adjusted for inflation, then the changed threshold applies throughout the remaining term of the contract, unless there is a subsequent threshold adjustment
- ▶ Proposed FAR Case 2016-002: (8/12/19) Applicability of Small Business Regulations Outside the United States
  - ▶ Support the Small Business Administration's (SBA) policy of including overseas contracts in agency small business contracting goals. This amendment is consistent with SBA's regulatory changes, which clarify that small business contracting provisions, e.g., set-asides, may apply to contracts performed overseas.

# FAR Proposed Rules: Items to Watch

- ▶ Proposed FAR Case 2018-016: (10/2/19) Lowest Price Technically Acceptable Source Selection Process
  - ▶ Specifies the criteria that must be met in order to include lowest price technically acceptable (LPTA) source selection criteria in a solicitation; and requires procurements predominantly for the acquisition of certain services and supplies to avoid the use of LPTA source selection criteria, to the maximum extent practicable
- ▶ Proposed FAR Case 2018-004: (10/2/2019) Increased Micro-Purchase and Simplified Acquisition Thresholds
  - ▶ implement section 217(b) of the NDAA for FY 2017 ([Pub. L. 114-328](#)) and sections 805, 806, and 1702(a) of the NDAA for FY 2018 ([Pub. L. 115-91](#)).
    - ▶ Increase MPT from \$3,500 to \$10,000.
    - ▶ Increase SAT to \$250,000

# FAR Proposed Rules: Items to Watch

- ▶ Proposed FAR Case 2018-005: (10/2/19) Modifications to Cost or Pricing Data Reporting Requirements
  - ▶ implement section 811 of the NDAA for FY 2018 to increase the threshold for requesting certified cost or pricing data from \$750,000 to \$2 million for contracts entered into after June 30, 2018.
  - ▶ In the case of a change or modification made to a prime contract that was entered into before July 1, 2018, the threshold for obtaining certified cost or pricing data remains \$750,000, with the following exception. Upon the request of a contractor that was required to submit certified cost or pricing data in connection with a prime contract entered into before July 1, 2018, the contracting officer shall modify the contract without requiring consideration to reflect a \$2 million threshold

# DFARs Final Rules: CY2019 Highlights

- ▶ In CY2019: Many Final Rules were issued to repeal/cancel clauses that were deemed no longer necessary:

Date	DFAR Case #	Title
04/01/19	2019-D006	Repeal of DFARS Clause “Oral Attestation of Security Responsibilities”
04/01/19	2018-D076	Repeal of Congressional Notification for Certain Task- and Delivery-Order Contracts
04/01/19	2018-D059	Repeal of Certain Defense Acquisition Laws
05/31/19	2019-D007	Repeal of DFARS Provision Regarding Availability of Specifications and Standards Not Listed in the Acquisition Streamlining and Standardization Information System
05/31/19	2019-D026	Repeal of DFARS Clause “Ordering Limitation”
06/28/19	2019-D020	Repeal of Transportation Related DFARS Provisions and Clauses
06/28/19	2018-D048	Repeal of DFARS Clause “Price Adjustment”
09/13/19	2019-D024	Repeal of DFARS Provision “Award to Single Offeror”
09/13/19	2019-D025	Repeal of DFARS Clause “Returnable Containers Other Than Cylinders”
10/31/19	2019-D021	Repeal DFARS Provision Related to Disclosure of Information for Litigation Support
11/27/19	2019-D040	Repeal of Temporary Statutory Authorities

# DFARs Final Rules: CY2019 Highlights

- ▶ In CY2019: Many Final Rules were issued modify language / terms used in clauses to provide clarity and consistency:

Date	DFAR Case #	Title
02/15/19	2018-D028	Modification of DFARS Clause "Transportation of Supplies by Sea"
04/01/19	2018-D051	Modification of DFARS Clause "Utilization of Indian Organizations, Indian-Owned Economic Enterprises, and Native Hawaiian Small Business Concerns"
08/09/19	2019-D011	Modification of DFARS Clauses Related to the Display of Hotline Posters
09/13/19	2019-D016	Modification of DFARS Clause "Trade Agreements"
09/13/19	2019-D018	Modification of DFARS Clause "Reporting and Payment of Royalties"
09/13/19	2019-D012	Modification of DFARS Clause "Release of Past Infringement"
09/13/19	2019-D017	Modification of DFARS Clause "Readjustment of Payments"
09/13/19	2018-D045	Modification of DFARS Clause "Orders for Facilities and Services"
09/13/19	2018-D035	Modification of DFARS Clause "Cancellation or Termination of Orders"
10/31/19	2019-D015	Modification of DFARS Clause "Protection Against Compromising Emanations"
10/31/19	2018-D046	Modification of DFARS Clause "Obligation of the Government"
11/27/19	2018-D047	Modification of Clause Accident Reporting and Investigation Involving Aircraft, Missiles, and Space Launch Vehicles.

# DFARs Final Rules: CY2019 Highlights

- ▶ **DFARs Case 2017-D014: (2/15/19) Use of Commercial or Non-Government Standards**
  - ▶ Updates DFARs section Part 211 to encourage offerors to propose commercial or non-Government standards and industry-wide practices that meet the intent of military or Government-unique specifications and standards.
- ▶ **DFARs Case 2017-D034: (2/15/19) Antiterrorism Training Requirements for Contractors**
  - ▶ Contractors, who as a condition of contract performance require routine physical access to a Federally-controlled facility or military installation, are aware of the requirement for contractor personnel to complete Level I DoD antiterrorism awareness training.
- ▶ **DFARs Case 2018-D065: (4/1/19) Consent To Subcontract**
  - ▶ For DoD contracts with contractors that have approved purchasing systems, a contracting officer must have written approval from the program manager prior to withholding a consent to subcontract

# DFARs Final Rules: CY2019 Highlights

- ▶ DFARs Case 2015-D035: (4/30/19) Use of the Government Property Clause
  - ▶ Requires the use of FAR clause 52.245-1, Government Property, in all purchase orders for repair, maintenance, overhaul, or modification of Government property, regardless of the unit acquisition cost of the items to be repaired.
  
- ▶ DFARs Case 2018-D057: (4/30/19) Small Business Set-Asides for Architect-Engineer and Construction Design Contracts
  - ▶ Increases to \$1 million the threshold for small business set-asides of acquisitions for A-E services, including construction design, in connection with military construction projects or military family housing projects
  - ▶ Removes the prohibition on setting aside these acquisitions valued above the threshold.

# DFARs Final Rules: CY2019 Highlights

- ▶ DFARs Case 2018-D012: (4/30/19) Contract Closeout Authority
  - ▶ Authorizes the Secretary of Defense to close out certain contracts or groups of contracts through modification of such contracts without completing a reconciliation audit or other corrective action. Applies to contracts entered into on a date that is at least 17 fiscal years before the current fiscal year or which a determination has been made that the contract records are not otherwise reconcilable, because—
    - ▶ The contract or related payment records have been destroyed or lost; or
    - ▶ Although contracts records are available, the time or effort required to establish the exact amount owed to the U.S. Government or amount owed to the contractor is disproportionate to the amount at issue.
- ▶ DFARs Case 2018-D023: (5/31/19) Applicability of inflation Adjustment of Acquisition Related Thresholds
  - ▶ 201.109 - new paragraph (a)(i): ...the adjustment for inflation of all statutory acquisition-related dollar thresholds in the DFARS be applied to contracts and subcontracts without regard to the date of award of the contract or subcontract...

# DFARs Final Rules: CY2019 Highlights

- ▶ DFARs Case 2017-D009: (6/28/19) Only One Offer
  - ▶ Implements a section of the National Defense Authorization Act for Fiscal Year 2017 that addresses the requirement for additional cost or pricing data when only one offer is received in response to a competitive solicitation.
- ▶ DFARs Case 2018-D008: (8/9/19) Undefined Contract Actions
  - ▶ Modifies restrictions on undefinitized contractual actions (UCA) regarding risk-based profit, time for definitization, and Foreign Military Sales. Section 815 establishes limitations on unilateral definitizations of UCAs over \$50 million.
- ▶ DFARs Case 2018-D010: (9/26/19) Restrictions on Use of Lowest Price Technically Acceptable Source Selection Process
  - ▶ Implements sections of the National Defense Authorization Acts for Fiscal Years 2017 and 2018 that establish limitations and prohibitions on the use of the lowest price technically acceptable source selection process.

# DFARs Final Rules: CY2019 Highlights

- ▶ DFARs Case 2019-D004: (10/31/19) Nonmanufacturer Rule for 8(a) Participants
  - ▶ Revised and standardized the limitations on subcontracting and the nonmanufacturer rule that apply to small business concerns, including 8(a) Program participants, under procurements conducted pursuant to Federal Acquisition Regulation (FAR) part 19, Small Business Programs.
- ▶ DFARs Case 2017-D004: (11/27/19) Use of Fixed-Price Contracts
  - ▶ Requires a preference for fixed-price contracts, review and approval for certain cost-reimbursement contract types, and the use of firm-fixed-price contract types for foreign military sales unless an exception or waiver applies.

# DFARs Proposed Rules: Items to Watch

- ▶ Proposed DFARs Case 2018-D058: (4/1/19) Demonstration Project for Contractors Employing Persons With Disabilities
  - ▶ Provides an instruction for companies to be part of a demonstration project for contractors employing persons with disabilities as required in NDAA 2019
- ▶ Proposed DFARs Case 2019-D002: (4/30/19) Performance-Based Payments
  - ▶ Performance-based payments shall not be conditioned upon costs incurred in contract performance but only on the achievement of negotiated performance outcomes. Therefore, this rule proposes to remove the restrictions at DFARS 232.1001(a) and paragraph (b)(i) of the clauses at DFARS 252.232-7012 and 252.232-7013 that limit performance-based payments to amounts not greater than costs incurred up to the time of payment.
- ▶ Proposed DFARs Case 2018-D068: (5/31/19) Prompt Payments of Small Business Contractors
  - ▶ Looking to provide accelerated payments to small business contractors and to small business subcontractors by accelerating payments to their prime contractors. Specifically, section 852 of NDAA 2019 requires DoD, to the fullest extent permitted by law, to establish an accelerated payment date for small business contractors, with a goal of 15 days after receipt of a proper invoice

# DFARs Proposed Rules: Items to Watch

- ▶ Proposed DFARs Case 2017-D038: (5/31/19) Contractor Purchasing System Review Threshold
  - ▶ This proposed rule implements a recommendation from the Defense Contract Management Agency (DCMA) to raise the contractor purchasing system review (CPSR) threshold at Federal Acquisition Regulation 44.302(a) from \$25 million to \$50 million. Head of agency responsible for Contract Administration can still raise or lower this if it is in the Government's best interest.
  
- ▶ Proposed DFARs Case 2019-D029: (11/27/19) Treatment of Certain Items as Commercial Items.
  - ▶ Provides that a contract for an item using FAR part 12 procedures shall serve as a prior commercial item determination, unless the appropriate official determines in writing that the use of such procedures was improper or that it is no longer appropriate to acquire the item using commercial item acquisition procedures.

# That's It for this segment of the program!

- ▶ Questions?
- ▶ Answers?
- ▶ Enough Already???
  
- ▶ Thank you for your attention!