

# FAR CLAUSES

Presented by

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# Objectives

- Learn the anatomy of a FAR Clause
- Understand when you would see them and why you should care
- Gain awareness to resources and tools you will need when FAR Clauses come into your life
- Learn how to escape the circle of despair when you deal with FAR Clauses

# WHAT IS THE FAR?

- Title 48, Chapter 1 of the Code of Federal Regulations (CFR)
- Established for the codification and publication of uniform policies and procedures for *acquisition* by all executive agencies.

# FAR vs UNIFORM GUIDANCE

- Uniform Guidance is for grants management and provides principles for considering the administration and appropriateness of costs to be borne by grants.
- FARs are procurement rules governing agency procurements. Terms are defined, the inclusion is prescribed, etc.

# WHAT IS THE FAR?

- Government-wide procurement (contract) regulations
  - FAR 52.227-13 (Rights in Data)**
- Individual agencies have their own implementation of the FAR
  - Defense Federal Acquisition Regulations (DFAR)
    - DFAR 252.227-13 (Rights in Technical data)

# WHEN WILL YOU SEE THE FAR?

- When submitting a proposal to a Federal agency (either directly or as a subcontractor) where a *contract* is requested as the funding mechanism.

# WHEN WILL YOU SEE THE FAR?

Often when the proposed contract turns up in your email

- [Clauses Included by Reference Clause Database Clause Number Clause Title](#)
- [FAR 12.202-1 Definitions \(NOV 2013\)](#)
- [FAR 12.203-1 Contract \(JAN 1984\)](#)
- [FAR 12.203-6 Government Agency Contingent Fees \(MAR 2004\)](#)
- [FAR 12.203-6 Restrictions on Subcontract Sales to the Government \(SEP 2006\)](#)
- [FAR 12.203-7 Anti-Kickback Provisions \(MAY 2010\)](#)
- [FAR 12.203-8 Conviction, Reclusion, and Recovery of Funds for Illegal or Improper Activity \(MAY 2010\)](#)
- [FAR 12.203-10 Price or Fee Adjustment for Illegal or Improper Activity \(MAY 2010\)](#)
- [FAR 12.203-12 Limitation on Payments to Influence Certain Federal Transactions \(OCT 2010\)](#)
- [FAR 12.204-4 Printed or Copied Double-Sided or Postconsumer Fiber Content Paper \(MAY 2011\)](#)
- [FAR 12.204-10 Reporting Consultant Compensation and Fee For Subcontract Awards \(JAN 2013\)](#)
- [FAR 12.204-13 Items for Award Management Maintenance \(JAN 2013\)](#)
- [FAR 12.204-18 Incorporation by Reference of Representations and Certifications \(JAN 2010\)](#)
- [FAR 12.204-4 Protecting the Government's Interest When Subcontracting With Contractor Debarred, Suspended, or Proposed for Debarment \(JULY 2011\)](#)
- [FAR 12.209-9 Updates of Publicly Available Information Regarding Responsibility Matters \(JAN 2013\) \(FAR 12.209-10 Prohibition on Contracting With Inverted Domestic Corporations \(OCT 2010\)\)](#)
- [FAR 12.211-1 Audit and Records - Negotiations \(OCT 2010\)](#)
- [FAR 12.211-8 Order of Precedence - Uniform Contract Format \(OCT 1987\)](#)
- [FAR 12.211-10 Price Reduction for Defective Certified Cost or Pricing Data \(MAY 2010\)](#)
- [FAR 12.211-12 Price Reduction for Certified Cost or Pricing Data \(OCT 2010\)](#)
- [FAR 12.211-15 Price Adjustment and Asset Reversion \(OCT 2010\)](#)
- [FAR 12.211-17 Waiver of Facilities Capital Cost of Money \(OCT 1997\)](#)
- [FAR 12.211-18 Extension or Adjustment of Plans for Payment and Benefits \(PMB\) Other Than Pensions \(JAN 2002\)](#)
- [FAR 12.211-19 Identification of Ownership Changes \(OCT 1987\)](#)
- [FAR 12.211-21 Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data - Initial Rules \(OCT 2010\)](#)
- [FAR 12.211-23 Limitations on Pass Through Charges \(OCT 2010\)](#)
- [FAR 12.211-7 Alternative Cost and Payment \(JAN 2011\) - Alternative IV \(JULY 2012\)](#)
- [FAR 12.214-4 Fixed Fee \(JAN 2011\)](#)
- [FAR 12.214-4 Notice of Price Evaluation Preference for HUBZone Small Business Concerns \(OCT 2010\) \(FAR 12.214-5 Utilization of Small Business Concerns \(OCT 2010\)\)](#)
- [FAR 12.214-9 Small Business Subcontracting Plan \(OCT 2010\)](#)
- [FAR 12.214-14 Limitations on Subcontracting \(NOV 2010\)](#)
- [FAR 12.214-15 Acquisition Strategy - Subcontracting Plan \(JAN 1999\)](#)
- [FAR 12.214-20 Post-Award Small Business Program Representation \(JAN 2010\)](#)
- [FAR 12.222-3 Contract Labor \(JAN 2002\) \(FAR 12.222-21 Prohibition of Segregated Facilities \(MAY 2010\) \(FAR 12.222-26 Equal Opportunity \(MAY 2010\)\)](#)
- [FAR 12.222-35 Equal Opportunity for Veterans \(JAN 2010\)](#)
- [FAR 12.222-36 Equal Opportunity for Workers with Disabilities \(JAN 2010\)](#)
- [FAR 12.222-37 Employment Reports on Veterans \(JAN 2010\)](#)
- [FAR 12.222-40 Identification of Employee Rights Under the National Labor Relations Act \(OCT 2010\)](#)
- [FAR 12.222-50 Combating Trafficking Persons \(MAR 2010\)](#)
- [FAR 12.222-54 Employment Eligibility Verification \(MAY 2010\)](#)
- [FAR 12.223-4 Drug-Free Workplace \(MAY 2002\)](#)
- [FAR 12.223-18 Encouraging Contractor Policies to Ban Text Messaging While Driving \(AUG 2011\)](#)
- [FAR 12.223-19 Restrictions on Certain Foreign Purchases \(JAN 2002\)](#)
- [FAR 12.227-1 Authorization and Consent \(OCT 2007\) - Alternative I \(MAY 1984\)](#)

# And some more...

- FAR 52.227-2 Notice and Assistance Regarding Patent and Copyright Infringement. (DEC 2007)
- FAR 52.228-7 Insurance - Liability to Third Persons. (MAR 1996)
- FAR 52.230-3 Disclosure and Consistency of Cost Accounting Practices. (MAY 2014)
- FAR 52.230-6 Administration of Cost Accounting Standards. (JUN 2010)
- FAR 52.232-9 Limitation on Withholding of Payments. (APR 1984)
- FAR 52.232-17 Interest. (MAY 2014)
- FAR 52.232-20 Limitation of Cost. (APR 1984)
- FAR 52.232-22 Limitation of Funds. (APR 1984)
- FAR 52.232-23 Assignment of Claims. (MAY 2014)
- FAR 52.232-25 Prompt payment. (JUL 2013) - Alternate I (FEB 2002)
- FAR 52.232-33 Payment by Electronic Funds Transfer - System for Award Management. (JUL 2013)
- FAR 52.232-39 Unenforceability of Unauthorized Obligations. (JUN 2013)
- FAR 52.232-40 Providing Accelerated Payments to Small Business Subcontractors. (DEC 2013)
- FAR 52.233-1 Disputes. (MAY 2014)
- FAR 52.233-3 Protest after Award. (AUG 1996) - Alternate I (JUN 1985)
- FAR 52.233-4 Applicable Law for Breach of Contract Claim. (OCT 2004)
- FAR 52.242-1 Notice of Intent to Disallow Costs. (APR 1984)
- FAR 52.242-3 Penalties for Unallowable Costs. (MAY 2014)
- FAR 52.242-4 Certification of Final Indirect Costs. (JAN 1997)
- FAR 52.242-13 Bankruptcy. (JUL 1995)
- FAR 52.243-2 Changes - Cost-Reimbursement. (AUG 1987) - Alternate V (APR 1984)
- FAR 52.244-2 Subcontracts. (OCT 2010)
- FAR 52.244-5 Competition in Subcontracting. (DEC 1996)
- FAR 52.245-1 Government Property. (APR 2012)
- FAR 52.245-1 Government Property. (APR 2012) - Alternate II (APR 2012)
- FAR 52.245-9 Use and Charges (APR 2012) Page 14
- FAR 52.246-23 Limitation of Liability. (FEB 1997)



# And even a few more...

- OFAC 252.201-700 Contracting Officer's Representative (OCT 1991)
- OFAC 252.209-700 Requirements Relating to Compensation of Former DoD Officials (SEP 2011)
- OFAC 252.203-701 Prohibition on permit acquisition of treasure or other defense related historic items (OCT 2008)
- OFAC 252.209-702 Requirement to Inform Employees of Whistleblower Rights (OCT 2013)
- OFAC 252.209-700 Disclosure of Information (Jan2 2013)
- OFAC 252.209-701 Control of Government Furnished Work Product (APR 1992)
- OFAC 252.209-706 Billing Instructions (OCT 2005)
- OFAC 252.204-701 Safeguarding of unclassified controlled technical information (NOV 2013)
- OFAC 252.209-704 Submitting with Firms that are Owned or Controlled by the Government of a Country that is State Sponsor of Terrorism (OCT 2014)
- OFAC 252.219-700 Item Identification and Valuation (OCT 2013)
- OFAC 252.219-707 Reporting of Government Furnished Property (AUG 2012)
- OFAC 252.215-700 Pricing Adjustments (OCT 2012)
- OFAC 252.215-702 Control of System Requirements (OCT 2012)
- OFAC 252.219-703 Small Business Subcontracting Plan (SBC Contract) (OCT 2014)
- OFAC 252.225-702 Preference for Certain Domestic Commodities (FEB 2013)
- OFAC 252.225-703 Duty-Free entry (NOV 2014)
- OFAC 252.225-708 Export Controlled Items (JAN 2012)
- OFAC 252.226-701 Utilization of Indian organizations, Indian-owned economic enterprises, and other non-Indian small businesses (SEP 2006)
- OFAC 252.227-703 Rights in Technical Data Noncommercial Items (FEB 2014)
- OFAC 252.227-704 Rights in noncommercial computer software and noncommercial computer software documentation (FEB 2014)
- OFAC 252.227-704 Rights in bid or proposal information (JAN 2011) (OFAC 252.227-705 Limitation on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends (MAY 2012))
- OFAC 252.227-707 Deferred Ordering of Technical Data or Computer Software (APR 1988)
- OFAC 252.227-700 Technical Data - Withholding of Payment (MAY 2000)
- OFAC 252.227-707 Validation of restrictive markings on technical data (JAN 2011)
- OFAC 252.227-708 Patent Rights - Ownership by the Contractor (Large Business) (JAN 2012) (OFAC 252.226-700 Supplemental Cost Principles (OCT 1991))
- OFAC 252.227-703 Electronic Submission of Payment Requests and Billing Reports (JAN 2012) (OFAC 252.227-700 Limit on Contract Payments (OCT 2004))
- OFAC 252.215-701 Acknowledgment of Support and Disclaimers (MAY 1992)
- OFAC 252.249-700 Contractor Business Systems (FEB 2012)
- OFAC 252.249-705 Accounting System Administration (FEB 2012)
- OFAC 252.249-702 Requests for equitable adjustment (OCT 2012)
- OFAC 252.249-701 Contractor purchasing system administration (MAY 2014)
- OFAC 252.245-701 Tagging, Labeling, and Marking of Government Furnished Property (MAY 2013) (OFAC 252.245-702 Reporting uses of Government Property (MAY 2013))
- OFAC 252.245-701 Contractor Property Management System Administration (APR 2012)
- OFAC 252.245-704 Reporting, Identification, and Disposal (MAY 2011)
- OFAC 252.246-700 Material Inspection and Receiving Report (MAY 2008)
- OFAC 252.247-703 Transportation of supplies by sea (MAY 2014)
- OFAC 252.247-704 Notification of Transportation of Supplies by Sea (MAY 2000)
- OFAC Deviation 252.201-700 Prohibition on Contracting with Entities that Require Certain Internal Confidentiality Agreements (EAWYTCN 2011-00481) (FEB 2011)

> Etc.

# STRUCTURE OF THE FAR

- Subchapters
  - Parts
    - Subparts
      - Sections
        - Subsections

# FAR Subchapters and Parts

- **Subchapter A (Parts 1-4) - General section**
- **Subchapter B (5-12) - Competition and Acquisition Planning**
- **Subchapter C (13- 18) - Contracting Methods and Contract Types**
- **Subchapter D (19-26) - Socioeconomic Programs**
- **Subchapter E (27-33) - General Contracting Requirements**
- **Subchapter F (34-41) - Special Categories of Contracting**
- **Subchapter G (42-51) - Contract Management**
- **Subchapter H (52 and 53) - Clauses and Forms**

# HOW TO MANEUVER THE FAR

52.227-11

- Look at first line of every single FAR clause – “As prescribed in [REFERENCE NUMBER]”
  - gives instructions as to when to use the clause
- Reverse engineer from the contract to the clause to the prescription reference keeping in mind the Statement of Work. Does this FAR apply to your situation?

# What does the process look like?

- Contractor flows down:

DFARS 252.227-7038 Patent Rights - Ownership by the Contractor (Large Business). (JUN 2012) .

- The RF o/b/o SUNY should receive:

FAR 52.227-11 - the Patent FAR/DFARS equivalent of Bayh-Dole is required to be flowed down to a university. The patent rights in this FAR match SUNY's IP policy.

- As prescribed in 27.303(b)(1), insert 52.227-11 where:

Shall include the substance of the Patent Rights-Ownership by the Contractor clause set forth at 52.227-11 of the Federal Acquisition Regulation (FAR), in all subcontracts for experimental, developmental, or research work to be performed by a small business concern or **nonprofit organization**; and..." The same clause defines nonprofit as, in part, a university.

# “self deleting” FARs

- Flow down of non-applicable FARs

# CHALLENGES WITH FARs

- FARs are not written in plain English. Many of the terms and phrases have a special meaning when used in the FAR different from the standard English meaning. Be sure to look up the definitions.
- Often, the first encounter with the contract and the accompanying flow down FARs are at contract execution time.

QUESTIONS?