

Recommendation 91: Require the Administrator of General Services and the Secretary of Defense to maintain the FAR and DFARS respectively, as electronic documents with references to the related statutes, Executive Orders, regulations, and policies, and with hyperlinks to Federal Register Notices.

Problem

The FAR, codified at Title 48 Code of Federal Regulations, provides the primary regulatory framework by which the federal government contracts for supplies and services and implements statutes, Executive Orders (EOs), regulations, policies, and Federal Register Notices (FRNs), established by organizations across the Federal government. DoD supplements the FAR as needed to accommodate DoD-specific statutes, policies, EOs, and FRNs in the DFARS. The FAR system, and consequently the FAR and DFARS documents, are necessarily complex because of the depth, breadth and intricacy of the acquisition policies and statutes implemented and the guidance needed to accommodate the diverse agencies and missions across federal government.

This complexity renders the FAR and DFARS challenging to navigate and understand by many of the government and industry personnel who are part of the acquisition team described in Section 1.102 of the FAR and are responsible for the requirements and acquisition processes that facilitate getting supplies and services to warfighters and support other federal missions. This situation has led to criticism by both public- and private-sector leaders and stakeholders that the structure and content of the FAR and DFARS impede both government and industry acquisition personnel and organizations from adequately understanding the complexity of acquisition and transactional processes. These commenters also contend that the inability to effectively navigate and understand the regulations prevents acquisition personnel from leveraging the flexibilities, methods, and authorities available to increase the speed of the acquisition process and encourage innovation, competition, and investment by the private sector.

Background

One of the two enumerated duties of the Section 809 Panel established in Section 809 of the FY 2016 NDAA was to

“review the acquisition regulations applicable to the Department of Defense with a view toward streamlining and improving the efficiency and effectiveness of the defense acquisition process and maintaining defense technology advantage.”

Each of the Section 809 Panel report volumes contains recommended changes to statutory and regulatory language in the FAR and DFARS. These recommended changes, as required by the FY 2016 NDAA, are based on thorough research and analyses of applicable existing FAR and DFARS language and related statutory requirements and language.

As part of its review of acquisition regulations, the Section 809 Panel developed a FAR and DFARS reference document that provides data on changes to the FAR and DFARS that have been implemented since the FAR was initially published as an FRN on September 19, 1983. This research approach resulted in a document with comments to each FAR and DFARS part and subpart that trace back to

and provide information on the FRNs that specify the changes made to the FAR and DFARS since September 1983.

As stated in FAR 1.102 (d), “The role of each member of the Acquisition Team is to exercise personal initiative and sound business judgment in providing the best value product or service to meet the customer’s needs.” FAR 1.102 (c) states, “The Acquisition Team consists of all participants in government acquisition including not only representatives of the technical, supply, and procurement communities but also the customers they serve, and the contractors who provide the products and services.” Members of the acquisition team need to understand the regulatory requirements stipulated in the FAR and DFARS, which requires more than simply reading the FAR and DFARS. It also requires knowledge of the history and requirements of the statutes, policies, EOs, and FRNs that form the basis of FAR and DFARS regulatory requirements.

In their current forms, the FAR and DFARS do not provide substantial detail on most FAR and DFARS requirements. This shortcoming contributes to challenges experienced by the acquisition workforce in navigating and understanding the FAR and DFARS. The research and reference document developed by the Section 809 Panel provides detailed reference information that makes it possible for someone—a contracting specialist or contracts administrator in government or industry, a policy analyst in government or industry, a new member of the acquisition workforce, or a student at the Defense Acquisition University—to quickly identify where regulatory and statutory changes have been made since 1983. With the comments in this reference document as a base source, users of the document can then access from the Internet copies of the FRNs that contain details on the origin of statutory or policy changes, the proposed and final rule language, and the public comments.

Discussion

The reference document produced by the Section 809 Panel will help government and industry acquisition team members better understand the FAR and DFARS, including the origins and basis for language and requirements, resulting in a better informed acquisition workforce. Having a more knowledgeable workforce will facilitate better communications between government and industry with fewer misunderstandings of FAR and DFARS requirements. In turn, both parties will be more likely to understand and appreciate each other’s concerns and incentives, which could result in more productive fact finding and negotiations, a faster contracting process, and reduced acquisition lead time. In addition to providing a tool that will contribute to a more knowledgeable workforce, this FAR/DFARS reference document can serve as a training resource for classroom, on-the-job, job-specific, and just-in-time training. It could also help demystify the FAR rulemaking process.

Both government and industry are striving to recruit and retain well educated, qualified, and motivated acquisition personnel. Incoming members of the acquisition workforce are likely familiar and comfortable with using Internet-based research and reference tools. They expect to have tools that provide quick access to information. Providing relevant and readily available tools that will contribute to their learning, professional development, and work performance can and should be resourced and leveraged to expeditiously increase their knowledge, maintain their interest, and successfully motivate their performance.

The current FAR and DFARS maintained by the FAR and DARS staffs do not include versions that provide information on the FRN origins of the FAR and DFARS language like the research document developed by the Section 809 Panel. Establishing and maintaining a FAR and a DFARS that provide references to the statutes, EOs, regulations, and policies, and hyperlinks to FRNs should be planned for, programed, and funded by the Secretary of Defense and the Administrator of General Services.

The hyperlinked capability noted in this recommendation is based on current technology. It is possible that future technology could provide other, better means of accomplishing the intent of this recommendation. The Administrator of General Services and the Secretary of Defense should employ whatever technology best accomplishes the goal of providing the FAR and DFARS as described above.

Conclusions

The complexity of the FAR system has resulted in FAR and DFARS documents that are challenging to navigate and understand for most government and industry acquisition team members involved in the requirements and acquisition processes. This situation has led to criticism by senior government and industry leaders that the system and the regulations themselves are impeding innovation and timely acquisition of critical supplies and services. This frustration has also led to increased use of other contractual arrangements that are not governed by the FAR and DFARS.

As part of the statutory requirement to review acquisition regulations applicable to DoD, the Section 809 Panel developed a research and reference document that provides information about the sources and basis for FAR and DFARS content since the FAR's issuance in 1983. This tool provides summary information on the FRNs that contain the background and rationale for FAR and DFARS content. This tool can be used by both government and industry acquisition workforce members to improve knowledge of the FAR/DFARS and consequently functioning of the acquisition system.

The Administrator of General Services should plan for and resource development and implementation of a FAR that includes references to the statutes, EOs, regulations, and policies, and hyperlinks to FRNs that establish the basis for the regulatory language and requirements included in the FAR. The Secretary of Defense should plan for and resource development and implementation of a DFARS that includes references to the statutes, EOs, regulations, and policies, and hyperlinks to FRNs that establish the basis for the regulatory language and requirements included in the DFARS. Deployment of such capabilities will support efforts to enhance the knowledge and capability of the acquisition workforce, establish appropriate buyer and seller relationships, and improve functioning of the acquisition system.

Implementation

Legislative Branch

- Require the Secretary of Defense to post and make available to the public the reference document for the FAR and DFARS compiled by the Section 809 Panel.
- Require the Secretary to develop and maintain a DFARS that includes references to the statutes, EOs, regulations, and policies, and hyperlinks to FRNs that establish the basis for the regulatory language and requirements included in the DFARS.

- Require the Administrator of General Services to develop and maintain a FAR, in a form consistent with the DFARS developed and employed by DoD, which includes references to the statutes, EOs, regulations, and policies, and hyperlinks to FRNs that establish the basis for the regulatory language and requirements included in the FAR.

Executive Branch

- There are no regulatory changes required for this recommendation.

Implications for Other Agencies

- There are no cross-agency implications for this recommendation.