



Application of the Federal Acquisition Regulations versus Agency Requirements, Department of Defense Instructions, Directives and Regulations

As they relate to Contract/Government
Property Management and Administration



Introduction

Following the completion of this training module, you should be able to:

- Identify the laws, statutes and regulations that apply to contractors and Government Property (GP)
- Identify the statutory and regulatory requirements that apply internally to Government vs. those made contractually binding upon contractor



Federal Property and Administrative Services Act of 1949

Federal Property And Administrative Services Act of 1949

As Amended (Pub. L. 152, Ch. 288, 63 Stat 377)

- Designed to increase the efficiency and economy of Federal Government operations with regard to the procurement, utilization and disposal of property
- Created the General Services Administration (GSA)
- Tasked GSA to promulgate regulations regarding the application of the law, the actions and requirements dealing with the procurement, utilization and disposal of property, i.e., Government property



The Federal Management Regulation (FMR)

The Federal Management Regulation (FMR)

- Successor regulation to the Federal Property Management Regulations (FPMR)
- It contains updated regulatory policies originally found in the FPMR (<http://www.gsa.gov/portal/category/21221>)
- Prescribes policies concerning property management and related administrative activities
- Issued by GSA to carry out the Administrator of General Services' functional responsibilities, as established by statutes, Executive orders, Presidential memoranda, Circulars and bulletins issued by the Office of Management and Budget (OMB), and other policy directives.
- Regulation is binding upon the Government
 - **NOT** directly binding upon contractors
 - Contractors are impacted by this regulation through the promulgation of OTHER regulations that become contractually binding



The Federal Acquisition Regulation (FAR)

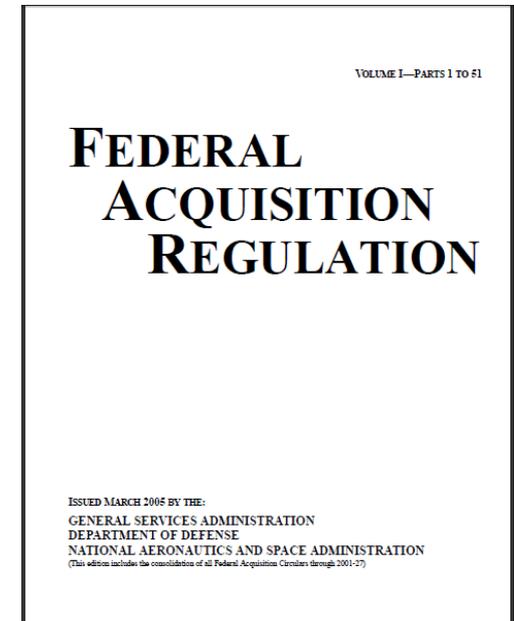
The Federal Acquisition Regulation (FAR)

- Principal set of rules in the Federal Acquisition Regulation System. The FAR is codified at Title 48 of the United States Code of Federal Regulations.
- Issued pursuant to the Office of Federal Procurement Policy Act of 1974 (Pub. L. 93-400 and Title 41 of the United States Code, Chapter 7).
- Statutory authority to issue and maintain the FAR resides with the Administrator of GSA, the Secretary of Defense, and the Administrator, NASA.



The Federal Acquisition Regulation (FAR)

- The FAR has parts that are policy and guidance to the Government
 - Some implement statutory requirements
 - Others implement regulatory requirements
- The FAR has parts that set forth requirements and clauses that are binding upon contractors awarded contracts under the FAR





The Federal Acquisition Regulation (FAR)

The FAR's primary parts and clauses dealing with GP in the possession of contractors are:

- **FAR Part 45:** entitled "Government Property"
- **FAR Part 52:** sets forth a myriad of clauses for appropriate use within Federal Contracts. The GP clauses are found at:

FAR 52.245-1

- "Government Property"

FAR 52.245-2

- "Government Property Installation Operation Services"

FAR 52.245-9

- "Use and Charges"

NOTE: there are **NUMEROUS** other related clauses that impact GP!!



The Federal Acquisition Regulation (FAR)

It is critical for Government personnel to understand the distinction as to which impact the Government or contractors:

- FAR Parts provide guidance, direction and requirements imposed upon the Government
- vs.
- Clauses are contractually binding upon the contractor (and the Government)

Why are clauses binding on both the contractor and the Government? The contract says both what the contractor will do and what the Government promises to do. For example, if the Government promises to provide property, it must do so; the contractor in turn agrees to the use of that property and all the provisions of the clause that goes with it.



The Federal Acquisition Regulation (FAR)

To illustrate:

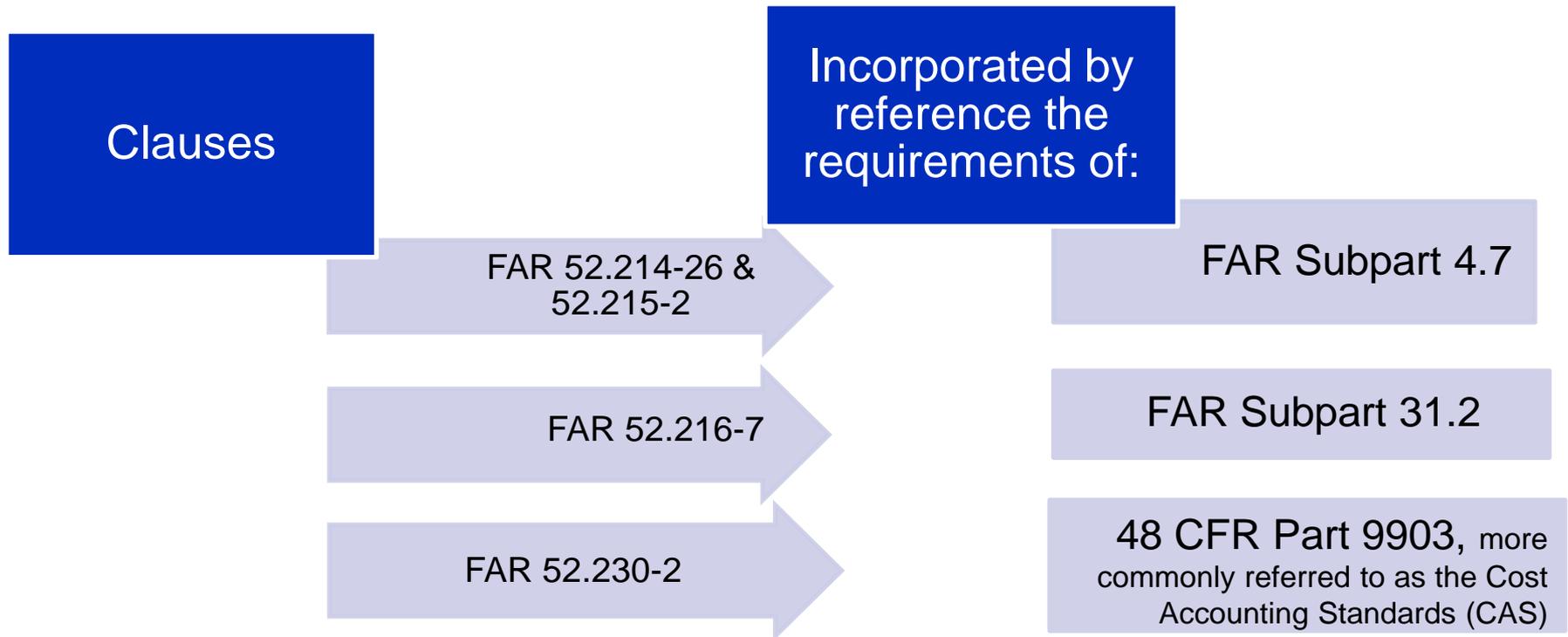
FAR	
Policy and Regulation Binding Upon the Government	FAR GP <u>CLAUSES</u> Contractually Binding Upon the Contractor (And the Government) When Incorporated Into a Contract
FAR PART 45	FAR 52.245-1
	FAR 52.245-2
	FAR 52.245-9

NOTE: FAR Part 45 is policy and regulation binding upon the Government!



The Federal Acquisition Regulation (FAR)

- Though the protocol is for the Government to use clauses from FAR Part 52 for incorporation into a contract – there are situations where FAR Subparts are incorporated by reference and become a contractual requirement imposed upon the contractor.
 - **For example:**





The Federal Acquisition Regulation (FAR)

Government Personnel need to understand the distinction between:

- FAR parts and subparts that are guidance and direction to the Government and FAR Clauses, and
- FAR Parts and Subparts incorporated by Reference, that are Contractually binding upon the contractor and the Government.



Questions?



The Federal Acquisition Regulation (FAR)

- The FAR, Subpart 1.3, allows for supplementation by Government agencies. The Department of Defense is one such agency that has created a supplement, i.e., the Department of Defense Federal Acquisition Regulation Supplement – the DFARS.



The DFARS and Contract/Government Property

DFARS parts and clauses on Contract/GP

- Similar arrangement as the FAR
- DFARS Part 245 – Government Property: provides policy and guidance to the Government
- DFARS 252.245 – has five (5) clauses binding upon the contractor when properly incorporated into a contract including:





The DFARS and Contract/Government Property

Procedures, Guidance and Information (PGIs)

- DFARS goes one step further and provides additional guidance
- Procedures, guidance and information directed at the Government
- NOT contractually binding upon the contractor
- Current PGIs for Contract/GP are found at:
 - PGI 245.1: GENERAL
 - PGI 245.2: SOLICITATION AND EVALUATION PROCEDURES
 - PGI 245.4: TITLE TO GOVERNMENT PROPERTY and
 - PGI 245.6: REPORTING, REUTILIZATION, AND DISPOSAL



The DFARS and Contract/Government Property

To Reiterate:

Government personnel need to be AWARE of the segregation of requirements:

FAR and DFARS Parts and Subparts

- Is direction to the Government

FAR and DFARS Clauses (including FAR/DFARS Subparts incorporated by reference)

- Are contractually binding upon the CONTRACTOR and the GOVERNMENT



Applicability of the FAR and DFARS

Summary – FAR & DFARS Parts and Clauses

Policy and Regulation Binding Upon the Government	GP <u>CLAUSES</u> Contractually Binding Upon the Contractor (And the Government) When Incorporated Into a Contract
FAR	
FAR PART 45	FAR 52.245-1
	FAR 52.245-2
	FAR 52.245-9
DFARS	
DFARS Part 245	
DFARS PGIs at	DFARS 252.245-7000
PGI 245.1	DFARS 252.245-7001
PGI 245.2	DFARS 252.245-7002
PGI 245.4	DFARS 252.245-7003
PGI 245.6	DFARS 252.245-7004



Other Activity Requirements For Contract/Government Property

- Numerous DoD Activities have created further guidance regarding the management of Contract/Government Property in the possession of Contractors. For example:
 - The Defense Contract Management Agency (DCMA) has DCMA Instruction 124 entitled, “Contract Property Management.”
 - <http://www.dcma.mil/policy/124/DCMA-INST-124.pdf>
 - The Department of the Army has AR 735-5 entitled, “Property Accountability Policies.”
 - http://www.apd.army.mil/pdf/files/r735_5.pdf
- **CRITICAL** for Government personnel to be **AWARE** these are guidance and direction to the **GOVERNMENT**
- **NOT** contractually binding upon the Contractor



Other Activity Requirements For Contract/Government Property

Is it Appropriate to Incorporate Component Level Regulations into Contract?

Using AR 735-5 as an Example:

- AR 735-5 directs the ARMY responsible command or individual to do certain tasks. The FAR Government property clauses requires the contractor, based upon the stated minimum requirements, to establish their own systems and methodologies for managing GP accountable under their contracts.
- AR 735-5 requires Joint Inventories and Annual Inventories, the FAR requires Periodic Inventories based upon the contractor's use of Voluntary Consensus Standards or their established practices.

The Two Problems:

- (1) Conflict with the FAR
- (2) Have not gone through the required public comment process to make binding on a contractor



Additional Documents

Impacting Contract/Government Property



The Defense Acquisition System

The DoD 5000 Series of Instructions and Regulations

- The cornerstones of the Defense Acquisition System for acquiring weapon systems, automated information systems and services
- Within DoD 5000.02 there is guidance and direction to the GOVERNMENT in regard to Contract/GP
 - http://www.dtic.mil/whs/directives/corres/pdf/500002_interim.pdf

NOTE: This is a requirement placed upon the **GOVERNMENT! NOT** contractually binding upon the contractor!



The Defense Acquisition System

Interim DoD 5000.02, dated November 25, 2013

- Enclosure 6 provides guidance to the Program Manager's (PM) responsibilities
- The PM (among other requirements) will address the Government Property accountability system!

NOTE: This is a requirement placed upon the **GOVERNMENT! NOT** contractually binding upon the contractor!



DoD Instruction 5000.64, “Accountability and Management of DoD Equipment and Other Accountable Property”

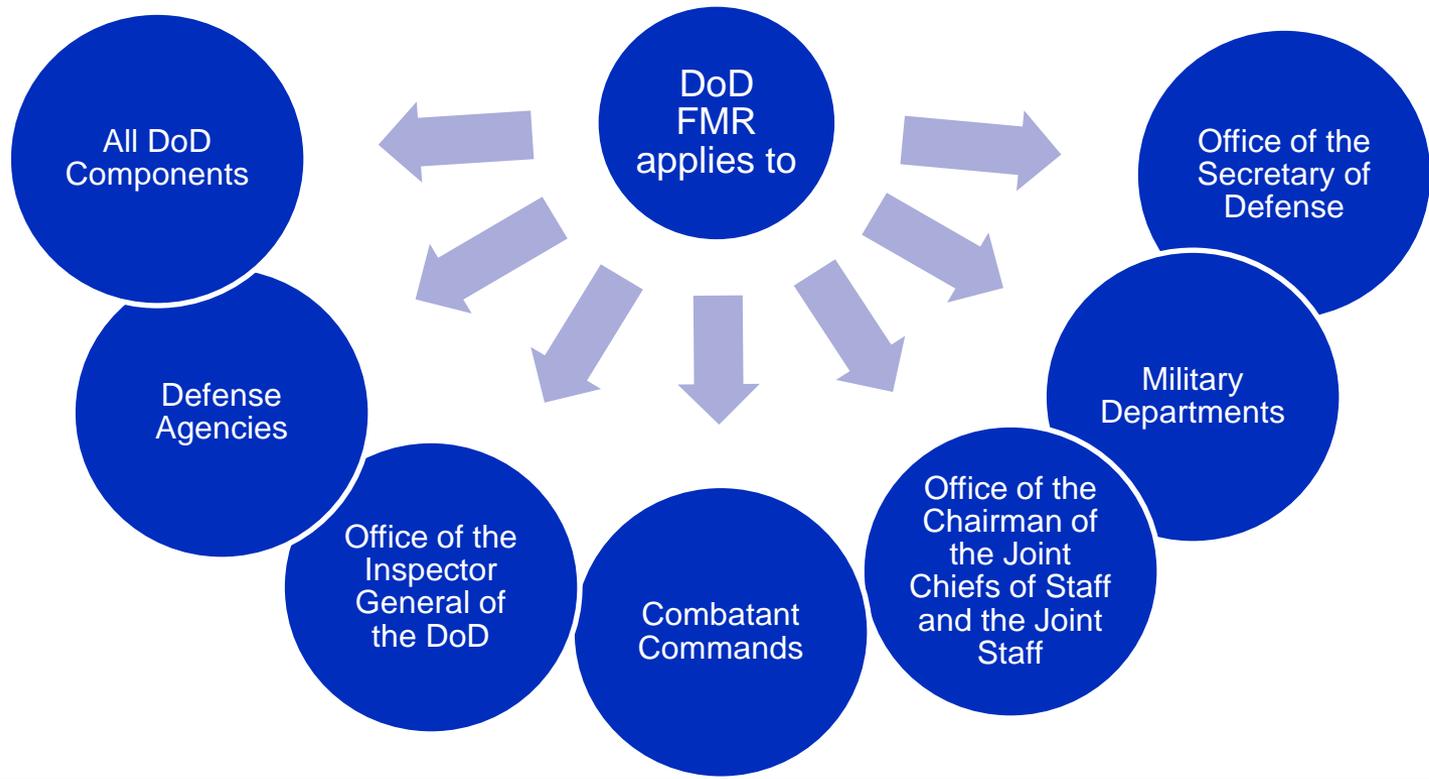
- Purpose:
 - Establishes policy and procedures to comply with title 40 of the United States Code (U.S.C) and section 901 of title 31, U.S.C.(References (c) and (d))
 - Outlines requirements that reflect the accountability perspective of property management, which supports the lifecycle management of items to include the documentation of lifecycle events and transactions
- Directed at and binding upon the Government – NOT the Contractor



DoD 7000.14-R, "DoD Financial Management Regulation," as amended

DoD Financial Management Regulation (FMR)

- Provides for the financial management and financial accounting for all Government Property



NOTICE: This document and its requirements are directed at the Government, NOT contractors, in possession of Government/Contract Property!



Summary of Applicability

REGULATION	APPLICABILITY
Federal Management Regulations (FMR)	Regulation binding upon the Government
Federal Acquisition Regulations (FAR) PARTS	Generally applicable to Government
	MAY be applicable to Contractor if Incorporated by Reference in a FAR CLAUSE, e.g., FAR Subpart 4.7 when FAR 52.214-26 or 52.215-2 are incorporated into contract
FAR CLAUSES	Binding upon a Contractor if incorporated into contract. Also, Binding upon Government when in the contract, e.g., FAR 52.245-1.
AGENCY FAR SUPPLEMENTS	Same as FAR Parts
	Same as FAR Clauses
DOD Regulations, e.g., DoD 5000.02, DoDI 5000.64, DoD 7000.14-R, etc.	Binding upon the Government, i.e., Department of Defense
Departmental Regulations, e.g., DCMA Instruction 124, AR 735-5, etc.	Binding upon the Government, i.e., the issuing Agency or Department – Defense Contract Management Agency (DCMA) or the Department of the Army



Summary

To summarize, it is critical to understand:

The FAR, DFARS and Component regulations and the specific clauses affecting Government Property

The parts and clauses that are binding upon contractors and impacts the Government



Resources

Resources Used:

FAR Guidance

- <http://www.acquisition.gov/far/>

DFARS Guidance

- <http://farsite.hill.af.mil/VFDFARA.HTM>

Government Furnished Property

- http://www.acq.osd.mil/pepolicy/accountability/accountability_GFP.html

DPAP Procurement

- <http://www.acq.osd.mil/dpap/index.html>

DFARS PGI

- <http://www.acq.osd.mil/dpap/dars/dfars/changenotice/2014/20140311/pgi-changes-20140311.pdf>

FMR

- <http://comptroller.defense.gov/fmr.aspx>

DoDi 5000.02

- http://www.dtic.mil/whs/directives/corres/pdf/500002_interim.pdf