

**A BRIEF REFERENCE GUIDE**

**TO**

**AGILITIES, FLEXIBILITIES, AND SIMPLIFICATIONS**

**WITHIN**

***THE FEDERAL ACQUISITION REGULATION***

**AND**

***DOD 5000.02, OPERATION OF THE  
DEFENSE ACQUISITION SYSTEM***

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## **INTRODUCTION**

Ignorance of the FAR is a greater barrier to government innovation than the FAR itself. To help foster greater innovation, speed, and effectiveness in federal contracting efforts, the following pages present selected excerpts (emphasis added) from the FAR and *DoD Instruction 5000.02, Operation of the Defense Acquisition System*. Accompanying each excerpt is a brief commentary on potential ways to interpret and implement these regulations, as well as summaries of the underlying principles.

This document is not a comprehensive overview of the entire body of federal acquisition policy and regulation. Instead, it aims to highlight specific portions from two key regulations which describe the simplifications, agilities, flexibilities, and alternatives available to acquisition professionals.

Note that this document is not an official opinion and does not constitute legal or contractual advice. Instead, this informal analysis provides an easy starting point for further discussion. The goal is to equip program managers, engineers, and other acquisition practitioners from government and industry alike with an accessible quick reference guide to some of the more useful and empowering portions of federal acquisition policy.

# THE FEDERAL ACQUISITION REGULATION

## FAR 1.102-2(b)(2) FAR System Performance Standards

(2) The System must provide uniformity where it contributes to efficiency or where fairness or predictability is essential. **The System should also, however, encourage innovation, and local adaptation where uniformity is not essential.**

In this introductory statement, the FAR makes it clear that “the System” is supposed to encourage innovation and variation. Not just tolerate or allow it – the word they use is “encourage.” It goes on to acknowledge that uniformity in how we interpret, implement, or execute the FAR’s guidance is occasionally necessary in the name of efficiency, fairness, or predictability, but **the intent is for the FAR to adapt to local needs, not the other way around.** Pretty amazing, right?

This is an important point to understand, as it sets the foundation for how the FAR should be interpreted and applied. The FAR is supposed to foster efficiency, fairness, and predictability, as well as innovation and adaptability to different contexts. These are not mutually exclusive objectives. In fact, **adapting to local needs actually makes the FAR fairer and more efficient.**

In contrast, insisting that each federal agency (or each division within any given agency) behave exactly like every other agency or division tends to drive inefficiency into the process. **And that is not what the FAR says to do.**

### **FAR 13.003 Policy.**

(a) Agencies shall **use simplified acquisition procedures to the maximum extent practicable** for all purchases of supplies or services not exceeding the simplified acquisition threshold

Despite its reputation for complexity—or perhaps because of it—the FAR actually contains an explicit preference for using simplified procedures. **These simpler approaches do not merely exist. They are actually the preferred default** and should be used “to the maximum extent practicable.” Go ahead and take a moment to let that sink in.

The underlying principle—that **simpler procedures are available, effective, and preferred**—is an important one to keep in mind. Extremely high levels of process complexity are neither inevitable nor desirable, and are certainly not required by the FAR.

Acquisition programs are full of opportunities and decision points where people get to choose between simple and complex alternatives. These alternatives are often stark and obvious, but while the FAR has an express preference for simplicity, many people feel compelled to adopt the more complicated approach due to organizational inertia or “the way we always do it around here.” This is not necessary, and **acquisition professionals who opt for a simpler approach should know they do so with the full support of the FAR.**

#### **FAR 15.306(d)(4)**

This section encourages the government to “suggest to offerors that have exceeded any mandatory minimums (in ways that are not integral to the design), that **their proposals would be more competitive if the excesses were removed** and the offered price decreased.”

In yet another statement favoring simplicity, this FAR paragraph addresses the pre-award/source selection phase of activity. When evaluating an over-engineered proposal or one that exceeds minimums unnecessarily, **the government’s source selection team is encouraged to provide direct feedback to the offeror** and to suggest that their proposal would be more competitive if it was scaled down.

Source selection teams should neither scoff at nor pursue an expensive, over-engineered proposal that aims to deliver a Gucci solution to an every-day requirement. Instead, the FAR makes it clear that **it is in the government’s best interest to provide feedback to such offerors and to invite them to simplify their proposals.**

The underlying principle is that an **over-reaching proposal drives up cost and reduces the quality** of the award competition. This is important for government and industry personnel alike to understand. The other principle is that **the government is free to tell offerors how to make their proposals more competitive, even in the early phase of the source selection.** In fact, the FAR encourages them to do so.

This communication between evaluators and bidders needs to be accomplished in accordance with the overall guidelines for source selection communications and should not be used to give anyone an unfair advantage (see the remainder of FAR 15.306), but the objective of these discussions, as explained in 15.306(d)(2) “... is to

maximize the Government’s ability to obtain best value ...” In order to obtain best value, the government can invite offerors to remove excesses from within their proposals. This allows each offeror to put their best foot forward and fosters genuine competition between the best of breed from all contenders.

**FAR 18.101 Emergency Acquisitions, General.**

The FAR includes many acquisition flexibilities that are available to the contracting officer when certain conditions are met. These **acquisition flexibilities do not require an emergency declaration** or designation of contingency operation.

In addition to having a preference for simplicity, **the FAR is also strongly in favor of flexibility**. The previous sentence may come as a surprise to people who have only seen the FAR subjected to strict interpretations, but the regulation makes it quite clear that **flexibilities are indeed present, available, and preferred**.

The FAR does not intend these flexibilities to be seldom-used contingencies or reluctantly authorized departures from the norm. Instead, it explicitly encourages their use as a matter of course. It is worth noting that while many of these flexibilities are described in Part 18 (*Emergency Acquisitions*), their use is *not* limited to formally declared emergencies or other special occasions. In fact, they are available to any contracting officer when “certain conditions” are met.

The remainder of Sub-Part 18.1 identifies a number of specific flexibilities relevant to various situations and explains those conditions.

## **FAR 35.002 Research & Development Contracting, General.**

The contracting process shall be used to encourage the best sources from the scientific and industrial community to become involved in the program and must provide an environment in which the work can be pursued with **reasonable flexibility and minimum administrative burden.**

Here we again see the FAR expressing a preference for flexibility, but now we see the added emphasis on reducing the administrative burden. It may be fair to say the FAR is the very definition of “administrative burden;” we should also recognize that **the FAR goes to considerable length to minimize and reduce the administrative burden on acquisition programs.**

While this particular quote is from the FAR’s R&D subpart, variations on that phrase are found in several other places throughout the regulation (for example, Subpart 16.202-1—Fixed-Price Contracts, or 4.1200 – Representations and Certifications). The general principle of reducing the administrative burden can be applied quite broadly.

Therefore, **any enterprising acquisition professionals who seek to reduce the administrative burden for their particular project will find the FAR is on their side.** Attempts to maintain or increase the burden, on the other hand, are actually contrary to the FAR’s direction.

### **FAR 35.008 Evaluation for award.**

(a) Generally, an R&D contract should be awarded to that organization, including any educational institution, that proposes the best ideas or concepts and has the highest competence in the specific field of science or technology involved. However, **an award should not be made to obtain capabilities that exceed those needed for successful performance of the work.**

This section echoes FAR 15.306(d)(4) in its preference for a restrained approach to contract award. That is, an offeror whose proposed solution exceeds the government's need should not be viewed more favorably than an offeror whose proposed solution merely meets the need. Again, this is an important principle for government and industry alike to understand.

The basic principle is that **the government should avoid paying a premium for capabilities it does not really require.** Source selection decisions should not chase after the latest shiny object, which tends to cost more and take longer, but instead should take a more restrained approach.

This subpart brings to mind the proverbial 70% solution, widely held up as preferable to the 100% alternative. The reason 70% beats 100% is that the more modest solution tends to cost considerably less, tends to be available much sooner, and tends to be a better fit with actual needs. The so-called 100% solution, in contrast, tends to be overkill, late-to-need, and overpriced.

The Department of Defense is quite specific on this topic. A memo signed on January 23, 2013 by ADM James Winnefeld, the vice chairman of the Joint Chiefs of



Staff and chairman of the Joint Requirements Oversight Council, encourages program managers to request requirement relief whenever requirements (specifically Key Performance Parameters, or KPPs) “appear out of line with an appropriate cost-benefit analysis.” The memo, titled [Key Performance Parameter Relief](#), states:

*KPP relief should be considered especially appropriate in cases where significant cost savings may be achieved with marginal impact to operational capability (i.e., spending 15 percent of a program’s budget to get the last 3 percent of KPP performance)...*

This is essentially identical to the principle in FAR 35.008. If the last 3 percent of capability is not really necessary and is consuming a disproportionate amount of the resources, then a more modest approach is clearly called for.

### **FAR 39.103 Modular contracting.**

Modular contracting is intended to reduce program risk and to incentivize contractor performance while meeting the government’s need for timely access to rapidly changing technology. Consistent with the agency’s information technology architecture, **agencies should, to the maximum extent practicable, use modular contracting to acquire major systems (see 2.101) of information technology.** Agencies may also use modular contracting to acquire non-major systems of information technology.

The concept of modular contracting involves dividing large efforts into a series of smaller efforts. This can be done more often than it is done, and **the FAR establishes an explicit preference for modular contracting.**

While major information technology systems often appear monolithic and indivisible, a closer inspection often reveals hidden seams and opportunities to chunk, divide, and sub-divide the effort. **The FAR could not be clearer in its preference for reducing large IT systems into a series of smaller systems.**

The specific application of modular contracting in the FAR is for information technology, but the practice can often be applied on non-IT systems as well. **Not every program can be developed using this method, but modular contracting is clearly the default, preferred approach.**

Organizations that want to use a non-modular approach to deliver a big, expensive, complex system should be required to justify their preference and gain special authorization. Those that want to break a large effort into a modular series of smaller projects can look to this section of the FAR for support and should know they are doing precisely what they should be doing.

This has significant implications for the proponents of Agile methodologies in particular, because many of the benefits described in the box below speak directly to Agile practices.

(b) When using modular contracting, an acquisition of a system of information technology may be **divided into several smaller acquisition increments** that—

- (1) Are **easier to manage individually** than would be possible in one comprehensive acquisition;
- (2) Address complex information technology objectives incrementally in order to **enhance the likelihood of achieving workable systems** or solutions for attainment of those objectives;

(3) Provide for delivery, implementation, and testing of workable systems or solutions in discrete increments, each of which comprises a **system or solution that is not dependent on any subsequent increment in order to perform its principal functions**;

(4) Provide an opportunity for subsequent increments **to take advantage of any evolution in technology or needs** that occur during implementation and use of the earlier increments; and

(5) Reduce risk of potential adverse consequences on the overall project by **isolating and avoiding custom-designed components** of the system.

Having established the benefits of modularizing large IT systems, the FAR goes on to explain how to define each module and to illuminate what these increments should look like:

(c) The characteristics of an increment may vary depending upon the type of information technology being acquired and the nature of the system being developed. The following factors may be considered:

(1) To promote compatibility, the information technology acquired through modular contracting for each increment should **comply with common or commercially acceptable information technology standards** when available and appropriate, and shall conform to the agency's master information technology architecture.

(2) The **performance requirements of each increment should be consistent with the performance requirements of the completed, overall system** within which the information technology will function and should address interface requirements with succeeding increments.

The key to successful modular design, in IT or other categories, is to have a well-defined architecture, complete with standard interfaces. This helps prevent optimization of a part at the expense of the whole, and ensures that new modules are compatible with the existing modules. And it is precisely what the FAR proposes.

The formal systems engineering principle of “high cohesion, low coupling” applies here as well. This principle ensures that changes to one module do not cause complexity-adding ripples throughout the rest of the system, and helps to reduce the cost, delay, and complexity of upgrading or replacing older modules.

Finally, this section addresses the importance of ensuring the performance requirements of each part are consistent with the performance of the whole. Mismatched performance can produce a fragile architecture rather than a robust one, as one segment produces more information than another can accommodate, or one piece operates at a slower rhythm than the rest.

(d) For each increment, contracting officers shall choose an appropriate contracting technique that facilitates the acquisition of subsequent increments. Pursuant to Parts 16 and 17 of the Federal Acquisition Regulation, contracting officers shall select the contract type and method appropriate to the circumstances (e.g., indefinite delivery, indefinite quantity contracts, single contract with options, successive contracts, multiple awards, task order contracts).

Contract(s) shall be structured to ensure that **the Government is not required to procure additional increments.**

This section is **yet another FAR paean to flexibility**. It points out that contracting officers have a number of contract types and methods to choose from. It lists them. It then encourages adopting and structuring the contract in such a way as to ensure the government maintains the flexibility to stop procurement between each increment. That is, the **contract structure should provide the opportunity—but not the obligation—to proceed from one module to the next**.

Maintaining this opportunity is a simple matter of including the appropriate contract clause. The idea of modularity means the overall effort is severable. While the initial plan may envision a series of 10 increments, we may discover that the requirement is satisfied after only 6 or 7. In such cases, we can declare success and call it a day. This is just one of the many benefits of the modular approach.

(e) To avoid obsolescence, a modular contract for information technology should, to the maximum extent practicable, **be awarded within 180 days** after the date on which the solicitation is issued.

**If award cannot be made within 180 days, agencies should consider cancellation** of the solicitation in accordance with 14.209 or 15.206(e).

To the maximum extent practicable, **deliveries under the contract should be scheduled to occur within 18 months after issuance of the solicitation**.

Information technology is changing at a terrific pace, and it shows no signs of slowing down. Accordingly, **the FAR encourages setting firm deadlines for both contract award and solution delivery** to reduce the likelihood of pointlessly delivering yesterday's technology tomorrow. In fact, the FAR suggests that **delays justify cancellation**. If we cannot do it in 180 days, we should not do it.

## **DoD Instruction 5000.02**

***Released January 7, 2015***

*While the Pentagon is subject to the FAR, it also has its own set of instructions on how to run an acquisition program: DoD Instruction 5000.02. This instruction is intended to complement the FAR and to provide military-specific guidance for the unique demands and challenges associated with defense-related technologies and services.*

*Like the FAR, 5000.02 can be interpreted and implemented in a variety of ways. Also like the FAR, the text itself provides instructions on how it is supposed to be interpreted: with an eye to tailoring, flexibility, innovation, and speed. The following pages provide a small number of excerpts intended to point defense acquisition personnel towards some of the opportunities and flexibilities inherent in the Pentagon's acquisition system.*

### **5.a.(2) Procedures – Overview**

The structure of a DoD acquisition program and the procedures used should be **tailored as much as possible** to the characteristics of the product being acquired, and to the totality of circumstances associated with the program including operational urgency and risk factors. (DoD 5000.02 page 2)

There are two approaches to tailoring a policy or procedure. One is to maintain uniformity as a general rule and only tailor the procedure when necessary. Under this approach, the default answer to a tailoring request is *No*, and the burden of proof is on the person asking for the waiver or alternative path. The requestor must

provide a strong and compelling justification for why they should be allowed to deviate from the standard procedure. **This is not consistent with DoD 5000.02.**

The other approach is to tailor as much as possible, which is what 5000.02 says to do. Accordingly, tailoring should be the standard procedure and **the default answer to a tailoring request should be Yes.** Under a “tailor as much as possible” framework, there must be a strong and compelling reason to enforce uniformity. The burden of proof is on the person who seeks to deny the request rather than the one making the request. **This is the preferred approach, according to DoD 5000.02.**

(b) When there is a strong threat-based or operationally driven need to field a capability solution in the shortest time, **MDAs are authorized to implement streamlined procedures designed to accelerate acquisition system responsiveness.** (DoD 5000.02 page 2)

When speed is needed, Milestone Decision Authorities are explicitly allowed to streamline and accelerate the process. This is an important authority for program offices to bear in mind, because they often have direct awareness of the operational need and thus are in a position to make the case for shortening the delivery timeline.

A program office must ensure they have a solid understanding of the user’s time-to-need, and should be diligent to convey that information up the chain to the MDA. If the timeline is short, this information should be accompanied with a specific request to streamline the procedure.

## 4 – Program Decision Reviews and Milestones

(e) **Issues should be resolved at the lowest level possible.** When an issue cannot be resolved quickly at a lower level, the issue will be submitted to the MDA with complete and objective data necessary to support a decision (DoD 5000.02 page 3)

In an echo of Peter Drucker’s recommendation that “decisions should be made at the lowest possible level and as close to the action as possible,” 5000.02 establishes a clear preference for resolving issues at the lowest level possible. This is important for people at all levels of the organization to understand.

(f) The documents prepared in support of the decision process (e.g., Acquisition Strategy, Systems Engineering Plan (SEP), Test and Evaluation Master Plan (TEMP), Life-Cycle Sustainment Plan (LCSP)) **should generally not be prepared solely for staff review and approval, but be intended primarily for use within the program as planning and management tools** that are highly specific to the program and tailored to meet program needs. (DoD 5000.02 page 4)

This paragraph on program decision reviews shines a light on some of the tension inherent in many acquisition programs. Program offices are required to produce a large stack of documentation at various phases of the decision process, but 5000.02 explains that **the primary audience for these documents is the program office itself**, not the various staffs and functions who review the documents.

That is, while senior executives and functional experts review and approve the various planning documents, securing approval is not the sole—or even the primary—reason for producing them.



## Defense Acquisition Program Models

The instruction provides several tailorable models for acquisition programs, and the third is named *Incrementally Deployed Software Intensive Program*. While this is distinct from the FAR's "modular contracting," it shares many of the same practices and benefits.

Specifically, this model involves breaking a large effort into an iterative series of smaller efforts, each of which provides a fraction of the overall capability. It focuses on rapidly delivering valuable, working software on a short timeline, then using the lessons from the earlier phases to shape activities in subsequent phases.

This model is distinguished from the previous model by the **rapid delivery of capability** through multiple acquisition increments, each of which provides part of the overall required program capability. Each increment may have several limited deployments; each deployment will result from a specific build and provide the user with a mature and tested sub-element of the overall incremental capability.

**Several builds and deployments will typically be necessary to satisfy approved requirements for an increment of capability.** The identification and development of technical solutions necessary for follow-on capability increments have some degree of concurrency, allowing subsequent increments to be initiated and executed more rapidly. (DoD 5000.02 page 11)

The goal is to use speed to foster learning. The point is that the Instruction provides a roadmap for doing exactly that.

## AFFORDABILITY ANALYSIS & INVESTMENT CONSTRAINTS

### 3 – Lifecycle Affordability Analysis, 3.e (3)

The **metrics used for MDA-approved affordability constraints on procurement and sustainment costs may be tailored** to the type of acquisition and the specific circumstances of a given program. In addition to capability requirements tradeoffs approved by the requirements validation authority; prudent investments in research, development, and test and evaluation; **innovative acquisition strategies; and incentives to reduce costs can be used** to ensure that affordability constraints are achieved. (DoD 5000.02 Enclosure 8, page 124)

Once again, we find an express preference for flexibility and tailoring, this time in the areas of metrics, strategies, and incentives. That is, **5000.02 does not insist on every project conforming to a uniform approach**. Instead, it grants authority for different programs to use different metrics, to adopt innovative acquisition strategies, and to provide a variety of incentives to reduce costs.

## **CONCLUSION**

Regulations do not interpret themselves.

It is up to human beings to read, understand, and apply the regulations. Fortunately, both the FAR and DoDI 5000.02 contain guidance about how they are intended to be interpreted and applied—with a preference for adaptability instead of uniformity, a preference for simplicity, and a preference for minimizing the administrative burden rather than expanding it.

These policies contain many explicit statements in favor of flexibility, agility, and innovation, many of which are described in this document. Widespread familiarity with such statements can help increase the efficiency and effectiveness of government acquisition programs.

It is hoped that this brief primer helps equip acquisition professionals with the policy support necessary to reduce the cost, time, and complexity of their projects.

## **About Dan Ward Consulting LLC**

Dan helps government and corporate clients manage complexity and innovate more effectively. He is passionate about leading small teams and helping shepherd the development of new technology programs.

Dan is the author of [FIRE: How Fast, Inexpensive, Restrained, and Elegant Methods Ignite Innovation](#) (HarperBusiness, 2014), and [The Simplicity Cycle: A Field Guide To Making Things Better Without Making Them Worse](#) (HarperBusiness, 2015).

Prior to launching Dan Ward Consulting, Dan served in the US Air Force as an acquisitions officer for over 20 years, retiring at the rank of Lieutenant Colonel. He holds three engineering degrees and is certified Level III in both Program Management (PM) and Systems Planning, Research, Development, and Engineering (SPRDE). He is a Cybersecurity Fellow with the New America Foundation as well a Senior Associate Fellow with the British Institute for Statecraft.

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