



DFARS - 2021

Defense

Federal Acquisition

Regulation Supplement



Complimentary Webinar Series

JSchaus & Associates – Washington, DC – hello@JenniferSchaus.com



About The Series

- Complimentary Webinar Series
- Every Wednesday at 12pm EST
- Recorded and posted on our website and YouTube Channel
- Speakers are attorneys, consultants, subject matter experts in defense contracting



**National Veteran
Small Business
Coalition**

CELEBRATING
10
YEARS

The National Veteran Small Business Coalition (NVSBC)

is the largest non-profit trade association in the country representing veteran and service-disabled veteran-owned small business in the federal marketplace as prime and subcontractors. NVSBC provides networking, match-making, coaching, and training opportunities for members.

Please visit: www.nvsbc.org



Helping business do business with government

- ✓ Full training calendar: virginiaptac.org & [useful links](#)
- ✓ Register for free counseling: <https://virginiaptac.org/services/counseling/>
- ✓ Your “one stop” shop for Government Contracting assistance
- ✓ Reach us at ptac@gmu.edu or 703-277-7750

This procurement technical assistance center is funded in part through a cooperative agreement with the [Defense Logistics Agency](#).

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Set-Aside ALERT

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Set-Aside Alert provides up-to-date news, information and opportunities for **small business federal contractors**. Our daily Opportunities Alerts assure you won't miss important **Sources Sought** and **Solicitation announcements**, providing details so you can jump on the hot ones. Every two weeks we deliver concise breaking news, events, regulations, and **teaming opportunities**.



Tom Johnson, Publisher
TJohnson@SetAsideAlert.com



GovCon Council Meetings

3rd Tuesday of the Month at 8 a.m.

novab2g.restonchamber.org | restonchamber.org

aliciaf@restonchamber.org

JENNIFER SCHAUS



JSchaus & Associates – Washington, DC – hello@JenniferSchaus.com

Judy Bradt, CEO



The Art Of Human Connection In The Federal Arena

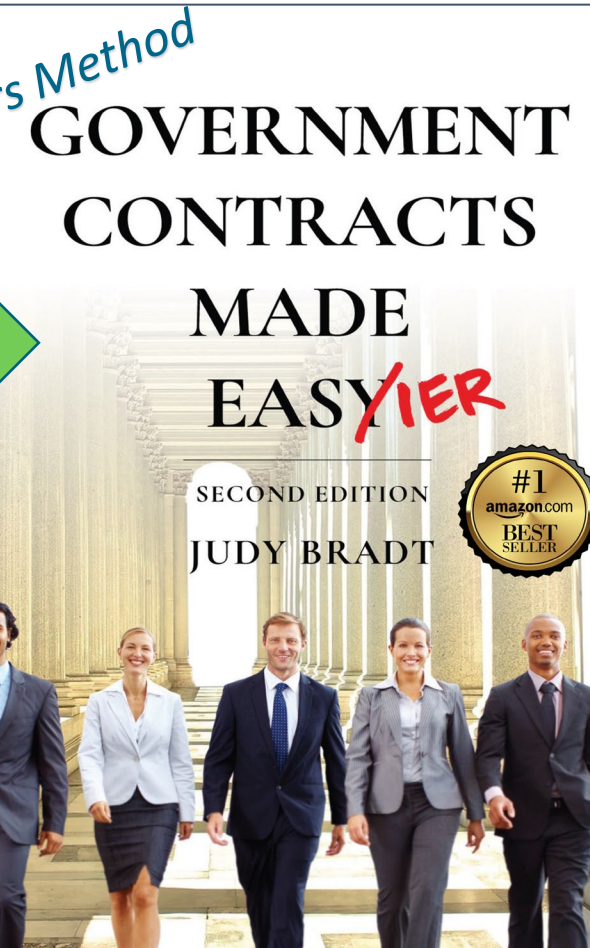
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With the right people.
At the right time.

- Activate your custom sales plan.
- Meet your Federal Humans sooner.
- Grow your Federal Business.

Judy.Bradt@GrowFedBiz.com



Exclusive:
Players and Layers Method



DFARS – 2021 - Defense Federal Acquisition Regulation Supplement



Title	Date	Registration Link	Partner
GSA Schedule: What's In It For You? (Virtual)	May 25, 2021 10:00am - 12:00pm	https://attendee.gotowebinar.com/rt/4195134251484326668	
Marketing and Messaging For Federal Contractors (Virtual)	July 01, 2021 4:00pm – 6:00pm	https://catalystcenter.ecenterdirect.com/events/971443	
GSA Schedule: What's In It For You? (Virtual)	July 08, 2021 12:30pm - 2:00pm	https://attendee.gotowebinar.com/rt/1904645922152546572	

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About Us

- Professional services for federal contractors
- Market Analysis
- Proposal Writing / Pricing
- Contract Compliance & Administration



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Our 2021 Webinar News

**Get LIVE ANSWERS to your
GOV CON Questions on these topics!**

2021

2nd Friday of each month

January – CMMC / Cybersecurity

February – OTA's

March – Bid Protest

April – Teaming Agreements

May – Sub-Contracting

June – Sales & Capture

July – Proposal Writing

August – Compliance

September – Oral Presentations

October – Set-Asides

November – Pricing

December – M&A

**Gov Con
2021
LIVE Q&A Café
WEBCAST SERIES**



*** Use Code "DFARS"
for a \$15 Discount!**



About Our Speaker



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DFARS Part #215

Contracting by Negotiation

Wednesday, 14 April 2021

DFARS Part 215 – Contracting by Negotiation

- FAR = Federal Acquisition Regulation
 - FAR is issued jointly by DoD, GSA and NASA
 - Agency supplements to the FAR shall not “unnecessarily repeat, paraphrase or otherwise restate material contained in the FAR” and shall not conflict or be inconsistent with FAR content
- DFARS = Department of Defense Federal Acquisition Supplement
 - DFARS contains:
 - Requirements of law
 - DoD-wide policies
 - Delegations of FAR authorities
 - Deviations from FAR requirements
 - Policies /procedures that have a significant effect or significant cost or impact
- DFARS Part 215 Supplements FAR Part 15, Contracting by Negotiation

DFARS Part 215 – Contracting by Negotiation

- Director, Defense Procurement and Acquisition Policy, Memorandum dated April 1, 2016, Department of Defense Source Selection Procedures
 - **applicable to acquisitions conducted as part of a major system acquisition program as defined in FAR 2.101 and FAR Part 15 acquisitions with an estimated value greater than \$10 million**
 - *Not applicable to*
 - FAR Part 8 (Federal Supply Schedules)
 - FAR Part 12 (Acquisition of Commercial Items)
 - FAR Part 13 (Simplified Acquisition Procedures)
 - FAR Part 14 (Sealed Bidding)
 - FAR 16.505(b)(1) (Orders under multiple award contracts – Fair Opportunity)
 - FAR Subpart 35.016 (Broad Agency Announcements)
 - FAR Subpart 36.6 (Architect/Engineer Services)
 - SBIR and STTR acquisitions

DFARS Part 215 – Contracting by Negotiation – LPTA Source Selection Process

- Every LPTA acquisition must consider cost/price and “acceptability” of the product or services
 - In order to be eligible for award, proposal must receive an “acceptable” rating for all non-price factors/subfactors
- LPTA shall consider Past Performance but on a “acceptable” or “unacceptable” basis
- LPTA may only be used when
 - Minimum requirements can be described clearly and expressed in terms of performance objectives, measures and standards that will be used to determine the acceptability of offers
 - No, or minimal additional innovation of future technological advantage will be realized by using a difference source selection process

DFARS Part 215 – Contracting by Negotiation – LPTA Source Selection Process cont.

- LPTA should not be used when
 - Procuring IT services, cybersecurity services, SETA services, advanced electronic testing or other “knowledge-based” professional services
 - Personal protective equipment
 - Knowledge-based training or logistics services in contingency or other operations outside the US
 - Aviation “critical safety item”
 - Engineering and manufacturing development for major defense acquisition program
 - Auditing contracts

DFARS Part 215 – Contracting by Negotiation – Source Selection – Evaluation Factors – Small Business

- FAR provides that, in a bundled or consolidated procurement, agency should evaluate offerors' past performance meeting small business subcontracting goals
- FAR provides that, in a bundled or consolidated procurement, agency should evaluate proposed small business participation
- DFARS provides that in any competitive acquisition that requires a subcontracting plan, the extent of small business participation should be considered
 - Agencies should evaluate extent to which offerors “identify and commit” to small business performance of a contract in proposal

DFARS Part 215 – Contracting by Negotiation – Evaluation Factors – Cost/Price

- FAR requires price/cost to be considered in every source selection
 - **But** contains an exception for DoD, NASA and the Cost Guard
 - For these actions, CO may choose not to consider price if
 - The acquisition has an estimated value above the simplified acquisition threshold
 - The acquisition will result in multiple-award contracts that are for the same or similar services; *and*
 - The solicitation states that award will be made to all qualifying offerors
 - But the CO must consider price/cost as one of the factors in the selection decision for each order placed under the contract
 - Does not apply to MACs that allow for sole source task order awards

DoD source selection procedures (Apr. 2016) says cost/price must be considered in every acquisition

DFARS Part 215 – Contracting by Negotiation – Source Selection

- DFARS states that Contracting Officers should conduct discussions with offerors in acquisitions with an estimated value in excess of \$100 million
- DFARS mandates that risk be evaluated as part of technical evaluation
 - Through separate technical and risk ratings – Outstanding (Blue), Good (Purple), Acceptable (Green), Marginal (Yellow), Unacceptable (Red)
 - Technical rating will reflect quality of offeror's solution
 - Risk rating reflects risk associated with proposed technical approach
 - Risk associated with technical approach in a single rating – Low, Moderate, High, Unacceptable
 - Rating refers to potential for disruption of schedule, increased costs, degradation of performance, the need for increased Government oversight and/or likelihood of unsuccessful contract performance

DFARS Part 215 – Contracting by Negotiation – Source Selection –Debriefings

- Debriefings intertwined with protests
 - Information provided during debriefing often basis for protest
 - “CICA stay” key for successful protest
 - FAR Part 33 provides that, in order to get CICA stay, protest must be filed within 5 calendar days of a debriefing
 - Issue arises when there is a “written debriefing”
 - FAR Subpart 15 allows offerors to ask questions
 - When does the 5 day window begin?

DFARS Part 215 – Contracting by Negotiation – Source Selection -Debriefings

- Agency should provide redacted source selection decision as part of debriefing for contracts with an estimated value in excess of \$100 million
- Agency should provide debriefings in all acquisitions
- Class Deviation – “Enhanced Post-Award Debriefing Rights” (March 2018)
 - Offerors allowed to submit questions w/in two business days of initial debriefing
 - Agency must respond to questions w/in five business days
 - Debriefing considered concluded only when agency provides a response thereto
 - If offeror does not submit questions the debriefing will be considered concluded after expiration of the the two business days window for submitting questions
- Does not apply to task order awards under an IDIQ or other multiple award contract; GSA FSS Buys; Commercial Item buys or Sealed Bidding

THANK YOU To Our Speaker



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Thank You For Attending!

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