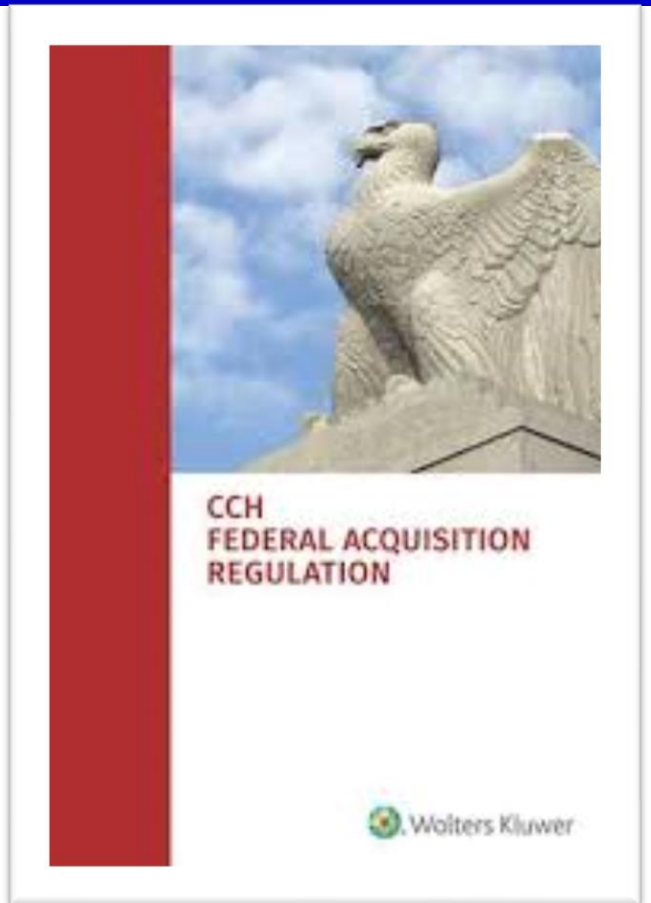
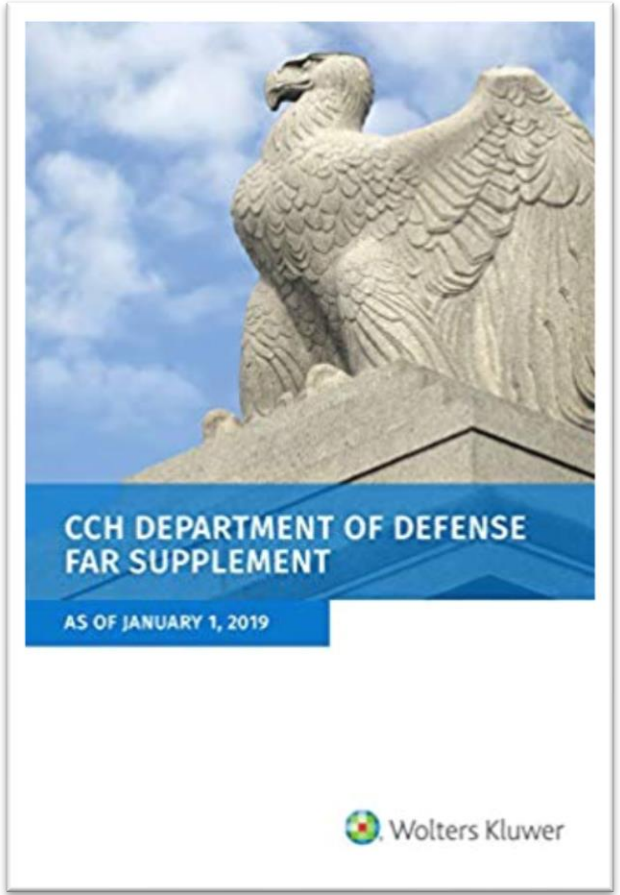
HOW TO USE THE F.A.R. and OTHER REGULATIONS TO HELP YOU WIN MORE GOVERNMENT CONTRACTS





For a copy of this presentation…

Go to this link:

https://www.govassociation.org/download

YOU WILL LEARN:

- ❖Overview and history of contracting laws
- ❖Key laws that affect you as a government contractor
- ❖Important regulations to keep you from getting in trouble
- ❖OTAs that allow you to win sole source contracts up to $50 million (not 8a program)
- ❖Learn about micro purchases, SAP's, and other laws that support small businesses
- ❖809 Panel and their recommendations which can impact your small business negatively
- ❖History of the 8a BD Program and other set-aside programs
- ❖FAR, DFARS, FASA, SCA, Davis Bacon, Buy American Act, etc.

ABOUT YOUR INSTRUCTOR

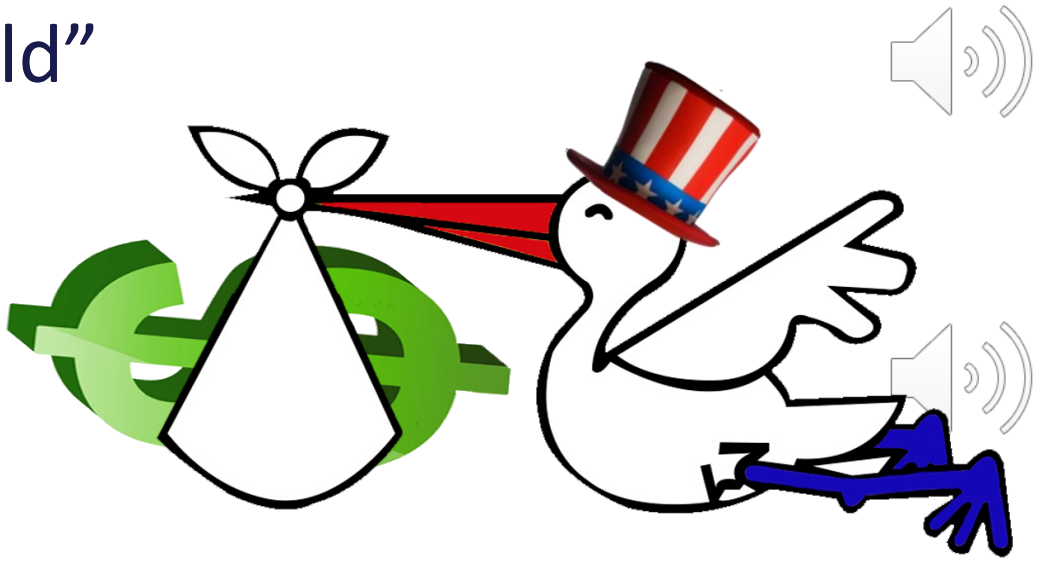
- Entrepreneur
- Small Business Advocate
- Founder of GCA
- Helped Companies Win **$900M+**
- Awarded: President Obama's
  - Lifetime Achievement Award
  - Global Humanitarian Award
  - Goodwill Ambassador (Georgia)
- Taught 10,000+ Entrepreneurs

In the Beginning…

What is significant about April 18th, 1775?

- Four men and one woman made late night rides…
- **William Dawes, Samuel Prescott**, **Israel Bissell**, and **Sybil Ludington**
- **Have you heard of Paul Revere?**
- April 19th…. “Shot heard around the world”
- Lexington, Mass

- Government Contracting was born



Why is it Important to Understand Regulations?

85,000+ government entities in the US:

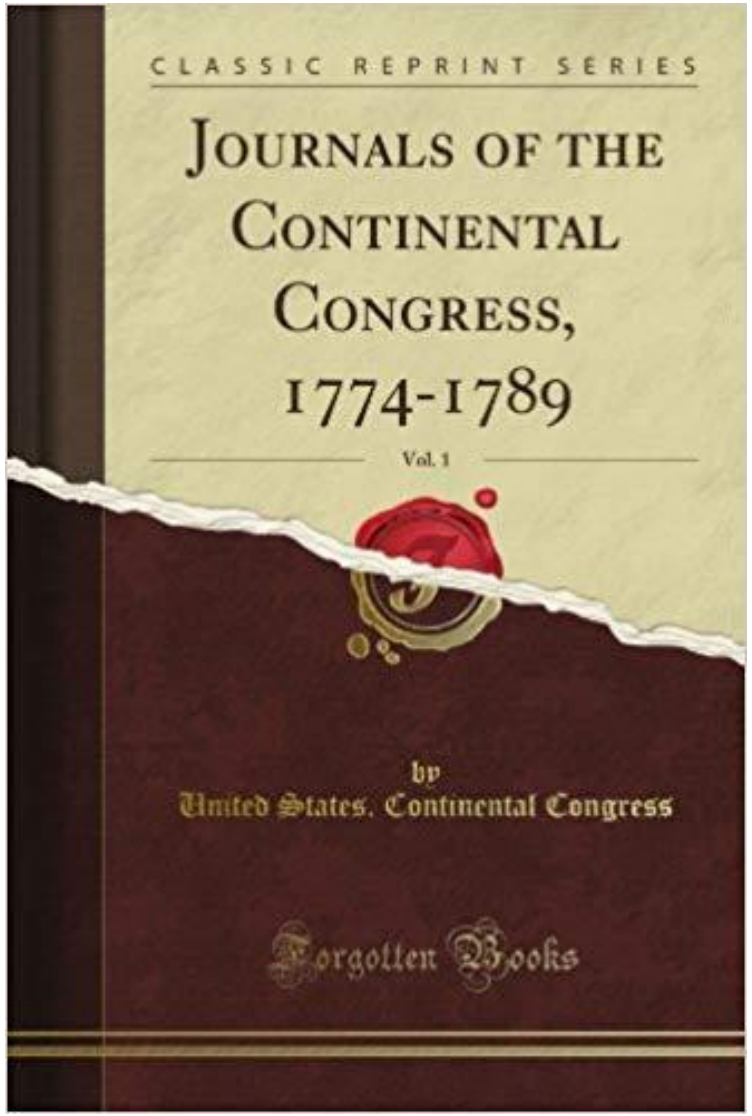
- 1 federal, 24 federal depts., 100+ sub-agencies,
- 50 states,
- 3042 counties, (254–Texas|159–Georgia|134–Virginia
- 35,963 cities and townships
- 14,566 districts,
- 31,131 special districts,
- 640+ Native American Tribes and
- 5 US territories
- Each one have their own procurement regulations

Why is it Important to Understand Regulations?

- It can keep you out of jail
- It can open doors for you
- It can change how see the world
- It can help you win contracts

First instance of Fair Price bidding

- Journals of the Continental Congress., Vol. 3, p. 360 (Nov. 20, 1775)
- The earliest reference to advertising for proposals in the Journals of the Continental Congress is this one, dated Nov. 20, 1775, referring to procuring supplies for two Battalions that were to be recruited in New Jersey



The First Procurement Law

- Before there were procurement laws, agencies can randomly buy goods or services from anyone they choose
- Purveyor of Public Affairs Act of 1795
- Allowed the government to buy needed supplies and materials

CIVIL WAR ERA…

- The Civil War created monumental needs for the federal government
- Civil Sundry Appropriations Act of 1861
- This continued the principle of advertised procurements for the next 86 years.

Monopolies…

- When it became apparent that small companies and their labor force needed protection
- Sherman Antitrust Act of 1890
- Outlawed monopolistic business practices

Sealed Bids

- Armed Services Procurement Act, signed into law in 1947, continued the sealed bid as the preferred method of procurement
- It also attempted to place procurement rules in one location. The result was the Armed Services Procurement Regulation (ASPR)
- Which today becomes the F.A.R. Federal Acquisition Regulation

Other Regulations…

- Eight-Hour Work Law of 1892 set the eight-hour workday.
- The Davis-Bacon Act of 1931 set the minimum wage on the construction site at the local prevailing wage.
- The Walsh-Healey Public Contracts Act of 1936, drastically changed in 1994, required a supplier to certify that it was the manufacturer or a regular dealer. This was an attempt to do away with the broker.
- Truth in Negotiation Act of 1962 required both prime and subcontractors on contracts over $500,000 to certify the cost data submitted under the solicitation

Buy American & Berry Amendment

- In 1933, the Buy American Act required the government to buy only American products
- In 1941, the Berry Amendment ensures that the Department of Defense only acquires certain end products, material and components (mostly food and natural fiber products) that are of U.S. origin, or from a qualifying country.

Origin of the SBA

- In 1942, Congress first authorized a federal agency to enter into prime contracts with other agencies and subcontract with small businesses.
- Smaller War Plants Corporation (SWPC). The SWPC's subcontracting authority expired along with the SWPC at the end of the World War II
- In 1951, start of the Korean War, Congress created the Small Defense Plants Administration (SDPA), given the same powers that the SWPC
- In 1953, Congress transferred the SDPA's subcontracting authorities to the newly created SBA, with the intent that the SBA would exercise these powers in peacetime, as well as in wartime.

Federal Programs for Small Businesses

- Small Business Act of 1953 established the Small Business Administration (SBA)
- Given subcontracting authority to help small businesses similar to SWPC/SDPA, but instead focused on its loan and other program
- Owned and controlled by the socially and economically disadvantaged. Under the original Section 8(a), the SBA could contract with any “small-business concerns or others,” but it reportedly seldom, if ever, employed this subcontracting authority, focusing instead upon its loan and other programs.

Small Business Act – SECTION 8(a)

- 8(a) Program Origins
- When the Small Business Act of 1958 transformed the SBA into a permanent agency, this subcontracting authority was included in Section 8(a) of the act
- The current 8(a) Program is the result of the merger of two distinct types of federal programs: those seeking to assist small businesses in general and those seeking to assist racial and ethnic minorities.
- The merger first occurred, as a matter of executive branch practice, in 1967 and was given a statutory basis in 1978.

Federal Programs for Racial and Ethnic Minorities

- Presidents Lyndon Johnson and Richard Nixon laid foundations for the present 8(a) Program in the hope of providing such "encouragement."
- Johnson created the President's Test Cities Program (PTCP), which involved a small-scale use of the SBA's authority under Section 8(a) to award contracts to firms willing to locate in urban areas and hire unemployed individuals, largely African Americans, or sponsor minority-owned businesses by providing capital or management assistance.
- However, under the PTCP, small businesses did not have to be minority-owned to receive subcontracts under Section 8(a)

Federal Programs for Racial and Ethnic Minorities

- Nixon's program was larger and focused more specifically on minority-owned small businesses, thanks to:
- Congressman Parren Mitchell – Congressional Black Caucus (12 members)
- "Father of the 8a Program"

Federal Programs for Racial and Ethnic Minorities

- During the Nixon Administration, the SBA promulgated its earliest regulations for the 8(a) Program to "assist small concerns owned by disadvantaged persons to become self-sufficient, viable businesses capable of competing effectively in the market place."
- In 1973, defined disadvantaged persons as including, but not limited to, "black Americans, Spanish-Americans, oriental Americans, Eskimos, and Aleuts."
- However, the SBA lacked explicit statutory authority for focusing its 8(a) Program on minority-owned businesses until 1978

1978 Amendments to the Small Business Act

- In 1978, Congress amended the Small Business Act to give the SBA express statutory authority
- SBA can only subcontract under Section 8(a) with "socially and economically disadvantaged small business concerns," or businesses that are least 51% owned by one or more socially and economically disadvantaged individuals
- Established a basic definition of socially disadvantaged individuals, which included those who have been "subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their individual qualities."
- They also included congressional findings that "Black Americans, Hispanic Americans, Native Americans, and other minorities" are socially disadvantaged

Table 1. Groups Presumed to Be Socially Disadvantaged

Group	Countries of Origin Included Within Group
Black Americans	n/a
Hispanic Americans	n/a
Native Americans (including American Indians, Eskimos, Aleuts, Native Hawaiians)	n/a
Asian Pacific Americans	Burma, Thailand, Malaysia, Indonesia, Singapore, Brunei, Japan, China (including Hong Kong), Taiwan, Laos, Cambodia, Vietnam, Korea, The Philippines, U.S. Trust Territory of the Pacific Islands (Republic of Palau), Republic of the Marshall Islands, Federated States of Micronesia, Commonwealth of the Northern Mariana Islands, Guam, Samoa, Macao, Fiji, Tonga, Kiribati, Tuvalu, Nauru
Subcontinent Asian Americans	India, Pakistan, Bangladesh, Sri Lanka, Bhutan, the Maldives Islands, Nepal

Source: Congressional Research Service, based on 13 C.F.R. §124.103(b).

Public Law 95-507

- Public Law 95-507, which amended the Small Business Act of 1978, formalized the Small Business Subcontracting Plan requirement in contracts over $500,000 to large businesses
- Formally established the 8(a) Business Development Program as we see it today

FASA & FARA

- The Federal Acquisition Streamlining Act of 1994 (FASA) was revolutionary in its impact on the federal acquisition process.
- It repealed or substantially modified more than 225 statutes and pushed the contracting process into the 21st century
- Simplified the federal procurement process, reduced paperwork burdens, and transformed the simplified acquisition process to electronic commerce
- Before the law could be fully implemented, the Federal Acquisition Reform Act of 1996 (FARA), also known as the Clinger-Cohen Act, was passed to correct some deficiencies in the earlier legislation and to make more changes

FASA/FARA – Key Points

- FASA/FARA created:
- Micro Purchases (<$10,000)
- Simplified Acquisition Procedures (SAP) (<$250K)

The Contracting Rulebook and Bible: FAR

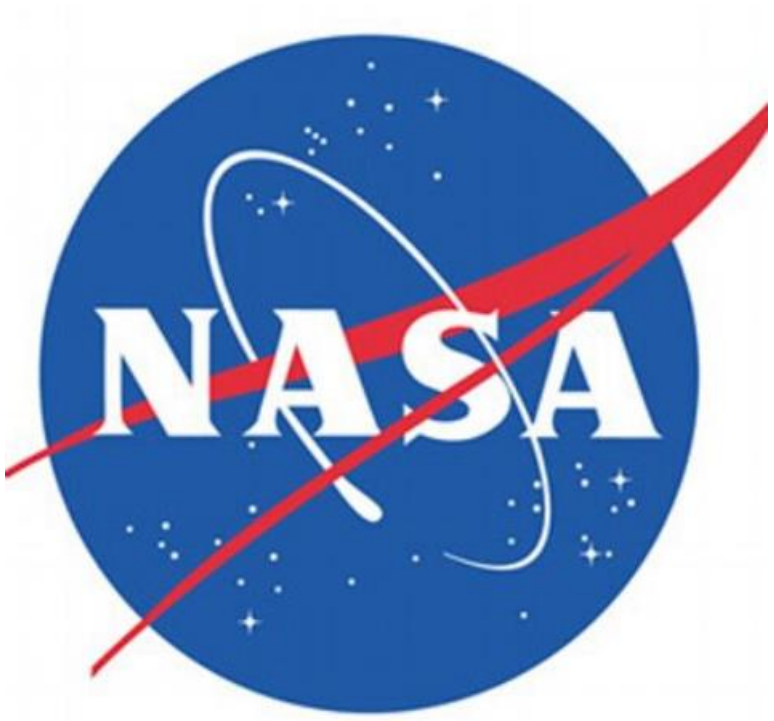
- From ASPA to FAR (Federal Acquisition Regulation)
- Consolidates all procurement regulations into one location
- FAR is divided into 53 parts
- The first 6 parts deal with general government acquisition matters
- The next 6 parts deal with aspects of acquisition planning.
- The rest of the FAR deals with simplified acquisition threshold, large dollar value buys, labor laws, contract administration, applicable clauses and forms, etc.

FAR Part 19

- Small Business Programs
- 8a, ED/WOSB, HUBZONE, SD/VOSB
- SET-ASIDES CONTRACTS
- SOLE SOURCE CONTRACTS
- Let’s take a deeper look….
- https://www.acquisition.gov/browse/index/far

SUPPLEMENTAL REGULATIONS

- Defense Federal Acquisition Regulation Supplement (DFARS)
- General Services Acquisition Regulation Supplement (GSARS)
- National Aeronautics Space Administration FAR Supplement (NASFARS)



FAA & QUASI-GOV'T ORGANIZATIONS

- Federal Aviation Agency (FAA) the authority to develop its own acquisition regulations; therefore it is not bound by the FAR.
- Although the FAA has chosen to adopt or adapt many parts of the FAR, don't assume that its provisions are all just like those in the FAR.
- Some quasi-government agencies, like the Tennessee Valley Authority or United States Postal Service, are not bound by the FAR, but many of their acquisition regulations are adaptations of FAR provisions
- Federal Reserve, IRS, etc. uses FAR with its own supplemental regulations

How to Take Advantage of Regulations

- When you know the rules it can change how you do business with the government for the better
- Share story about $1.2 million Birmingham project
- Advance Payments (FAR 32.403) are a type of contract financing the Government provides to contractors to accomplish or to maintain progress on essential program or contract objectives.

SOLE SOURCE

- 8(a) Certification Program
- Direct Award to one company
- No competition
- Price negotiated
- <$4million
- Secretary of HUD Alphonso Jackson often says, “There is no other program that has produced more Black millionaires in this nation than the 8a program.”

FAR SubPart 15.6

- Subpart 15.6 - Unsolicited Proposals
- Let’s take a deeper look….
- https://www.acquisition.gov/content/subpart-156-unsolicited-proposals

National Defense Authorization Act (NDAA)

- Section 846 of the FY 2018 NDAA
- GSA to "establish a commercial **e-commerce portal** for purposes of enhancing competition, expediting procurement, enabling market research, and ensuring reasonable pricing of commercial products."
- Like "AMAZON" portal
- Will start out for products/services <$10,000
- Will roll out this year

OTAs = Other Transaction Agreements

- DoD has statutory authority to award Other Transactions (OT) (as do many other agencies)
- OTs, Technology Investment Agreements (TIAs) – 10 U.S.C. 2371
- OTs for Prototypes – 10 U.S.C. 2371b

- Does not fall under FAR
- Up to $500million
- Can be Sole Source (Direct Award)

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