

GOVERNMENT CONTRACTS

Law 230-001; 2.0 Credits

Fall 2023

Wednesdays, 8:10pm-10:10pm

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Case materials are available on Westlaw and Lexis. The Federal Acquisition Regulation (in Title 48 of the Code of Federal Regulations) is known as “the FAR.” **It is an important source of rules and regulations that relate to the federal procurement system, and we will expect you to have reviewed the assigned FAR provisions.** You can access the current version of the FAR (free of charge) for class purposes at the following website:

<https://www.acquisition.gov/browse/index/far>.

OVERVIEW: This course examines the basic statutory and regulatory principles of contracting with the United States Government. Topics covered will follow the “life cycle” of a government contract, from acquisition planning and contract formation through performance and termination. We will also cover ethics and compliance obligations that are unique to government contracts and issues that arise in corporate transactions involving government contractors.

LEARNING OUTCOMES: By the end of the course students should have acquired:

- An understanding of the basic principles that make government contracts different from commercial contracts between private parties
- The skills of statutory and regulatory analysis, including the application of statutes and regulations to contract formation, performance and termination
- An understanding of the unique administrative and judicial fora responsible for resolving disputes involving government contracts and their contributions to government contracts law

Class 1 (August 23) – Introduction; the FAR System; Authority to Contract

- FAR Subpart 1.6
- G.L. Christian & Assoc. v. United States, 312 F.2d 418 (Ct. Cl. 1963)
- Federal Crop Ins. Corp. v. Merrill, 332 U.S. 380 (1947)
- Reliable Disposal Company, Inc., ASBCA No. 40100, 91-2 BCA ¶ 23895 (1991)
- Panther Brands, LLC v. United States, 146 Fed. Cl. 204 (2019)

Class 2 (August 30) – Types of Contracts; Commercial Item Contracting; GSA Schedule Contracts; Other Transaction Agreements

- FAR Subpart 16.1; FAR §§ 16.201-203; 16.301-306; 16.500-501; 16.601-602
- FAR 2.101 (definition of commercial item); FAR Part 12; FAR 52.212-4
- FAR 8.405
- American Electronic Laboratories v. United States, 774 F.2d 1110 (Fed. Cir. 1985)
- Urban Data Systems, Inc. v. United States, 699 F.2d 1147 (Fed. Cir. 1983)
- Oracle America, Inc., B-416061, May 31, 2018, 2018 CPD ¶ 180
- CGI Federal Inc. v. United States, 779 F.3d 1346 (Fed. Cir. 2015)

- Palantir USG Inc. v. United States, 904 F.3d 980 (Fed. Cir. 2018)

Class 3 (September 6) – Competition in Contracting; Noncompetitive Procedures; Sealed Bidding and Negotiated Procurement

- FAR Part 6
- FAR 5.002 & Subparts 5.1 and 5.2
- FAR Part 15 (excluding Subparts 15.4 and 15.5)
- AT&T Communications v. WilTel, 1 F.3d 1201 (Fed. Cir. 1993)
- Emery Worldwide Airlines, Inc. v. United States, 264 F.3d 1071 (Fed. Cir. 2001)
- Lockheed Missiles & Space Co. v. Bentsen, 4 F.3d 955 (Fed. Cir. 1993)
- Information Technology & Applications Corp. v. United States, 316 F.3d 1312 (Fed. Cir. 2003)

Class 4 (September 13) – Debriefings & Bid Protests

- FAR Subpart 15.5
- DFARS 215.506; DFARS 215.506-70
- 28 U.S.C. § 1491
- FAR Subpart 33.1
- 4 C.F.R. Part 21
- SRA Int'l, Inc. v. United States, 766 F.3d 1409 (Fed. Cir. 2014)
- Statistica, Inc. v. Christopher, 102 F.3d 1577 (Fed. Cir. 1996)
- RAMCOR Servs. Group, Inc. v. United States, 185 F.3d 1286 (Fed. Cir. 1999)
- Distributed Solutions, Inc. v. United States, 539 F.3d 1340 (Fed. Cir. 2008)

Class 5 (September 20) – Sources of Contract Disputes I--Changes, Delays, Differing Site Conditions, and Acceleration

- FAR Part 43; FAR 52.243-1
- FAR 52.242.17; FAR 52.249-14
- FAR 52.236-2
- White v. Edsall Constr. Co., 296 F.3d 1081 (Fed. Cir. 2002)
- Ace Constructors, Inc. v. United States, 499 F.3d 1357 (Fed. Cir. 2007)
- Fraser Constr. Co. v. United States, 384 F.3d 1354 (Fed. Cir. 2004)
- Int'l Tech. Corp. v. Winter, 523 F.3d 1341, 1348-49 (Fed. Cir. 2008)

Class 6 (September 27) – Sources of Contract Disputes II--Contract Interpretation and Pricing of Adjustments

- LAI Servs., Inc. v. Gates, 573 F.3d 1306 (Fed. Cir. 2009)
- Bell BCI Co. v. United States, 570 F.3d 1337 (Fed. Cir. 2009)
- Servidone Constr. Corp. v. United States, 931 F.2d 860 (Fed. Cir. 1991)
- Propellex Corp. v. Brownlee, 342 F.3d 1335 (Fed. Cir. 2003)

Class 7 (October 4) – Contract Claims; The Contract Disputes Act

- 41 U.S.C. §§ 7101-7109
- FAR Subpart 33.2; FAR 52.233-1
- Reflectone, Inc. v. Dalton, 60 F.3d 1572 (Fed. Cir. 1995)

- Burnside-Ott Aviation Training Center v. Dalton, 107 F.3d 854 (Fed. Cir. 1997)
- Alliant Tech. Sys, Inc. v. United States, 178 F.3d 1260 (Fed. Cir. 1999)
- M. Maropakis Carpentry, Inc. v. United States, 609 F.3d 1323 (Fed. Cir. 2010)

Class 8 (October 11) – Terminations for Convenience; Terminations for Default

- FAR 52.249-2; FAR Subparts 49.1, 49.2
- FAR 52.249-8; FAR Subpart 49.4
- Torncello v. United States, 681 F.2d 756 (Ct. Cl. 1982)
- Krygoski Constr. Co. v. United States, 94 F.3d 1537 (Fed. Cir. 1996)
- Am-Pro Protective Agency, Inc. v. United States, 281 F.3d 1234 (Fed. Cir. 2002)
- DCX, Inc. v. Perry, 79 F.3d 132 (Fed. Cir. 1996)
- Lisbon Contractors, Inc. v. United States, 828 F.2d 759 (Fed. Cir. 1987)
- McDonnell Douglas Corp. v. United States, 567 F.3d 1340 (Fed. Cir. 2009)

Class 9 (October 18) – Teaming and Subcontracting; Socioeconomic Programs

- FAR Subpart 9.6, FAR Subpart 19.5, FAR Subpart 19.7, FAR Part 44
- FAR 52.244-2; FAR 52.244-5
- EG&G Inc. v. The Cube Corp., 63 Va. Cir. 634 (Va. Cir. Ct. 2002)
- Cyberlock Consulting, Inc. v. Info. Experts, Inc., 939 F. Supp. 2d 572 (E.D. Va. 2015)
- Antitrust Guidelines for Collaborations Among Competitors, issued by Department of Justice and Federal Trade Commission (April 2000) (*available on FTC website*)

Class 10 (October 25) – Ethics in Government Contracting; Contractor Responsibility; Suspension and Debarment

- Ethics in Government Act, 18 U.S.C. §§ 207-216
- Procurement Integrity Act, 41 U.S.C. § 2101-2107; FAR 3.104
- Anti-Kickback Act, 41 U.S.C. §§ 8701-8707
- FAR Subpart 3.10; FAR 52.203-13
- FAR Subpart 9.4
- Caiola v. Carroll, 851 F.2d 395 (D.C. Cir. 1988)
- Agility Def. & Gov’t Servs. v. Dep’t of Defense, 739 F.3d 586 (11th Cir. 2013)

Class 11 (November 1) – False Claims; Defective Pricing

- FAR 15.401-15.403
- 31 U.S.C. §§ 3729-3731
- Wynne v. United Technologies Corp., 463 F.3d 1261 (Fed. Cir. 2006)
- Daewoo Eng’g & Constr. Co. v. United States, 557 F.3d 1332 (Fed. Cir. 2009)
- Lodge Constr., Inc. v. United States, 158 Fed. Cl. 23 (2022)
- Universal Health Servs., Inc. v. United States ex rel. Escobar, 136 S. Ct. 1989 (2016)

Class 12 (November 8) – Enacting Policy Preferences through Government Contracts

- FAR Subparts 22
- FAR Subpart 25.1; Executive Order 13881, “Maximizing Use of American-Made Goods, Products, and Materials” (84 FR 34257, July 15, 2019); Executive Order 14005,

- “Ensuring the Future is Made in All of America by All of America’s Workers” (86 FR 7475, Jan. 28, 2021)
- Section 889 of the John S. McCain National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019 (Pub. L. 115-232); FAR 52.204-24; FAR 52.204-25; FAR 52.204-26
 - Interim Rule, “Federal Acquisition Regulation: Prohibition on a ByteDance Covered Application” (88 FR 36430, June 2, 2023); FAR 52.204-27

Class 13 (November 15) – Review/Make-up

Exam Period: November 29-December 13, 2023 (see notes below)

Additional Notes:

Syllabus and Communications: The syllabus (and particularly the order of classes) may change slightly. To the extent we know of changes in advance, we will announce them at class. Frequently, however, we will communicate with you via email regarding changes to the schedule, any cancellations, to distribute materials, and the like. You are responsible for checking your emails for information regarding class.

Participation: We will consider class participation in grading. We do not anticipate lowering the grade of anyone who regularly attends class, but we may make a single-increment adjustment to the grade(s) of the student(s) whose participation has, in our sole judgment and discretion, made the most significant contribution to the course (e.g., from “B” to “B+”).

Exam: The exam will be a take-home exam, with 24 hours to complete it. The exam will be open book. We will likely give two essay questions and 4-5 short-answer questions. The essay questions will likely be in multiple parts and of the issue-spotting variety. We usually ask one essay question about contract formation and another question about contract administration/changes/termination (but reserve the right to change our minds as the semester progresses). The short-answer questions will likely relate to ethics and compliance issues covered in the last third of the semester.

If you have any questions about grading or other such administrative matters, please contact one of us.