



Department of Defense INSTRUCTION

NUMBER 5000.35
October 21, 2008

USD(AT&L)

SUBJECT: Defense Acquisition Regulations (DAR) System

References: See Enclosure 1

1. PURPOSE. This Instruction:

a. Reissues DoD Directive 5000.35 (Reference (a)) as a DoD Instruction in accordance with the guidance in DoD Instruction 5025.01 (Reference (b)) and the authority in DoD Directive 5134.01 (Reference (c)).

b. Establishes policy and assigns responsibilities for the management and operation of the DAR system.

c. Cancels DoD Instruction 5000.63 (Reference (d)).

d. Incorporates delegations of authority granted to the Director of Defense Procurement, Acquisition Policy, and Strategic Sourcing (DPAP) by Under Secretary of Defense for Acquisition Memorandum (Reference (e)).

2. APPLICABILITY. This Instruction applies to OSD, the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the Department of Defense (hereafter referred to collectively as the "DoD Components").

3. DEFINITIONS

a. Case. A recommended revision to the Federal Acquisition Regulation (FAR) (Reference (f)), the Defense Federal Acquisition Regulation Supplement (DFARS) (Reference (g)), or DFARS Procedures, Guidance, and Information (Reference (h)) that has been formally accepted by the DAR Council Director for consideration by the Council.

b. Clause. A contract or contract solicitation term, condition, or provision, of the type found in part 52 of Reference (f) or part 252 of Reference (g).

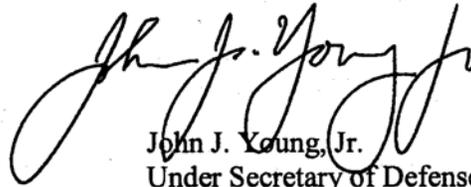
c. Regulation. Reference (f), Reference (g), and any DoD Component supplements to Reference (f) or (g), including any contracting policy letters, clause books, automated systems, written instructions, or similar instruments.

4. POLICY. It is DoD policy to maintain an organized system for the development and control of procurement and contracting policies and procedures.

5. RESPONSIBILITIES. See Enclosure 2.

6. RELEASABILITY. UNLIMITED. This Instruction is approved for public release. Copies may be obtained through the Internet from the DoD Issuances Web Site at <http://www.dtic.mil/whs/directives>.

7. EFFECTIVE DATE. This Instruction is effective immediately.



John J. Young, Jr.
Under Secretary of Defense for Acquisition,
Technology, and Logistics

Enclosures

1. References
2. Responsibilities

ENCLOSURE 1

REFERENCES

- (a) DoD Directive 5000.35, "Defense Acquisition Regulations (DAR) Management," July 21, 2004 (hereby canceled)
- (b) DoD Instruction 5025.01, "DoD Directives Program," October 28, 2007
- (c) DoD Directive 5134.01, "Under Secretary of Defense for Acquisition, Technology, and Logistics (USD(AT&L))," December 9, 2005
- (d) DoD Instruction 5000.63, "Defense Acquisition Regulations (DAR) System," July 31, 2002 (hereby canceled)
- (e) Under Secretary of Defense for Acquisition Memorandum, "Delegations of Authority," April 10, 1991
- (f) Federal Acquisition Regulation (FAR), current edition¹
- (g) Defense Federal Acquisition Regulation Supplement (DFARS), current edition²
- (h) DFARS Procedures, Guidance, and Information (PGI), current edition³
- (i) Chapter 7 of title 41, United States Code
- (j) Chapter 35 of title 44, United States Code

¹ FAR is available at <http://www.acqnet.gov/FAR/>.

² DFARS is available at <http://www.acq.osd.mil/dpap/dars/dfarspgi/current/index.html>.

³ PGI is available at <http://www.acq.osd.mil/dpap/dars/dfarspgi/current/index.html>.

ENCLOSURE 2

RESPONSIBILITIES

1. DIRECTOR, DPAP. The Director, DPAP, under the authority, direction, and control of the Under Secretary of Defense for Acquisition, Technology, and Logistics (USD(AT&L)) and in accordance with Reference (c); chapter 7 of title 41, United States Code (U.S.C.) (Reference (i)); and chapter 35 of title 44, U.S.C. (Reference (j)), is delegated all authority pertaining to DoD procurement vested in the USD(AT&L) by existing or future statutes and DoD Directives, except for such authorities that by the terms of the statute or directive may not be delegated. In exercising this authority, the Director, DPAP, shall:

a. Act for the USD(AT&L) in developing, coordinating, issuing, and maintaining Reference (f) and any regulations issued by the Department of Defense to supplement Reference (f).

b. Approve or disapprove regulations relating to procurement, proposed to be issued by DoD Components, pursuant to subsection 421(d) of Reference (i).

c. Act for the USD(AT&L) in the administration of Reference (f) and any supplementing DoD regulations, including:

(1) Approving or disapproving any individual or class waiver or deviation from Reference (f) or supplementing DoD regulations that are required to be approved above the level of the DoD Component.

(2) Acting as the “head of the agency” or “agency head” for DoD Components other than the Military Departments for functions that are required by Reference (f) or supplementing DoD regulations to be performed by the USD(AT&L) or other official within OSD.

d. Act for the USD(AT&L) in making any determination and approving any waiver, exception, or exemption, required or permitted by law, that pertains to the conduct of DoD procurement.

e. Redelegate the authority in section 1 only as follows:

(1) The authority may not be redelegated in toto.

(2) Specific redelegations, as required, are authorized, except that:

(a) The authorities in paragraphs 1.b., 1.c.(1), and 1.d. may be redelegated only with the approval of the USD(AT&L), except for delegations to deputy directors of DPAP for limited periods of time in the absence of the Director.

(b) Authorities vested in the USD(AT&L) by statute, either directly or by delegation from the Secretary or Deputy Secretary of Defense, that require implementation in Reference (f)

or supplementing DoD regulations may be redelegated in accordance with the governing statute and any delegation to the USD(AT&L), and then only with the Director, DPAP's personal approval of each such redelegation.

f. Perform the following functions:

(1) Serve as the DoD representative on the Federal Acquisition Regulatory Council.

(2) Review and approve (before they become effective):

(a) All revisions to Reference (g) and, in conjunction with the other Federal Acquisition Regulatory Council members, all revisions to Reference (f), taking into account the views of the DoD Components, the civilian agencies, and industry where appropriate.

(b) All DoD procurement and contracting policies, procedures, clauses, and forms that have a significant effect beyond DoD internal operating procedures or a significant cost or administrative impact on contractors or offerors.

(c) All DoD Component plans for the control of clauses, other than those prescribed by Reference (f) or (g).

(3) Ensure that DoD procurement and contracting regulations are consistent with Reference (f), and any that are redundant with Reference (f) or are otherwise unnecessary are eliminated.

(4) Ensure compliance with the publication requirements of section 418b of Reference (i) for DoD procurement and contracting regulations, or waive these requirements in urgent and compelling circumstances.

(5) Ensure compliance with Reference (j) for each information collection requirement imposed by a DoD procurement and contracting regulation.

(6) Eliminate or reduce any redundant or unnecessary levels of review and approval in the DoD procurement and contracting system.

(7) Ensure transparency and efficiency in DoD procurement and contracting rulemaking processes and procedures.

2. DAR COUNCIL DIRECTOR. The DAR Council Director, under the authority, direction, and control of the Director, DPAP, shall direct the activities of the DAR Council, the DAR Directorate, the DFARS committees and, in conjunction with General Services Administration (GSA) and the National Aeronautics and Space Administration (NASA), the FAR teams. (See the Appendix to this enclosure.) In exercising these responsibilities, the Deputy Director of DPAP for DAR serves as the DAR Council Director and in that role shall:

a. Establish operating procedures for the DAR System to facilitate development and processing of procurement and contracting policies, procedures, clauses, and forms for approval by the Director, DPAP.

b. Determine what matters are appropriate for consideration by the DAR Council.

c. Act as the DoD point of contact for all proposed Reference (f), (g), and (h) cases submitted from:

(1) Senior officials responsible for DoD acquisition matters.

(2) Senior officials from other Federal agencies designated to represent their agency on Reference (f) matters.

(3) Authorized representatives of private sector entities.

d. Determine the need to open or close a Reference (g) or (h) case and, in conjunction with GSA and NASA, the need to open or close a Reference (f) case.

e. Establish schedules based on the perceived urgency of the case for the completion of each Reference (g) or (h) case and, in conjunction with GSA and NASA, each Reference (f) case.

f. Determine the appropriate scope of industry input to the development of Reference (g) regulations and, in conjunction with GSA and NASA, Reference (f) regulations.

g. When appropriate, establish ad hoc working groups to work unusual, special interest, or high priority cases. The DAR Council Director may request participation of representatives from OSD staff elements, the Military Departments, the Defense Agencies and, in conjunction with GSA and NASA, the civilian agencies.

h. Refer to the Director, DPAP, for resolution of any matters or issues where a consensus of DAR Council policy members is not achieved after a reasonable period of debate or where the DAR Council consensus appears contrary to established DoD policy. The decision of the Director, DPAP, consistent with any applicable guidance from the Secretary of Defense, Deputy Secretary of Defense, or USD(AT&L), shall be adopted as the DoD position without further coordination.

i. In conjunction with GSA, NASA, and the Office of Federal Procurement Policy, establish permanent interagency FAR teams to consider proposed Reference (f) revisions within specific functional areas. The Military Departments, Defense Logistics Agency (DLA), and Defense Contract Management Agency (DCMA) shall provide members to serve on those teams as needed.

j. Establish permanent DFARS committees to consider proposed Reference (g) and (h) revisions within specific functional areas. The Military Departments, DLA, and DCMA shall provide members to serve on those committees as needed.

- k. Maintain permanent records of DAR Council activities.
- l. Maintain official case files and perform case management functions.
- m. Refer matters for appropriate coordination within OSD and present the views of OSD on all matters discussed by the DAR Council.
- n. Publish References (g) and (h) and notices of any changes thereto.
- o. Serve as liaison with the Civilian Agency Acquisition Council, the FAR Secretariat, the Federal Register, and the Office of Information and Regulatory Affairs.

APPENDIX TO ENCLOSURE 2

DAR COUNCIL

1. PURPOSE. The DAR Council is responsible for developing fully coordinated recommendations for revisions to References (f), (g), and (h) that are responsive to overall DoD needs.

2. MEMBERSHIP. The DAR Council consists of:
 - a. The DAR Council Director.

 - b. The Deputy Director, who serves under the direction of the DAR Council Director.

 - c. A policy representative and a legal representative from each Military Department, the DLA, and the DCMA. These representatives are nominated by the contracting principal or the appropriate legal principal for their DoD Component and are approved by the Director, DPAP. These representatives shall have at least a SECRET clearance and shall serve in a full-time capacity on the DAR Council for not less than 2 years. On behalf of their respective DoD Components, they shall be empowered to develop and present fully coordinated positions on all matters brought before the DAR Council.

 - d. A policy representative and a legal representative from NASA, appointed by the NASA Assistant Administrator for Procurement at the invitation of the Director, DPAP.