

# **PART 1201 - FEDERAL ACQUISITION REGULATIONS SYSTEM**

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## **Subpart 1201.1 - Purpose, Authority, Issuance**

### **1201.101 Purpose.**

The Department of Transportation (DOT) Acquisition Regulation (TAR) establishes uniform acquisition policies and procedures, which implement and supplement the Federal Acquisition Regulation (FAR).

### **1201.104 Applicability.**

(a) Statute, the (FAR) Title 48, Code of Federal Regulations (CFR) chapter 1, and (TAR) 48 CFR chapter 12 apply to all acquisitions within the Department unless otherwise excluded by statute, the (FAR) 48 CFR chapter 1, or (TAR) 48 CFR chapter 12.

(b) The following order of precedence applies to resolve any question of applicability concerning an acquisition regulation or a procedure found within (TAR) 48 CFR chapter 12 or the Transportation Acquisition Manual (TAM):

- (1) Statute;
- (2) (FAR) 48 CFR chapter 1 or other applicable regulation;
- (3) (TAR) 48 CFR chapter 12;
- (4) DOT Orders; and
- (5) TAM.

(c) The Maritime Administration may depart from the requirements of the (FAR) 48 CFR chapter 1 and (TAR) 48 CFR chapter 12 as authorized by 40 U.S.C. 113(e)(15) but shall adhere to those regulations to the maximum extent practicable. Exceptions from the requirements of the (FAR) 48 CFR chapter 1 and/or (TAR) 48 CFR chapter 12 shall be documented according to Maritime Administration procedures or in each contract file, as appropriate.

(d) The (FAR) 48 CFR chapter 1, (TAR) 48 CFR chapter 12 and TAM do not apply to the Federal Aviation Administration as provided by the Department of Transportation and Related Agencies Appropriations Act, 1996, Public Law 104-50, unless otherwise directed by the Office of the Secretary of Transportation.

(e) For purposes of the (FAR), (TAR) and (TAM), the Office of the Assistant Secretary for Research and Technology (formerly the Research and Innovative Technology Administration; see Public Law 113-76; Consolidated Appropriations Act, 2014) shall have the same authority as an Operating Administration as defined in (TAR) 1202.1, and the Assistant Secretary for Research and Technology shall have the same authority as a Head of the Operating Administration as defined in (TAR) 1202.1

### **1201.105 Issuance.**

## **1201.105-1 Publication and code arrangement.**

(a) The (TAR) 48 CFR chapter 12 is published in:

(1) The Federal Register; and

(2) Cumulative form in the CFR.

(b) The TAR is issued as chapter 12 of Title 48 of the CFR.

## **1201.105-2 Arrangement of regulations.**

(a) *General.* The (TAR) 48 CFR chapter 12, which encompasses both Department and Operating Administration (OA)/Office of the Assistant Secretary for Research and Technology (OST-R)-specific guidance (see (TAR) 48 CFR 1201.3), conforms with the arrangement and numbering system prescribed by (FAR) 48 CFR 1.104. Guidance that is OA/OST-R-specific contains the OA/OST-R's acronym directly after the heading. The following acronyms apply:

FHWA - Federal Highway Administration

FMCSA - Federal Motor Carrier Safety Administration

FRA - Federal Railroad Administration

FTA - Federal Transit Administration

MARAD - Maritime Administration

NHTSA - National Highway Traffic Safety Administration

OST - Office of the Secretary OST-R - Office of the Assistant Secretary for Research and Technology

PHMSA - Pipeline and Hazardous Material Safety Administration

SLSDC - Saint Lawrence Seaway Development Corporation

(b) *Numbering* -

(1) *Departmentwide guidance.* (i) The numbering illustrations at (FAR) 48 CFR 1.105-2 apply to (TAR) 48 CFR chapter 12.

(ii) Coverage within (TAR) 48 CFR chapter 12 is identified by the prefix "12" followed by the complete (FAR) 48 CFR chapter 1 cite. For example, (TAR) 48 CFR 1201.201-1(b)).

(iii) Coverage in (TAR) 48 CFR chapter 12 that supplements (FAR) 48 CFR chapter 1 will use part, subpart, section and subsection numbers ending in "70" through "89" (e.g., (TAR) 48 CFR 1201.301-70). A series of numbers beginning with "70" is used for provisions and clauses.

(iv) Coverage in (TAR) 48 CFR chapter 12, other than that identified with a "70" or higher number, that implements the (FAR) 48 CFR chapter 1 uses the identical number sequence and caption of the (FAR) 48 CFR chapter 1 segment being implemented, which may be to the paragraph level. Paragraph numbers and letters are not always shown sequentially, but may be shown by the specific

FAR paragraph implemented. For example, (TAR) 48 CFR 1201.201-1 contains only paragraph (b) because only this paragraph, correlated with FAR, implements (TAR) 48 CFR chapter 12.

(2) *Operating Administration-unique guidance.* Supplementary material for which there is no counterpart in (FAR) 48 CFR chapter 1 or (TAR) 48 CFR chapter 12 shall be identified using chapter, part, subpart, section, or subsection numbers of "90" and higher.

(c) *References and citations.* (TAR) 48 CFR chapter 12 may be referred to as the Department of Transportation Acquisition Regulation or the TAR. Cross reference to the FAR in (TAR) 48 CFR chapter 12 will be cited by "FAR" followed by the FAR numbered cite, and cross reference to the TAM in (TAR) 48 CFR chapter 12 will be cited by "TAM" followed by the TAM numbered cite. References to specific cites within (TAR) 48 CFR chapter 12 will be referenced by the numbered cite only.

### **1201.105-3 Copies.**

(a) Copies of the TAR in Federal Register, and CFR form may be purchased from the Superintendent of Documents, Government Printing Office, Washington, DC 20402. The electronic version of the Federal Register may be found at <http://www.nara.gov> and the CFR at <http://www.gpoaccess.gov>.

(b) The (TAR) 48 CFR chapter 12 and Transportation Acquisition Circulars (TACs) are available on the Internet at <http://www.dot.gov/ost/m60>.

### **1201.106 OMB Approval Under the Paperwork Reduction Act.**

(a) *Data collection by regulation.* The information collection and recordkeeping requirements contained in (TAR) 48 CFR chapter 12 have been approved by the Office of Management and Budget (OMB).

(b) *Data collection under proposed contracts.* Under the regulations implementing the requirements of the Paperwork Reduction Act (5 CFR 1320), OMB must approve, prior to obligation of funds, proposed contracts which require the collection of information from ten or more non-Federal persons or entities. Solicitations requiring this level of information collection may be released prior to OMB approval provided that:

(1) A statement is included in the solicitation to the effect that the contract will not be awarded until OMB approval of the information collection requirements of the proposed contract has been obtained; and

(2) Enough time is permitted to allow receipt of OMB approval prior to contract award.

## **Subpart 1201.2 - Administration**

### **1201.201 Maintenance of the FAR.**

## **1201.201-1 The two councils.**

(b) The SPE is responsible for providing a DOT representative to the Civilian Agency Acquisition Council (CAAC).

## **Subpart 1201.3 - Agency Acquisition Regulations**

### **1201.301 Policy.**

(a)

(1) *Acquisition regulations* - (i) *Departmentwide acquisition regulations*. The Department of Transportation's (DOT's) Senior Procurement Executive (SPE) is the individual having authority to issue or authorize the issuance of agency regulations that implement or supplement the FAR and to include agency-unique policies, etc. that govern the contracting process. This authority was re-delegated from the Assistant Secretary for Administration.

(ii) *Operating Administration (OA) acquisition regulations*. OA acquisition regulations, and any changes thereto, shall be reviewed and approved by the Senior Procurement Executive (SPE) for insertion into the (TAR) 48 CFR chapter 12 as a TAR supplemental regulation before the SPE submits the proposed coverage for publication in the Federal Register in accordance with (FAR) 48 CFR 1.501. OA regulations may be more restrictive or require higher approval levels than those permitted by (TAR) 48 CFR chapter 12 unless otherwise specified.

(2) *Acquisition procedures*. The SPE is the individual who issues or authorizes the issuance of internal agency guidance at any organizational level. DOT internal operating procedures are contained in the Transportation Acquisition Manual (TAM). OA procedures necessary to implement or supplement the (FAR) 48 CFR chapter 1, (TAR) 48 CFR chapter 12, or TAM may be issued by the Head of the Contracting Agency (HCA), who may delegate this authority to any organizational level deemed appropriate. OA procedures may be more restrictive or require higher approval levels than those permitted by the TAM unless otherwise specified.

(b) The authority of the agency head under (FAR) 48 CFR 1.301(b) to establish procedures to ensure that agency acquisition regulations are published for comment in the Federal Register in conformance with the procedures in FAR Subpart 1.5 is delegated to the Office of the General Counsel, Assistant General Counsel for Regulation and Enforcement (C-50).

### **1201.301-70 Amendment of (TAR) 48 CFR chapter 12.**

(a) Changes to the regulation may be the result of recommendations from internal DOT personnel, other Government agencies, or the public. Changes shall be submitted in the following format to the Office of the Senior Procurement Executive (OSPE), 400 7th Street, SW., Washington, DC 20590:

(1) *Problem*: Succinctly state the problems created by current (TAR) 48 CFR chapter 12 language and describe the factual or legal reasons necessitating regulatory change.

(2) *Recommendation*: Identify the recommended change by using the current language (if

applicable), and crossing out the deleted words with a horizontal line. Insert proposed language in brackets. If the change is extensive, deleted language may be displayed by forming a box with diagonal lines connecting the corners.

(3) *Discussion*: Explain why the change is necessary and how it will solve the problem. Address any cost or administrative impact on Government activities, offerors, and contractors. Provide any other information and documents such as statutes, legal decisions, regulations, reports, etc., that may be helpful.

(4) *Point of contact*: Provide a point of contact who can answer questions regarding the recommendation.

(b) The (TAR) 48 CFR chapter 12 is maintained by the SPE through the TAR/TAM change process. This process consists of input from various DOT elements including representatives from DOT OAs specifically designated to formulate Departmental acquisition policies and procedures.

(1) *Transportation Acquisition Circular (TAC)*. TACs (*see* (TAR) 48 CFR 1201.301-72) will be used to amend (TAR) 48 CFR chapter 12.

(2) *TAR Notice (TN)*.

(i) TNs shall be issued when interim guidance is necessary and as often as may be necessary, under any of the following circumstances:

(A) To quickly promulgate selected material in a general or narrative manner, in advance of a TAC issuance;

(B) To disseminate other acquisition related information; or

(C) To issue guidance which may be effective for a period of 1 year or less.

(ii) Each TN will expire by a specific date.

### **1201.301-71 Effective date.**

Unless otherwise stated, the following applies -

(a) Statements in TACs or TNs to the effect that the material therein is "effective upon receipt," "upon a specified date," or that changes set forth in the document are "to be used upon receipt," mean that any new or revised provisions, clauses, procedures, or forms must be included in solicitations, contracts or modifications issued thereafter; and

(b) Unless expressly directed by statute or regulation, solicitations in process or completed negotiations when the TAC or TN is received, new information such as forms and clauses, need not be included if the chief of the contracting office determines that it would not be in the best interest of the Government to include the new information.

### **1201.301-72 TAC or TN numbering.**

TACs and TNs will be numbered consecutively on a fiscal year basis beginning with number "01"

prefixed by the last two digits of the fiscal year (e.g., TNs 04-01 and 04-02 indicate the first two TNs issued in fiscal year 2004).

### **1201.304 Agency control and compliance procedures.**

(a) DOT shall control the proliferation of acquisition regulations and any revisions thereto (except as noted in paragraph (b) of this section) by using an internal (TAR) 48 CFR chapter 12 change process that involves input from many DOT elements including OA representatives on the Procurement Management Council. The OA member shall represent their OA's viewpoint along with Departmentwide considerations in reaching a decision on (TAR) 48 CFR chapter 12 changes.

(b) OA-unique regulations will not be processed through the TAR/TAM change process, but shall be reviewed by OA legal counsel and submitted to the OSPE for review and approval. (See (TAR) 48 CFR 1252.101 for additional instructions pertaining to provisions and clauses.)

## **Subpart 1201.4-70 - Deviations From the FAR and TAR**

### **1201.403 Individual deviations.**

The Head of the Contracting Activity, or designee with a rank that is no lower than that of Senior Executive Service (SES) official or that of a Flag Officer, may authorize individual deviations (unless (FAR) 48 CFR 1.405(e) applies). However, see TAM 1201.403.

### **1201.404 Class deviations.**

The SPE may grant in writing class deviations from the (FAR) 48 CFR chapter 1 and (TAR) 48 CFR chapter 12, unless (FAR) 48 CFR 1.405(e) applies.

## **Subpart 1201.6 - Career Development, Contracting Authority and Responsibilities**

### **1201.602-3 Ratification of unauthorized commitments.**

(b) *Policy.* DOT policy requires that all procurement decisions shall be made only by Government officials having authority to carry out such acquisitions. Procurement decisions made by other than authorized personnel are contrary to Departmental policy and may be considered matters of serious misconduct on the part of the employee making an unauthorized commitment. Disciplinary action against an employee who makes an unauthorized commitment may be considered.

### **1201.603-1 General.**

Each DOT OA is responsible for appointing its contracting officers.