

## **EFFECTING CHANGE TO THE FEDERAL ACQUISITION REGULATIONS**

This document was presented at the 1992 International Conference of the Society of American Value Engineers (SAVE) at Phoenix, Arizona by Henry S. Mlodozienec, Pentagon. It was published in the SAVE Annual Proceedings and is copyrighted (SAVE, 1992). Permission to upload this document to CompuServe has been given by SAVE.

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He is a participant in the Electronics Industries Association Value Management Group and a member and former Director of SAVE National Capital Chapter.

He has been recognized for his VE achievements by the Deputy Secretary of Defense and received the Secretary of the Army Decoration for Exceptional Civilian Service.

### **ABSTRACT**

This paper describes the approach and the steps necessary to effect a change to the Federal Acquisition Regulation (FAR). While the information provided is intended to focus on changes to the FAR Part 48, Value Engineering Policies, and Part 52, Solicitation Provisions and VE Contract Clauses, it is applicable to the FAR in general.

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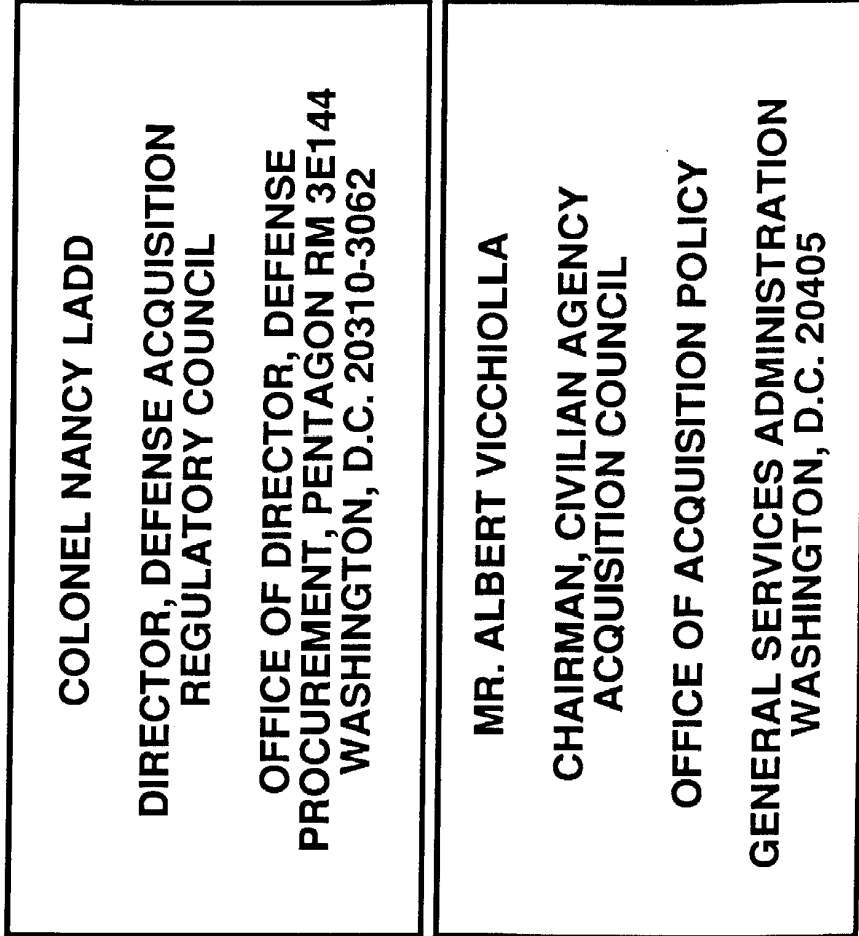
The FAR is the primary regulation for use by all Federal Executive Agencies in their acquisition of supplies and services. It is issued within applicable laws under the joint authorities of the Administrator of the General Services Administration, the Secretary of Defense, and the Administrator for the National Aeronautics and Space Administration (NASA), under the broad policy guideline of the Administrator, Office of Federal Procurement Policy, Office of Management and Budget.

A fact that may not be known to all is that the FAR is developed, and changed as necessary, with inputs from contractors, industry associations, as well as government

agencies. Some factors that precipitate or drive change are technology, business practices, policy implementation problems, resources availability, etc. For example, the not too long ago "spare parts horror stories" were responsible for a rash of FAR changes. In the VE area, policy interpretation and requests for contract clause language clarification, precipitate the bulk of the FAR changes.

Do you have a burning, compelling desire to change the FAR? You can do it as an individual, as a contractor, as a industry association, or as a government employee by establishing a FAR Case. (Government employees have to follow agency channels to submit recommended changes). You begin by preparing a letter stating your case, providing justification and including specific language to be added, deleted, or substituted in the numbered FAR part, section, and paragraph. The letter would be addressed to the Defense Acquisition Regulatory Council if you're dealing with the Department of Defense or to the Civilian Agency Acquisition Council if doing business with a civilian agency like Department of Transportation, General Services Administration, Department of Health & Human Services, etc. (see Figure 1).

**SUBMIT FAR CHANGE  
RECOMMENDATIONS TO:**



*Figure 1*

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There is at all times coordination between the Defense Acquisition Regulatory Council (DARC) and the Civilian Agency Acquisition Council (CAAC) and both have to agree in reviewing your submission that there are sufficient

grounds/justification to establish a case ... or it doesn't get established.

The composition of the DARC includes full time policy and

legal representatives from the Army, Navy, Air Force, National Aeronautics Space Agency, and Defense Logistics Agency. Their tenure is no less than 2 years and not longer than 4 years. DARC members are appointed by the Assistant Secretary, or Office of the General Council of the Service, Director DLA, and the NASA Administrator. The DARC Chairperson is named by the Director of Defense Procurement. The CAAC is set up similarly with representation from the civilian agencies and chaired by General Services Administration. The GSA provides an

administrative Secretariat which supports both Councils.

Assuming then that there is agreement that a case should be established, the DARC through its Army Policy member tasks the Chairman, DARC Value Engineering Committee to prepare the case. Figure 2 shows the make-up of the VE Committee. For the Chairman and the members, service on the VE Committee is an added part-time duty rather than a full time responsibility as is the case with the DARC and CAAC members.

# DEFENSE ACQUISITION REGULATORY COUNCIL (DARC) VALUE ENGINEERING COMMITTEE

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ARMY	HENRY MLODOZENIEC, OCSA (DACS-DME) <u>CHAIRMAN</u>	695-1768 2B683 PENTAGON
NAVY	WILLIAM MCANINCH, OASN (RDA)(APIA-AP)	602-2793 546 CP-5
AIR FORCE	SYED KARIM, SAF-AQXM	697-1757 4C283 PENTAGON
DLA	JANAK PANDHI, DLA-E	274-7132 8A430 CAMSTA
OSD	FRANK DOHERTY, OASD(P&L)- PR/IEQ	695-7915 2A318 PENTAGON
GSA	ROGER SCHWARTZ	523-6994 18TH & F ST.
VA	ROLAND PLANTE	233-3977 810 VERMONT, N.W.
DOT	BRUCE LIND	366-4631 400 7TH ST., S.W.
NASA	ROGER WILSON	453-9203 NASA HDQTRS (HH)

*Figure 2*

It is the Chairman's responsibility to call committee meetings, lead discussions, parcel out parts of the case to members for preparation, or on occasion after full Committee discussion prepare the entire case himself and get the concurrence of individual committee members before signing and forwarding the case (proposed rule) to the DAR Council. To be acceptable, the case has to be prepared in accordance with the format and FAR conventions prescribed in the two-inch thick DAR Operating Guide. Notfollowing conventions, formatting, etc., may result in the case, otherwise complete, being returned

to the VE Committee for corrections and re-submission.

Assuming the case is acceptable from a format/ convention standpoint, the DAR Council determines which, if any, of the remaining 28 standing committees (Figure 3) need to see the case for coordination and for comment on the change of existing policy or proposed new policy. Depending on the complexity of the case it may need to interface simultaneously with four, five, or more committees such as Cost Accounting Standards, Cost Principles, Pricing, Technical Data, etc.

# DAR COUNCIL STANDING COMMITTEES

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- INFORMATION RESOURCES
- COST ACCOUNTING STANDARDS
- COMMERCIAL PRODUCTS
- COST PRINCIPLES
- CONSTRUCTION
- CONTRACT ADMINISTRATION
- CONTRACT PLACEMENT
- DEBARMENT, SUSPENSION AND ETHICS
- ENVIRONMENTAL
- GOVERNMENT PROPERTY
- BONDS AND INSURANCE
- INTERNATIONAL ACQUISITION
- CONTRACT FINANCE
- CONTRACT SERVICES
- CONTRACT REPORTING
- LABOR/EEO
- PRICING
- QUALITY ASSURANCE
- RESEARCH & DEVELOPMENT
- SMALL BUSINESS
- SMALL PURCHASE
- TAXES
- PATENTS AND DATA
- TRANSPORTATION
- VALUE ENGINEERING
- SYSTEMS ACQUISITION
- UTILITIES
- LEASING

*Figure 3*

If in submitting the case you haven't told us the whole story,

maybe highlighted only the good side, or otherwise withheld

information, the Committee action will bring to the surface all facets of the case. The Committees draw heavily on their central library of historical records dating back to the Armed Services Procurement Regulations and the recorded decisions rendered by the Armed Services Board of Contract Appeals. When Committee action is completed the case is reported out to the DAR Council by the Committee having responsibility for the major issue(s) involved, for example the Cost Principle Committee or Technical Data Committee, etc., as the case may be.

The Defense Acquisition Regulatory Council sets a "date certain" on which it will consider the case, together with the comments from the various standing committees. After DAR Council action the case may be accepted subject to revision/rewrite by the VE Committee or if complex issues still remain the DAR Council may request the Chairman of the VE Committee together with selected members to appear before the Council to defend the VE Committee position. Only rarely will the DAR Council request Industry Association representation to appear before the council. Assuming DAR Council approval at this point, the case is forwarded to the Civilian Agency Acquisition Council (CAAC) for review and action. You will remember that the CAAC has had a copy of the case early on and through continuous coordination has been kept aware of DAR Council actions. Assuming CAAC concurrence the case goes to the FAR Secretariat for publication in the Federal Register as a "Proposed Rule".

The public, contractors, industry associations, and federal agencies have 60 days after date of publication to comment on the proposed rule to the Secretariat address provided in the Federal Register. After the cut off date the FAR Secretariat bundles up all the correspondence received and forwards it to the DAR Council VE Committee for review and resolution. The comments are sorted out by the Part 48 or Part 52 paragraph they affect and a matrix is utilized to keep the originating source identified. VE

Committee discussions determine which comments, in whole or in part, are accepted or rejected. In either case, the resolution of each comment is accompanied by a documented committee rationale. Accepted comments precipitate changes to the proposed rule baseline and result in the "final rule". Now, the case package that the VE Committee completed, with all members concurring, is forwarded to the DAR Council wherein the case (if sufficiently complex/ controversial) begins an identical cycle of standing committee reviews as previously described. Assuming smooth progression through the DAR Council and subsequently the Civilian Agency Acquisition Council, the FAR Secretariat causes the case to be published in the Federal Register as a "Final Rule". The Secretariat also follows up with the publication of the Federal Acquisition Circular (FAC) and as a final step, the incorporation of the case language (revised/new policy) into the Federal Acquisition Regulations. NOTE: ALL FAR CHANGES TO BE PUBLISHED ARE CLEARED WITH THE OFFICE OF FEDERAL PROCUREMENT POLICY (OFPP) WHICH IS PART OF THE OFFICE OF MANAGEMENT AND BUDGET (OMB).

If this seems like a slow, laborious, deliberate process, it is. In addition to the steps described, the flow of your favorite case may be interrupted any time by DoD directed priority cases or by Congressional legislative actions that require immediate attention of the Defense Acquisition Regulatory Council/Civilian Agency Acquisition Council. However the good news is that each year some 200 to 300 cases are considered, resolved, and disposed of.

The above attempts to describe in summary, a structured procedure with limited flexibility depending upon the complexity of the individual FAR case submission.

Finally, be it complex or simple, the case needs to be followed up by the originator. Inquiry as to case progress/status, at prudent intervals, is strongly recommended.