

THE SECRET'S IN THE SAUCE—WHY YOU NEED THE FAR

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One of the best movies in the 1990s was “Fried Green Tomatoes,” a story about a depression era café named The Whistle Stop in a little town in Alabama. Kathy Bates and Jessica Tandy starred. The Whistle Stop was known for its barbecue, as well as its fried green tomatoes. In the movie, Frank Bennett leaves the town and his family to go to Georgia. Bennett, who had abused his wife, eventually returns to Alabama and tries to kidnap his young son. The mother’s friend kills Frank with a blow to the head from a cast-iron skillet when she tries to stop the kidnapping. The staff of the Whistle Stop then covertly barbecues Frank’s body and serves it to the Georgia sheriffs who show up later investigating Frank’s disappearance. The sheriffs rave that it is the best barbecue they have ever had, and in answer to the question about why it’s so good, are told by the cook at The Whistle Stop that “the secret’s in the sauce.” This became the tag line of the movie.

The Sauce for Government Contracting. If there’s any “sauce” for government contracting, it’s the Federal Acquisition Regulation (“FAR”). It’s not very secret at all (because it’s really part 48 of the Code of Federal Regulations and is readily available on the internet) but there’s no question that it contains the answers to most of the questions about contract formation and administration. At the time the Competition in Contracting Act of 1984 was enacted, there were numerous procurement regulations in the Government, most notably the Defense Acquisition Regulation (“DAR”) (derived from the Armed Services Procurement Regulation, or “ASPR”) and the Federal Procurement Regulation (“FPR”). By Executive Order 12352 of Mar. 17, 1982, the President directed agencies to consolidate their separate procurement regulations into a single simplified Federal Acquisition Regulation which was issued in 1984. Although most agencies still issue “agency supplements to the FAR” (such as the Department of Defense FAR Supplement), the FAR itself remains the principal policy and guidance document, and the FAR supplements are part of a unified system.

You may ask, why not just read the procurement laws? The FAR and agency supplements to the FAR are issued pursuant to statutory authority and in conformance with required statutory and regulatory procedures FAR § 1.301(b) (2002). These regulations consequently have the force and effect of law. *DynCorp Information Systems, LLC v. U.S.*, 58 Fed. Cl. 446 (2003), citing *Newport News Shipbuilding & Dry Dock Co. v. Garrett*, 6 F.3d 1547, 1552 (Fed.Cir.1993). Contractors are expected to know FAR provisions. *General Eng'g & Mach. Works v. O'Keefe*, 991 F.2d 775, 780 (Fed.Cir. 1993). And finally, the FAR is logically arranged, and written in understandable English. If you don’t believe that, compare the FAR with the Internal Revenue (tax code) regulations!

How do you learn and understand the FAR? You are unlikely to learn the FAR by just sitting down and trying to read it. It’s over 2000 pages long (CCH edition) and the agency supplements are even longer than that. The only way to learn it is to break it

down into manageable pieces, understand how the various parts of the FAR are interpreted and used, and what they mean for you as a government contracts administrator, buyer, attorney or whatever. Many government contracts teaching organizations do just that. For example, the Public Contracting Institute (“PCI”) has an outstanding course, “Fun With the FAR” which breaks down the FAR into 27 separate and logical sections, and then, guides students through each “bite of the apple” on a different day. For example: are you interested in multiple award schedules? PCI will go through FAR Parts 8, 38, 39 & 51 in one session. After this, all students should know how to find the important things. If you want to learn how negotiated procurement works, the course goes through the details of FAR Part 15 in another session. What about Subcontracting? That’s FAR Part 44 in the PCI course. And so on, throughout the FAR.

Will you become an “expert” after any course on the FAR? That’s highly doubtful. But most importantly, you will understand *how to use the FAR and where to find the things that you need*. When you’re done, you will have obtained an introduction to all the basic procurement concepts in today’s federal contracting, and you will have learned how to use the FAR in order to apply it to your daily procurement issues. Most newcomers to government contracting lack this simple and basic foundation, which is essential to success in the field.

The Secret Sauce. Most importantly, these FAR courses will let you taste “the secret sauce” that will guide you through your government contracting years. And you don’t need to hit anyone on the head with a cast-iron skillet to get that secret sauce!