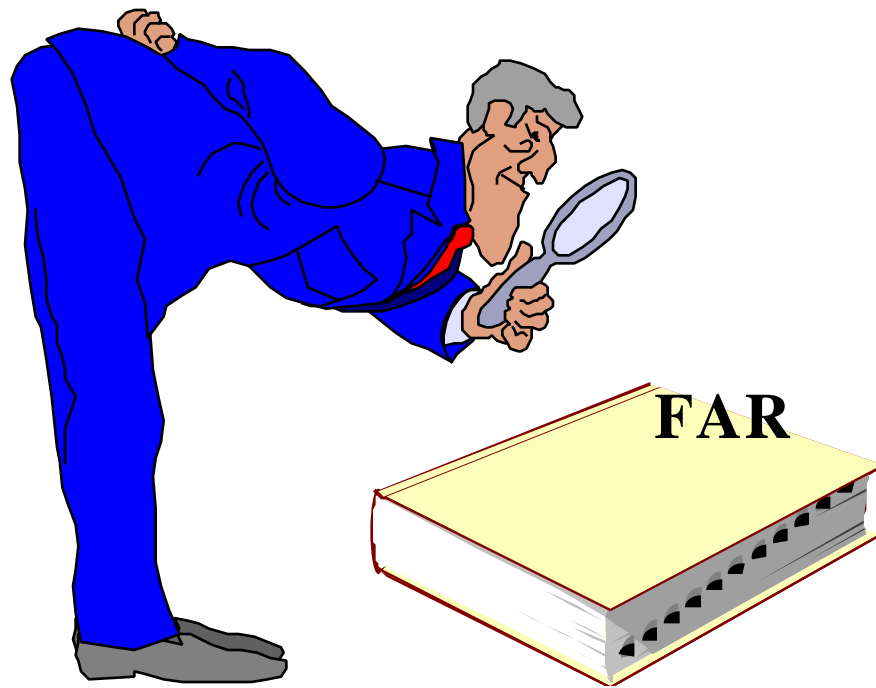


SECTION 3



SECTION 3 - FUNCTIONAL ANALYSIS OF FAR CHANGES

In this section, you will find a short description of every function listed in the simplified acquisition process diagrams in Section 2. For each function, you will generally find the following information displayed as shown below:

FUNCTION: The title of the function (i.e., “Purchase Requests”).

Duties	The duty or duties performed by Federal purchasing agents or contract specialists in carrying out the function.
Conditions	The conditions under which the duty is typically performed including decisions made in arriving at the function as well as documentation and information required as inputs to carrying out the function.
Performance Goals	The decisions, documentation, and information required as an output of performing the function including descriptions of what constitutes satisfactory performance levels.



Impact of the following rules on that function.

- FAC 90-24, “Federal Acquisition Regulation; Micro-Purchase Procedures”, effective as an interim rule on December 15, 1994.
- FAR case 94-770, “Simplified Acquisition Procedures/FACNET”, effective as an interim rule on July 3, 1995.
- FAR case 91-104, “Electronic Contracting”, published as an interim rule.

If the above rules have an impact on the function, you will find a reference to the FAR as modified by the above rules. FAR sections are referenced as §xx.xxx.

COMING ATTRACTIONS:



Coming Attractions are highlights of proposed rules that will take effect sometime after July 3, 1995. However, these rules are subject to change prior to publication in final form.

- FAR case 94-790, “Acquisition of Commercial Items”, published as a proposed rule in the Federal Register on March 1, 1995. Note that the new FAR Part 12 applies to all acquisitions of commercial items above the micro-purchase threshold. At 12.203(a), the proposed language states that:

“Contracting officers may use the procedures in Parts 13, Simplified Acquisition Procedures; 14, Sealed Bidding; or 15, Contracting by Negotiation, as appropriate, for the acquisition of commercial items. However, regardless of the procedures being used, when a requirement in this part is inconsistent with a requirement in another part of this chapter, **this Part 12 shall take precedence.**” [Emphasis added]

- FAR case 94-701, “Contract Award Implementation”, published as a proposed rule in the Federal Register on January 9, 1995.
- FAR case 94-730, “Protests, Disputes and Appeals”, published as a proposed rule in the Federal Register on January 10, 1995.

FUNCTION: Forecasting Requirements

Duty	Forecast probable requirements.
Conditions	Given staff meeting minutes, acquisition histories, market data, proposed budgets, and other such information.
Performance Goals	From the available data, accurately predict probable requirements for supplies and services that are likely to be incorporated in purchase requests from requiring activities supported by the contracting office. Plan to meet those requirements through the most cost-effective simplified procedures and instruments given the nature of the requirements.

No Changes.

FUNCTION: Purchase Requests

Duties	Accept the Purchase Request or request additional signatures and/or information from the requiring activity to complete the Purchase Request. Establish files on accepted Purchase Requests and control information on the procurement prior to solicitation.
Conditions	Given Purchase Requests
Performance Goals	Purchase Requests, after review by the <i>Contracting Office</i> , contain all elements necessary to proceed with the purchase. Data on planned purchases are not disclosed to competing firms prior to soliciting quotes.

Fewer Purchase Requests for Micro-Purchases

☞ A micro-purchase by definition is any acquisition that does not exceed \$2,500. (FAC 90-24, §13.101, definitions). The FAR encourages agency heads to delegate micro-purchase authority to end users — which means that they will buy for their offices rather than submitting purchase requests to contracting activities. (FAC 90-24, §13.601(a) and 13.601(d))

☞ Contracting officers are not considered procurement officials if their authority is limited to the micro-purchase threshold — if the head of the contracting activity determines that it is unlikely that the individual will conduct acquisitions in a total amount greater than \$20,000 in any 12 month period. (FAC 90-24, §3.104-4)

☞ On the other hand, requiring activities are still prohibited from splitting requirements to stay under the micro-purchase threshold. (FAC 90-24, 13.602(c)).

FUNCTION: Market Research

Duties	Obtain data from acquisition histories and other in-office sources. Collect and compile additional market information.
Conditions	Given Purchase Requests, related contract files, and access to on-line and hardcopy sources of market information.
Performance Goals	Identify all relevant sources of information readily available within the contracting office and extract data necessary for analyzing the requirement, sourcing the procurement, soliciting quotes, evaluating quotes, and awarding contracts. From sources outside the contracting office, collect and compile any additional data necessary for analyzing the requirement, sourcing the acquisition, soliciting quotes, evaluating quotes, and awarding contracts (such as commercial practices for warranties, buyer financing, maintenance and packaging and marking).

COMING ATTRACTIONS: Requirement For Market Research

☞ Before soliciting quotes, conduct market research when adequate information is not available and the circumstances justify its cost. (94-790)

☞ Extent of research may vary, but consider collecting information on:

- Capable sources.
- Availability of commercial items.
- Customizing, modifying or tailoring practices.
- Terms such as warranty, buyer financing, discounts, etc.
- Laws and regulations unique to the item.
- Distribution and support capabilities of suppliers. (94-790)

☞ Techniques include:

- Contacting experts regarding market capabilities.
- Reviewing the results of recent market research.
- Publishing formal requests for information.
- Querying databases/on-line communication.
- Obtaining source lists from other agencies or associations.
- Reviewing catalogs and product literature.
- Holding presolicitation conferences. (94-790)

FUNCTION: Threshold Determinations

Duties	<ol style="list-style-type: none">1. Develop a position on the expected value or price of the requirement.2. Determine whether the expected price is:<ul style="list-style-type: none">• At or below the threshold for use of FAR Part 13 simplified procedures.• At or below the Simplified Acquisition Threshold.
Conditions	Given Purchase Requests and data on the market.
Performance Goals	Accurately estimate the proper price or value of the requirement. Given that estimate, correctly determine whether the procurement is at or below the dollar threshold for the use of micro-purchasing or simplified acquisition procedures.

The Simplified Acquisition Threshold

☞ The “Simplified Acquisition Threshold” (SAT) is \$100,000 (94-770, §13.101, definitions).

However, do NOT assume that you have authority to use FAR Part 13 simplified procedures up to \$100,000. The SAT is not necessarily the same as the dollar threshold for use of simplified acquisition procedures.

Threshold For The Use of Simplified Acquisition Procedures

☞ Upon the effective date of the interim rule, you may immediately use FAR Part 13 procedures for actions at or below \$50,000.

Until your activity has an interim certified FACNET, use FAR Part 14 and 15 procedures to award contracts between \$50,000.01 and \$100,000. However, effective July 3, 1995:

- Contracts at or below SAT are reserved for small business concerns even if awarded through FAR Part 14 or 15 procedures (see SAT Set Asides).
- Certain clauses are not applicable to any contract at or below SAT even if awarded through FAR Part 14 or 15 procedures (see “Preparing RFQs”).

☞ When the senior procurement executive of the agency, or the Under Secretary of Defense for Acquisition and Technology for the military departments and defense agencies certifies your contracting activity’s interim FACNET capability, you may use FAR Part 13 simplified procedures for actions up to and including \$100,000 that are: (i) conducted through a system with such capability, or (ii) exempted from interim FACNET. This authority, however, expires on December 31, 1999, if your agency does not by that time have a certified full FACNET capability.

☞ After December 31, 1999, you may use Part 13 simplified procedures for actions between \$50,000.01 and \$100,000 ONLY IF you are in a Federal department or agency that has certified full FACNET capability. (94-770, §13.103(b))

☞ If the initial estimated price exceeds the dollar level for FAR Part 13 simplified procedures, you may not use those procedures even if the awards are priced under that dollar level. Moreover, the FAR continues to prohibit contracting officers from splitting requirements to stay under the SAT. (94-770, §13.103(c)).

☞ EXCEPTION: For acquisitions awarded and performed, or purchase to be made, outside the United States in support of a contingency operation — the simplified acquisition threshold is \$200,000. And you can immediately use Part 13 simplified procedures for such actions up to that dollar amount. (94-770, §13.101, definitions).

What Is FACNET?

FACNET is the “Federal Acquisition Computer Network”. The FAR defines FACNET as “the Governmentwide Electronic Commerce/Electronic Data Interchange (EC/EDI) systems architecture for the acquisition of supplies and services that provides for electronic data interchange of acquisition information between the Government and the private sector, employs nationally and internationally recognized data formats, and provides universal user access.”

Given this definition, many EC/EDI systems in place today are not FACNET certifiable. Federal buyers, for instance, have long used electronic bulletin boards to post RFQs and receive quotations. Such bulletin board transactions are NOT FACNET transactions. To be a FACNET transaction, the electronic data has to pass through a FACNET certified EC/EDI system.

How Does a Typical FACNET EC System Work?

A typical FACNET transaction begins at the computer desktop of a contracting officer. Contracting officers enter data into FACNET by completing blanks on electronic, on-screen forms for RFQs, POs, and the like. From there, the data:

- 1) Enters a Gateway that translates the data to meet standardized EDI formats , encrypts the data as necessary, and routes the data to Network Entry Points.

- 2) Enters one of the two Network Entry Points (NEPs) — one in Columbus, Ohio and one in Ogden, Utah. The NEPs sort and route the data to Value Added Networks (VANS).
- 3) Enters the VANS. VANS are commercial information services (many of which are the same firms that provide on-line services to home computers). The VANS collect, sort, and distribute electronic information to and from vendors.
- 4) Arrives at the electronic desktop of individual vendors which have registered as “Trading Partners” with the Central Contractor Registration Center, Columbus, Ohio 614-692-5543.

What Is “Interim Certified FACNET”?

The senior procurement executive of the agency, or the Under Secretary of Defense for Acquisition and Technology for the military departments and defense agencies, is responsible for certifying that a contracting office has implemented an “interim” FACNET. This certification is made to the Administrator of OFPP. To qualify for certification, the contracting office must be able to use EC/EDI for the following functions:

- 1) Provide widespread public notice of solicitations,
- 2) Issue solicitations, and
- 3) Receive responses to solicitations and associated requests for information.

Contracting offices must be able to perform these functions for contracts between \$2,500 and \$100,000. (94-770, §4.501 and §4.505-1)

What Is Full FACNET”?

“Full FACNET” means that the head of an agency, with OFPP concurrence, has certified to the Congress that the agency:

- 1) Has implemented all FACNET functions listed below, and
- 2) Used FACNET for more than 75% of eligible contracts between the micro-purchase threshold and the SAT during the preceding fiscal year. (94-770, §4.501 and 4.505-2)

A full FACNET system means the agency can electronically:

- Provide widespread public notice of contracting opportunities, and issue solicitations.
- Receive responses to solicitations and associated requests for information.
- Provide widespread public notice of awards and issuance of orders (including price).
- Receive questions regarding solicitations, if practicable.
- Issue contracts and orders, if practicable.
- Initiate payments to contractors, if practicable.
- Archive data relating to each procurement action. (94-770, §4.504)

A full FACNET system means that vendors can electronically:

- Access notices of solicitations.
- Access and review solicitations.
- Respond to solicitations.
- Receive contracts and orders, if practicable.
- Access information on contract awards and issuance of orders.
- Receive payment by purchase card, electronic funds transfer, or other automated means, if practicable. (94-770, §4.504)


FUNCTION: Funding

Part A: Funded Requirements

Duty	Determine if funds are available to commit the Government on a contractual action before solicitation.
Conditions	Given Purchase Requests and data on the market.
Performance Goals	Correctly identify the type of funds provided, the period funds expire, and whether committed funds are sufficient for the acquisition.

Part B: Options

Duty	Determine whether to include option provisions and clauses in Requests for Quotations (RFQs) and Purchase Orders (POs).
Conditions	Given Purchase Requests and data on the market.
Performance Goals	Provide for options in RFQs and POs when options would lower the expected cost to the Government of meeting additional requirements.

 Part 13 expressly permits options in purchase orders if :

- The requirements of subpart 17.2 are met, and
- The aggregate value of the acquisition and all options does not exceed the dollar threshold for use of simplified acquisition procedures under this part. (94-770, §13.112).

FUNCTION: Requirements Documents


Duty	Critique proposed requirements documents and related elements of the Purchase Request.
Conditions	Given Purchase Requests and other related documents.
Performance Goals	<p>The requirements documents — as selected, modified, or drafted by the requiring activity after review by the contracting activity — are phrased in terms that:</p> <ul style="list-style-type: none"> • The market can satisfy. • To the maximum extent practicable, describe functions to be performed, the performance required, or essential physical characteristics (NOT design characteristics). A brand name or equal specification is one way to achieve this goal. • Establish a valid and reliable benchmark for determining whether offered supplies or services meet the minimum functional need. • Encourage offerors to supply commercial items or (to the extent that commercial items suitable to meet the agency's needs are not available) other nondevelopmental items. • Enable all available commercial or other nondevelopmental items which can meet the minimum functional need to be considered technically acceptable. • Exclude all products or services (commercially available or not) from consideration that cannot meet the actual minimum functional need. • Include restrictive provisions or conditions only to the extent necessary to satisfy the minimum needs of the agency or as authorized by law. • Promote competition to the maximum extent practicable, with due regard to the nature of the supplies or services to be acquired.

COMING ATTRACTIONS: New Policies On Requirement Documents

 The new term “requirements documents” replaces such terms as “purchase descriptions”. (94-790)

 As a matter of policy, the FAR continues to require that agencies:

- Promote maximum practicable competition.
- State requirements in terms of --
 - Functions to be performed;
 - Performance required; or
 - Essential physical characteristics
- Include restrictive provisions only to describe minimum needs. (94-790)

 The FAR as a matter of policy now also requires agencies to define requirements in terms that enable and encourage offerors to supply commercial items, or, to the extent that commercial items suitable to meet the agency's needs are not available, nondevelopmental items other than commercial items, in response to the agency solicitations.

- Define requirements to encourage offerors to supply commercial or NDI.
- Provide commercial or NDI opportunity to compete in any procurement.
- Require contractors to incorporate commercial or NDI as components.

- Modify requirements to ensure that requirements can be met by commercial or NDI. (94-790)

☞ Competition advocates now have a positive obligation to root out requirements documents and SOWs that needlessly inhibit not only competition but also the acquisition of commercial items. (94-790)

FUNCTION: Statements of Work


Duty	Critique statements of work (SOWs) and related elements of the Purchase Request.
Conditions	Purchase Requests and data from market research
Performance Goals	<p>Correctly identify parts of the statement of work which are inconsistent with the technical evaluation factors (if any), instructions for submission of supporting information, and other parts of the Purchase Request. The statement of work, as written by the requiring activity after review by the Contract Specialist:</p> <ul style="list-style-type: none"> • Is complete, with a clear-cut division of responsibility between the contracting parties. • Is stated in terms that the market can satisfy. • Encompasses all commercially available products or services that can meet the actual minimum functional need. • Excludes all products or services that cannot meet the actual minimum functional need. • To the maximum extent practicable, describes functions to be performed, the performance required, or essential physical characteristics — rather than design characteristics. • Encourages offerors to supply commercial items or (to the extent that commercial items suitable to meet the agency's needs are not available) other nondevelopmental items. • Includes restrictive provisions or conditions only to the extent necessary to satisfy the minimum needs of the agency or as authorized by law. • Promotes competition to the maximum extent practicable, with due regard to the nature of the supplies or services to be acquired.

COMING ATTRACTIONS: New Policies on Requirements Documents Incorporated In SOWs

FUNCTION: Services & Construction

Part A: Authority to Purchase Services

Duty	Identify requests to purchase personal services.
Conditions	Given Purchase Requests and data on the market.
Performance Goals	Avoid contracts for unauthorized personal services, thereby precluding the circumvention of agency personnel ceilings and maintaining proper control of Government work.

 The FAR continues to allow the acquisition of personal services through simplified procedures only when there is express statutory authority for such acquisitions. (94-770, §13.103(d))


Part B: Wage Determinations

Duty	For work covered by the Service Contract Act or Davis-Bacon, identify required skill classifications and prepare requests for wage determinations from the Department of Labor (DoL).
Conditions	Given Purchase Requests, acquisition histories, and data on the market.
Performance Goals	Correctly (1) determine whether the Service Contract Act or Davis-Bacon applies to the purchase, (2) identify the required skills to which it applies, and (3) incorporate Department of Labor wage determinations (including fringe benefits).

No Change. Davis-Bacon requirements for wage determinations still apply to construction contracts over \$2,000; the Service Contract Act requirements for wage determinations still apply over \$2,500 for covered contracts.

FUNCTION: Use Of Government Property And Supply Sources


Duty	Determine whether to furnish Government property (GFP).
Conditions	Given a Purchase Request and existing Government property that might be available for use by the contractor
Performance Goals	Identify and correctly apply the policies and procedures related to this determination given the type of property at issue (e.g., material or agency peculiar property).

 When the cost of the item to be repaired does not exceed the simplified acquisition threshold, purchase orders for property repair need not include a Government property clause. (94-770, §45.106(e)).

FUNCTION: Government Sources

Part A. FAR Part 8 Required Sources

Duty	Determine whether to order from a required source.
Conditions	Given Purchase Requests and information on deliverables available from FAR Part 8 sources.
Performance Goals	Correctly determine whether the FAR Part 8 source is required. Identify and apply all relevant criteria in determining whether to order from a Government source. Correctly prepare orders.

 You must still acquire supplies and services available from the required sources in FAR Part 8. This is true regardless of whether the acquisition is above or below the micro-purchase threshold or above or below SAT. (94-770, §13.103(a) and §19.502-1)

You need not comply with set asides when ordering from required sources of supply (such as Federal Prison Industries, Committee for Purchase from People who are Blind or Severely Disabled, and Federal Supply Schedule contracts) or Federal Information Processing multiple award schedule contracts. (94-770, §13.103(a)).

You can use “an established electronic communications format” to place delivery orders against Schedules. (91-104, §8.405-2)

Part B. Interagency Acquisitions Under the Economy Act


Duty	Determine the need and identify procedures for ordering from other Federal departments and agencies.
Conditions	Given Purchase Requests and data on products or services available from other Federal agencies.
Performance Goals	Comply with the Economy Act or other policies authorizing interagency acquisitions.


COMING ATTRACTIONS: New Policies on Economy Act Transactions

FUNCTION: Open Market Sources

Part A. Commercial Source Lists


Duty	Develop commercial source lists.
Conditions	Given Purchase Requests, acquisition histories, and data on the market.
Performance Goals	Identify a sufficient numbers of vendors to obtain effective price and/or technical competition and capability to meet the Government's needs. Record for each source whether it is a: (A) Small business. (B) Small disadvantaged business. (C) Women owned business concerns. Ensure that small business concerns are given opportunities to respond to solicitations issued using simplified acquisition procedures.

 Source lists are required **only** for non-FACNET acquisitions over the micro-purchase threshold. (94-770, §13.106-1(a)(7))

 Source list profile information should be obtained from the Government-wide Central Contractor Registration system when it is available.

Part B. FACNET Registration

Duty	Advise potential sources on FACNET registration and participation.
Conditions	Given requests from vendors
Performance Goals	Provide the correct 1-800- EDI -3414.

 The FAR establishes the following requirements for vendor registration:


§4.503 Contractor registration.

(a) In order for a contractor to conduct electronic commerce with the Federal government, the contractor must provide registration information to the Central Contractor Registration.

(b) The contractor will be required to submit information in accordance with the Federal implementation conventions of the ASC ANSI X.12 transaction set for contractor registration.

FUNCTION: 8(a) Contracts


Duties	1. Determine whether to meet the requirement through an 8(a) contract. 2. Award an 8(a) contract.
Conditions	Given Purchase Requests, SBA contacts, and related market data.
Performance Goals	Correctly determine the capability of potential 8(a) sources to meet the need.

 As an alternative to awarding under a small business set aside, you can acquire the services of an 8(a) vendor as provided in FAR Subpart 19.8. (94-770, §13.105(c)(5) & 19.502-2(a))

FUNCTION: SAT Set Asides

Duty	Determine whether to solicit quotations from other than small business concerns.
Conditions	Given Purchase Requests, acquisition histories, data on potential sources, and lack of a required Government source.
Performance Goals	Do not request quotes from large business concerns if you reasonably expect quotes from at least two responsible small business concerns that will likely be competitive in terms of market price, quality, and delivery.

No Set-Aside for Micro-purchases

 Purchases under the micro-purchase threshold are NOT subject to any form of small business set-aside (94-770, §19.502-1).


Exclusive Reservation for Small Business Concerns of Acquisitions Under SAT Other Than Micro-purchases.,

Every acquisition between \$2,500.01 and \$100,000 is set aside exclusively for small businesses (94-770, §13.105(a) and §19.502-2). This set-aside does not apply to:

- Acquisitions outside the United States, its territories and possessions, Puerto Rico, and the Trust Territory of the Pacific Islands (94-770, §13.105(b)).
- Orders from a Part 8 required source (94-770, §13.105(c) & §19.502-1).
- Orders from the Federal Supply Schedules (mandatory or optional) or the Federal Information Processing Multiple Award Schedule Contracts (94-770, §19.502-1)
- Acquisitions over \$25,000 by “participating agencies” (see FAR §19.1004 to determine if your agency is a participant in this program) from designated industry groups (listed below) pursuant to the “Small Business Competitiveness Demonstration Program”. While the set aside for such acquisitions is not automatic, note that:

Acquisitions at or below \$25,000 from designated industries are set aside exclusively for “emerging” small business concerns (more on this below), and

An agency under specified circumstances may re-instate the small business set aside for acquisitions over \$25,000 from these industries (94-770, §13.105(c)(5) and §19.502-2(a) and (d))

 Contracting officers can solicit quotes from large business concerns for actions under SAT when they are unable to obtain offers from two or more small business concerns that are competitive with market prices and with regard to the quality and delivery of the goods or services being purchased. (94-770, §19.502-2(a))

Eligibility for the SAT Small Business Set-Aside is Not Automatic for Dealers, Brokers, and Other Resellers

☞ Small business resellers are NOT automatically eligible for a small business set aside if they propose to supply the products of a large domestic manufacturer or producer. However, this constraint does not apply if SBA waives the non-manufacturing rule. (94-770, deletion of §19.501(f)).

☞ Absent the waiver, a nonmanufacturer is eligible for a small business set-aside only if (1) it employs no more than 500 employees, (2) furnishes a product manufactured or produced in the United States, and (3) the product was made or produced by a small business manufacturer or producer.


☞ If SBA waives the rule, a small business supplier can furnish domestic products made by large businesses or products made in foreign manufacturing or production facilities (within constraints of the policies on foreign acquisition in Part 25) — as long as the small business reseller meets the other tests of FAR Part 19.102 for set-aside eligibility.

The waivers granted by the SBA as of February 6, 1995 are listed below:

Product/service code	SIC code	Waiver name
2320	3537	Trucks, Four Wheel Drive
2420	3711	Tractor, Wheeled
2620	5014	Tire, Aircraft, Pneumatic
3610	3579	Copier/Duplicator, Machines
3805	3531	Construction, Loaders
3805	3531	Construction, Road Grader
3805	3531	Construction, Backhoe
3805	3533	Construction, Scrapers
3810	3531	Construction, Crane over 15 Ton
3820	3532	Construction, Drill Rigs
3825	3711	Sweepers, Street
3930	3589	Sweepers, Warehouse
4710	3312	Pipe & Tubing, High Nickel Alloy
5805	3661	Communications, Digital EPBX Equipment
5836	3651	Video Cassette Recorder
6135	3699	Batteries, Nuclear
6770	3861	Film, Photographic
6810	2869	Ethyl Acetate
6810	2812	Soda Ash
6810	2869	Trichlorethane, 1,1,1
6810	2869	Methylene Chloride
6810	2812	Caustic Soda
6810	2812	Sodium Hydroxide
6810	2869	NN-Dimethyl Formamide
6810	2869	Propylene Glycol
6810	2865	Benzene
6810	2911	Hydrocarbon Diluent
6810	2819	Acid, Hydrofluoric
6810	2873	Ammonium Sulfate

6810	2819	Calcium Nitrate (Uncoated)
6810	2819	Acid, Hydrochloric
6810	2819	Acid, Boric
6810	2819	Acid, Enriched Boric
6810	2819	N-Dodecane
6810	2869	Methyl Isobutyl Ketone
6810	2865	Toluene
6810	2819	Heptane HPCL
7021	3571	Computer, Mainframe & Peripherals
7025	3577	Computer, Laser Printer
7220	3996	Tile and Roll, Vinyl Surface
7220	2273	Carpet, Woven, 6-ft Vinyl Back Broadloom
7220	2273	Carpet Tile
7220	2273	Carpet, 6-ft Vinyl Back Broadloom
7530	2621	Paper, Copy
7610	2732	Thesauruses & Dictionaries
7730	3653	Television Receiver Sets
7730	3651	Disc Players, Compact
8915	2091	Tuna, Canned
8915	2033	Tomato Paste, Canned
8915	2033	Apricots, Canned
8915	2033	Spinach, Canned
8915	2033	Pineapple; Slices, Tidbits, Juice
8915	2033	Citrus Sections, Canned
8925	2062	Sugar, Granulated & Brown
9310	2062	Paper Bags (Small Hardware Type)
9510	3312	Bars & Rods, High Nickel Alloy
9515	3312	Plate, Sheet, Strip & Foil; Stainless & High Nickel Alloy
9520	3312	Structural Shapes, High Nickel Alloy
9525	3356	Wire, Nonelectrical, High Nickel Alloy
9530	3355	Bars & Rods, High Nickel Alloy, Aluminum, Nickel-Copper, Nickel-Copper-Aluminum, Copper, Copper-Nickel
9535	3353	Plate, Sheet & Strip; Aluminum
9535	3353	Plate, Sheet & Strip, Nickel-Copper
9545	3353	Plate, Sheet, Strip, Foil & Wire; High Nickel Alloy
9650	3331	Copper Cathodes
9650	3331	Copper & Nickel Cathodes
9650	3339	Nickel Brickettes

“Emerging Small Business” Set Aside for the Comp Demo Program

 Reserve acquisitions between \$2,500.01 and \$25,000 exclusively for emerging small businesses if the contract is for supplies and services from the following industry groups (see 19.10). (94-770, §13.502-2(a)).

(1) Construction under standard industrial classification (SIC) codes that comprise Major Groups 15, 16, and 17 (excluding dredging—Federal Procurement Data System (FPDS) service codes Y216 and Z216).

(2) Refuse systems and related services including portable sanitation services, under SIC code 4212 or 4953, limited to FPDS service code S205.

(3) Architectural and engineering services (including surveying and mapping) under SIC codes 7389, 8711, 8712, or 8713, which are awarded under the qualification-based selection procedures required by 40 U.S.C. 541 et seq. (see Subpart 36.6) (limited to FPDS service codes C111 through C216, C219, T002, T004, T008, T009, T014, and R404). [FAC 90-23]

(4) Nonnuclear ship repair (including overhauls and conversions) performed on nonnuclear propelled and nonpropelled ships under SIC code 3731, limited to FPDS service codes J998 (repair performed east of the 108th meridian) and J999 (repair performed west of the 108th meridian).

However, this set-aside does not apply to:

- Acquisitions outside the United States, its territories and possessions, Puerto Rico, and the Trust Territory of the Pacific Islands (94-770, §13.105(b)).
- Orders from a Part 8 required source (94-770, §13.103(a)).
- Acquisitions over \$25,000 from the above industry groups. (§19.10).

FUNCTION: Competition Requirements

Part A. Non-FACNET Acquisitions Between \$25,000 and \$50,000


Duty	Determine whether to restrict competition
Conditions	Given Purchase Requests, acquisition histories, and market data.
Performance Goals	Correctly determine whether one or more of the reasons for not synopsising at FAR 5.202 also justifies restricted competition.

 Part 6 does NOT apply to contracts awarded by use of simplified acquisition procedures.

However, there still may be good reason to restrict competition for some acquisitions — basically the same reasons that justify restricted competition today under Part 13. However, you do NOT have to comply with the criteria and procedures of Part 6 to justify and document restricted competition. Instead, document such a decision as provided in Part 13.

You may use EC/EDI hardware and software for restricted competition.

Part B. Non-FACNET Acquisitions Between \$50,000 and \$100,000

 Part 13 simplified acquisition procedures may only be used for a non-FACNET acquisition above \$50,000 if the contracting activity has been certified as interim FACNET compliant and the contract action is exempt from the use of FACNET under FAR '4.506(a).

Part C. Non-FACNET Acquisitions At or Under \$25,000

Duty	Determine whether to solicit quotations from less than three sources.
Conditions	Given Purchase Requests for requirements with expected prices between the micro-purchase threshold and \$25,000, acquisition histories, and market data.
Performance Goals	Solicit quotes from at least three sources unless the supplies or services are reasonably available from only one source .

☞ Ordinarily, three quotes still suffice for acquisitions under \$25,000. The FAR now identifies two potential reasons (among other possible reasons) for concluding that supplies or services are “reasonably available” from only one source:

- Urgency
- Only one available source (94-770, §13.106-1(a)(3) and (a)(4))

Part D. Micro-Purchases

Duty	Determine whether to obtain competition.
Conditions	Given purchases under the micro-purchase threshold.
Performance Goals	<p>Award without competition if the price is reasonable. Consider verifying price reasonableness only if —</p> <ul style="list-style-type: none"> • You suspect or have information to indicate that the price may not be reasonable (e.g., comparison to the previous price paid or personal knowledge of the supply or service); or • Purchasing a supply or service for which no comparable pricing information is readily available (e.g., a supply or service that is not the same as, or is limited to, other supplies or services that have recently been purchased on a competitive basis).

☞ Ordinarily, one quote still suffices for acquisitions at or below \$2,500. Also, you are still required to distribute micro-purchases “equitably” among qualified suppliers. (FAC 90-24, §13.602(b) and §13.603).

FUNCTION: Establishing BPAs

Duties	<ol style="list-style-type: none"> 1. Identify the need for a BPA 2. Establish a BPA
Conditions	Given expected requirements for like requirements
Performance Goals	Establish a BPA when a BPA would preclude the preparation of numerous purchase orders (e.g., when there is a recurring need for the same or similar requirements but the exact items, quantities, and delivery requirements are not known in advance and may vary considerably). Comply with requirements for sourcing the BPA and establishing BPA terms and conditions.

No change.

FUNCTION: Unsolicited Proposals

Duty	Determine whether to return an unsolicited proposal to the offeror, or justify a sole source acquisition to procure the good or service offered in the unsolicited proposal.
Conditions	Given unsolicited proposals and market data
Performance Goals	Correctly obtain and verify determinations from requiring activities on whether the proposal meets the agency's tests for being considered a valid "unsolicited" proposal and whether it meets an agency need. Correctly identify the conditions which preclude competition for valid unsolicited proposals and/or outline alternatives for obtaining competition in the future. Correctly identify when needs addressed in an invalid "unsolicited" proposal can be competed.

No change. [Contracting officers are more likely to see such proposals under a Simplified Acquisition Threshold of \$100,000 than under the small purchase threshold of \$25,000.]

FUNCTION: Lease Vs. Purchase

Part A: Soliciting Offers To Lease

Duty	Determine whether to solicit quotes for: <ul style="list-style-type: none"> • Leasing the item • Purchasing the item • Both (the Government reserves the right to award either a lease or a sales agreement, depending on quoted terms for each).
Conditions	Given Purchase Requests, acquisition plans, results of market research, and acquisition histories.
Performance Goals	Solicit the type of offer that will result in the lowest expected total life cycle cost to the Government.


Part B: Evaluating Proposed Leases


Duty	Compare quoted sales terms against quoted leasing terms.
Conditions	Given a solicitation that provided for the submission of both types of quotes.
Performance Goals	Correctly determine whether the lowest total life cycle cost to the Government can be achieved through leasing or through purchasing the commodity.

No change. [Contracting officers are more likely to encounter offers to lease equipment under a Simplified Acquisition Threshold of \$100,000 than under the prior small purchase threshold of \$25,000.]

FUNCTION: Price-Related Factors


Duty	Identify any necessary price-related factors
Conditions	Given Purchase Requests, acquisition histories, and market data.
Performance Goals	Only consider price-related factors necessary to detect that quote, or that combination of quotes, which would result in the lowest total cost to the Government over the life of the deliverable. Requests information from vendors in the solicitation only if necessary to apply the factors.

 You may consider price-related factors, such as the administrative cost of the acquisition. You may also consider warranty provisions and other factors that potentially would affect life cycle cost. (94-770, §13.106-1(a)(1)).

 Part 13 expressly permits options in contracts awarded through simplified acquisition procedures — which may give rise to the use of options as an evaluation factor for such awards. (94-770, §13.112).

FUNCTION: Evaluation Factors Other Than Price

Duties	<ol style="list-style-type: none">1. Determine whether to award on “best value” or on price and price-related factors alone.2. Identify non-price factors in broad terms (e.g., past performance and/or technical capability).
Conditions	Given non-price factors recommended by requiring activities, acquisition histories, market data, Purchase Requests, requirements documents and/or the statement of work.
Performance Goals	Award on best value when non-price factors can be rationally applied and there will be a net benefit to the Government from considering such factors. When a decision is made to award on the basis of best value, notify vendors of that decision in the RFQ. Request information from vendors necessary to apply non-price factors only if not available from other sources.


 You may consider factors other than price, such as past performance and quality. That is, you can award on “best value” instead of automatically awarding to the lowest price quoter. When soliciting quotes, notify suppliers of the basis of award (e.g., that you will be awarding on best value). (94-770, §13.106-1(a)(1))

When selecting on factors other than price, you do NOT have to prepare formal evaluation plans, or conduct discussions, or score the quotes or offers. Instead, you can evaluate quotes based on such information as your personal knowledge of products and firms, previous experience, or customer surveys. (94-770, §13.106-1(b))

FUNCTION: Selecting the Ordering or Simplified Acquisition Method


Part A. For Micro-purchases


Duty	Select the method for obtaining the supplies or services: <ul style="list-style-type: none"> • Government commercial purchase card. • BPA call • SF-44 • Over-the-counter purchase out of imprest funds or by use of third party drafts. • Delivery order • Purchase Order
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 All the above tools are available for micro-purchasing. The FAR specifically provides that “micro-purchases may be awarded using any of the purchasing methods covered by part 13”. However, the FAR also strongly encourages the use of the Government commercial purchase card and electronic purchasing techniques for such purchases. (FAC 90-24, §13.601(b) and (c)).

Part B. For Other Than Micro-purchases

Duty	Select the method for obtaining the supplies or services: <ul style="list-style-type: none"> • Purchase Order (electronic or paper; with or without bilateral signatures; for issuance through FACNET or non-FACNET channels) • BPA call (electronic or oral) • Delivery or task order (electronic or oral) • SF 44 • Government commercial purchase card (when you have authority to use the card above \$2,500 for purchasing as well as payment).
Conditions	Given Purchase Requests, data from market research, and expected prices between the micro-purchase threshold and SAT
Performance Goals	Select the SA method that is most suitable, efficient, and economical given the circumstances of the acquisition.

 Generally use the simplified method that is most suitable, efficient, and economical in the circumstances of each acquisition. (94-770, FAR 13.104)

 Only use the SF 44 above the micro-purchase threshold for purchases made under unusual and compelling urgency or (new) in support of a contingency operation. (94-770, §13.505-3(b))

☞ The FAR now talks of electronic purchase orders in lieu of written telecommunications. But conditions for use are essentially the same. (94-770, §13.506)

FUNCTION: Determine Method of Payment

Duties	Determine whether payment will be made by: <ul style="list-style-type: none"> • Government commercial purchase card • Fast Payment procedures • Traditional billing procedures (with or without electronic funds transfer)
Conditions	Given a Purchase Request, an expected price between the micro-purchase threshold and SAT, and information on the market
Performance Goals	Use the most appropriate method.

☞ FACNET purchases may be paid by means of the Government commercial purchase card or by electronic funds transfer or other such means. (94-770, §4.504(b)(6); §13.601(c)).

☞ No change has been made to the Fast Payment procedure — the \$25,000 ceiling remains (except that executive agencies may permit higher dollar limitations for specified activities or items on a case-by-case basis). (94-770, FAR Subpart 13.3)

☞ The new method of payment is the purchase card. You may use the card to pay for transactions up to SAT as authorized by your agency. (94-770, §4.504(b)(6); §13.601(c))

Potential Benefits Of Payment By Purchase Card:

- *Fewer invoices and better control of expenditures.* Instead of receiving hundreds of bills from vendors, the purchase card company provides the purchase card holder with one statement covering purchases made with the card during the prior period.
- *Reduced risk to the Government.* If a vendor fails to perform, the Government can withhold payment from the purchase card company for the supplies or services. The purchase card company in turn credits the amount of the sale to the Government and charges back the amount of the sale to the vendor through the vendor's bank.
- *Less risk of dealing with a non-responsible firm.* Banks tend to rigorously screen the financial and other qualifications of vendors that are authorized to accept payment by purchase cards.
- *In markets for which the purchase card is a customary method of payment, a broader vendor base —* companies are likely to prefer being paid by the card (a method of payment with which they are very familiar) than through the unique and unfamiliar procedures established by the terms and conditions of Government payment clauses.
- *The Government receives a rebate from the purchase card company based upon volume of total purchases made with the card (a la the "Discovery" card).*

Potential Drawbacks:

- You will need to make arrangements with the finance office to handle the accounting issues inherent in use of the card (e.g., ensuring that each transaction ultimately tracks with the proper fund cite).
- Purchase cards are not an accepted method of payment in every market. On the other hand, purchase cards are becoming more popular with purchasing agents for industry, State Governments, and local governments. Hence, there should be fewer and fewer markets over time that are unfamiliar with the purchase card as a method of payment.
- Vendors forfeit from 2% to 5% of the purchase price to the bank for every transaction paid by a purchase card. Some vendors therefore decline to accept purchase cards. Others may try to pass that cost to the Government through higher prices.

FUNCTION: Purchase Planning

Duties	<ol style="list-style-type: none">1. Determine whether an informal plan is necessary.2. Update or prepare an informal plan.
Conditions	Given the Purchase Request, acquisition history, results of market research, and procurement plans (if any) for prior acquisitions.
Performance Goals	Only prepare informal plans for acquisitions that will take place over an extended period and require extensive participation by personnel outside the contracting activity (e.g., when selecting on factors other than price). Record key acquisition decisions and milestones. Correctly assign responsibilities and identify approving officials. Planning provides sufficient leadtime to obtain maximum practicable competition and meet the Government's needs in the most effective, economical, and timely manner.

No Change.

FUNCTION: Determine Method of Solicitation

Duties	Determine whether to solicit: <ul style="list-style-type: none"> • Orally • By issuing a paper RFQ • By issuing a FACNET RFQ • Through other electronic channels.
Conditions	Given Purchase Requests, the selected simplified acquisition procedure, and market information
Performance Goals	When the contracting office has a certified FACNET, use FACNET to solicit quotes whenever FACNET is cost effective and practicable. For non-FACNET purchases, solicit orally for contract at or below \$25,000. If the acquisition exceeds \$25,000, solicit orally (where possible), on paper or electronically. For construction contracts over \$2,000, only use paper or electronic solicitations.

☞ For acquisitions between the micro-purchase threshold and SAT, FACNET is the preferred method of soliciting and receiving quotes and providing notice of Government purchase requirements. (94-770, §4.502(b) & §13.103(e)).

☞ However, you can solicit outside of an interim certified FACNET if:

- The contract is exempt from widespread public notice under FAR 5.202. When this exception applies, you do NOT have to prepare a written determination for the file. (94-770, §4.506(a))
- The head of the contracting activity has determined that it is not practicable or cost-effective to process a class of purchases via FACNET. This determination has to be in writing, and the HCA has to centrally maintain a file of such determinations. (94-770, §4.506(a) & §13.106-1(a)(2)).
- The contracting officer has documented in writing that FACNET processing of that procurement is not “practicable or cost effective”. HCAs must also centrally maintain a file of these determinations. (94-770, §4.506(a) & §13.106-1(a)(2)).


☞ When soliciting quotes outside of FACNET:

- For construction contracts over \$2,000, only use paper or electronic solicitations.
- For other contracts at or below \$25,000, solicit orally to the maximum extent practicable.
- For contracts over \$25,000, solicit on paper or electronically. You can also solicit orally over \$25,000 (e.g., for acquisitions that are exempt from the requirement for a synopsis in the Commerce Business Daily). (94-770, §13.106-1(a)(2))

FUNCTION: Conduct Oral Solicitations


Duty	Conduct oral solicitations
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Conditions	Given Purchase Requests and a decision to conduct an oral solicitation
Performance Goals	Describe the requirement in complete and unambiguous terms. Do not compromise quotes from other vendors. If soliciting quotes under the total small business set aside, provide quoters with substantially the same information as conveyed by the clause at FAR 52.219-6.

 The clause at FAR 52.219-4, Notice of Small Business-Small Purchase Set-Aside, no longer exists and therefore no longer has to be summarized in an oral solicitation. In its place, convey the information from the clause at FAR 52.219-6.


FUNCTION: Preparing RFQs

Duty	Prepare Requests for Quotations
Conditions	Given a decision to solicit on paper or electronically, the Purchase Request, acquisition history, information on the market, and presolicitation decisions on such matters as whether the requirement is for a commercial item, type of contract, nature of goods or services being procured, et. al.
Performance Goals	Incorporate or reference all terms and conditions planned for the Purchase Order that will affect the ability of vendors to prepare accurate and complete quotations. Select the format appropriate for the acquisition (e.g., combined synopsis/solicitation; OF 347, et. al.).


 The following clauses are NO LONGER REQUIRED FOR solicitations and contracts at or below SAT (94-970, §13.111).


- (1) 28.102-4, Miller Act solicitation requirements.
- (2) 52.203-1, Officials Not to Benefit
- (3) 52.203-4, Contingent Fee Representation and Agreement
- (4) 52.203-5, Covenant Against Contingent Fees
- (5) 52.203-6, Restrictions on Subcontractor Sales to the Government
- (6) 52.203-7, Anti-Kickback Procedures
- (7) 52.215-1, Examination of Records by Comptroller General
- (8) 52.222-4, Contract Work Hours and Safety Standards Act-Overtime Compensation
- (9) 52.223-5, Certification Regarding a Drug-Free Workplace
- (10) 52.223-6, Drug-Free Workplace, except for individuals

Do NOT incorporate the above clauses in any solicitation or contract under \$100,000 whether or not you are using simplified acquisition procedures to award the contract.

 Establish deadlines for the submission of responses to solicitations which afford contractors a reasonable opportunity to respond — especially when soliciting via FACNET or over \$25,000. Consider the circumstances of the individual procurement such as the complexity, commerciality, availability, and urgency when establishing the solicitation response time. (94-770, §5.203(b) and §13.103(f))


COMING ATTRACTIONS: Part 12 Requirements

 The new standard for acquiring commercial items: Except as otherwise directed by FAR Part 12, only incorporate provisions, terms and conditions in solicitations for commercial items that are consistent with customary commercial practice. (94-790)


 There is a new combined CBD synopsis/solicitation for commercial items. Use this format when:

- Acquiring commercial items over \$25,000 by a method other than FACNET, and
- The combined synopsis/solicitation would not exceed 12,000 textual characters (i.e., the solicitation is relatively simple and no lengthy addenda are necessary). (94-790)

Use SF XXXX for all other commercial items. (94-790)

 The FAR requires contracting officers to incorporate three new provisions and two new clauses to solicit bids for commercial items. Notwithstanding prescriptions contained elsewhere in the FAR, these are the only provisions and clauses required for solicitations and contracts for the acquisition of commercial items.

- Use 52.212-1, Instructions to Offerors - Commercial.
- Use 52.212-3, Offeror Representations and Certifications - Commercial Items.
- Use 52.212-4, Contract Terms and Conditions - Commercial Items.
- Use 52.212-5, Contract Terms and Conditions Required To Implement Statutes Or Executive Orders - Commercial Items. (94-790)

 Tailor the provision at 52.212-1 and the clause at 52.212-4 to reflect commercial practices. This can be done without requesting a deviation. However, you can only add a non-commercial term or condition to this provision or this clause if you obtain a waiver. (94-790)

FUNCTION: Types of Contracts

Duty	Select the contract type or types to solicit.
Conditions	Given acquisition histories, market data, and the Purchase Request.
Performance Goals	<p>Correctly identify the factors in pricing a procurement that are the most uncertain, determine the potential risks entailed by the uncertainties, and select the type of contract that will:</p> <ol style="list-style-type: none"> 1. Minimize the potential risks (in terms of cost and performance) inherent in the requirement and the expected cost of contract administration (both to the Government and industry), taken together. 2. Provide a reasonable allocation of risk between the Government and the contractor. 3. Conform to FAR Part 16 and agency requirements and limitations on the use of the different contract types. <p>Do not use cost-plus-a-percentage-of-cost contracts.</p>

☞ Agencies may authorize use of other than firm fixed price contracts for simplified acquisitions. (94-770, §13.501(a) and §16.001)

For example, fixed price level of effort term contracts might be authorized for investigation or study in a specific research and development area. §16.207-3 allows use of this contract type only when —

- (a) The work required cannot otherwise be clearly defined;
- (b) The required level of effort is identified and agreed upon in advance;
- (c) There is reasonable assurance that the intended result cannot be achieved by expending less than the stipulated effort; and
- (d) The contract price is **\$100,000 or less**, unless approved by the chief of the contracting office. [Emphasis added]

☞ Agencies might require contracting officers to document their reasons for the contract type selected. (94-770, §16.103) This is especially likely if the agency authorizes use of other than fixed price contracts.

☞ You are not required to incorporate the clause at §52.216-1, Type of Contract, to notify quoters of the type of contract that is contemplated. (94-770, §16.105) When soliciting quotes, however, identify the contemplated type of contract if other than firm fixed price.

☞ D&Fs are no longer required for cost reimbursable contracts. (FAC 90-24)

FUNCTION: Publicizing Proposed Acquisitions

Duties	<ol style="list-style-type: none"> 1. Determine whether it is necessary to provide widespread public notice of the purchase. 2. If necessary, select and implement a method or methods of publicity
Conditions	Given an RFQ
Performance Goals	Market notified to the extent required or necessary for obtaining maximum practicable competition.

FACNET Solicitations

☞ Certified FACNETs by definition enable you to provide widespread public notice of your solicitations. In other words, you can make an RFQ available to all FACNET vendors with one or several keystrokes.

☞ When using a certified FACNET to provide widespread public notice of solicitations under SAT, you are NOT required to publicize the acquisition in any other way. You do NOT have to post a paper copy of the RFQ on bulletin boards or an electronic copy on electronic bulletin boards. You do NOT have to synopsize the requirement in the Commerce Business Daily.

☞ When your contracting office has a certified interim FACNET, do you have to provide widespread public notice of **every** RFQ through FACNET? NO. You do NOT have to make an RFQ available to all FACNET vendors IF:

- The contract is exempt from widespread public notice under FAR 5.202. When this exception applies, you do NOT have to prepare a written determination for the file. (94-770, §4.506(a))
- The head of a contracting activity (HCA) has excluded that class of contracts from FACNET (94-770, §4.506(a)), AFTER documenting in writing that “FACNET processing of those procurements is not cost effective or practicable”. HCAs must centrally maintain a file of these determinations.
- The Contracting officer has excluded that individual contract action from FACNET (94-770, §4.506(a)), AFTER documenting in writing that FACNET processing of that procurement is not “practicable or cost effective”. HCAs must also centrally maintain a file of these determinations.

However, if you have not made the RFQ available to all FACNET vendors, the RFQ is subject to the publicizing requirements for non-FACNET purchases (see below).

☞ If the agency is operating under a certified full FACNET system, you can only go off FACNET for:

- That class or those classes of actions that the Federal Acquisition Regulatory Council has determined to be unsuitable for acquisition through FACNET (94-770, §4.505-2), AND
- For actions by a contracting office that has been exempted from FACNET (in whole or in part) by the head of the agency or designee (based on a written determination that FACNET processing is not cost effective or practicable for the contracting office, or portions thereof) (94-770, §4.506(b))

However, if you have not made the RFQ available to all FACNET subscribers, the RFQ is then subject to the publicizing requirements for non-FACNET transactions (see below).

Non-FACNET Solicitations

☞ You must post notice in a public place of proposed contract actions exceeding \$10,000 through \$25,000 (or for Defense agencies exceeding \$5,000 through \$25,000). Now, however, the posting must include a statement that “all responsible sources may submit a quotation which, if timely received, shall be considered by the agency”. Moreover, the FAR now allows electronic posting.

Prior exceptions to this posting requirement still stand:

- The exemptions at §5.202(a)(1), (5) through (9) or (11).
- Oral solicitations.
- FACNET transactions.

Whether or not you post the purchase, you must consider ALL quotations timely received from responsible sources. (94-770, §5.101(a)(2))

☞ All contract actions over \$25,000 must be synopsisized in the Commerce Business Daily. (94-770, §5.101(a)(1)). However, section 5.202 of the FAR establishes 13 exceptions to this synopsis requirement. The newest exception is for FACNET transactions. (94-770, §5.101(a) and 5.202). A CBD synopsis is NOT required for non-FACNET transactions if —

- 1) A synopsis would inevitably disclose classified information.
- 2) The Government would be seriously injured if the agency complies with the time periods specified in §5.203.
- 3) The terms of an bilateral or international treaty effectively require contracting with specified sources.
- 4) Acquiring supplies or services through 8(a) contracts or from FAR Part 8 required sources.
- 5) The contract action is for utility services other than telecommunications services and only one source is available.
- 6) The contract action is an order placed under a requirements contract (what of task order contracts and calls against BPAs?)
- 7) The contract action results from acceptance of a proposal under the Small Business Innovation Development Act of 1982 (Pub. L. 97-219)
- 8) The contract action results from the acceptance of an unsolicited research proposal that demonstrates a unique and innovative concept (see §6.003) and publication of any notice complying with §5.207 would improperly disclose the originality of thought or innovativeness of the proposed research, or would disclose proprietary information associated with the proposal. This exception does not apply if the contract action results from an unsolicited research proposal and acceptance is based solely upon the unique capability of the source to perform the particular research services proposed (see §6.302-1(a)(2)(i)).
- 9) The contract action is made for perishable subsistence supplies, and advance notice is not appropriate or reasonable;
- 10) The contract action is made under the conditions:

Described in §6.302-3 and advance notice is not appropriate or reasonable (i.e., when it is necessary to award the contract to a particular source or sources in order (i) to maintain a facility, producer, manufacturer, or other supplier available for furnishing supplies or services in case of a national emergency or to achieve industrial

mobilization, or (ii) to establish or maintain an essential engineering, research, or development capability to be provided by an educational or other nonprofit institution or a federally funded research and development center).

The contract action is for purchases of brand-name commercial items for resale through commissaries or other similar facilities.

- 11) The contract action is made under the terms of an existing contract that was previously synopsisized in sufficient detail to comply with the requirements of §5.207 with respect to the current contract action (e.g., exercise of a priced option).
- 12) The contract action is by a Defense agency and the contract action will be made and performed outside the United States, its possessions, or Puerto Rico, and only local sources will be solicited. This exception does not apply to contract actions subject to the Trade Agreements Act (see Subpart 25.4). This exception also does not apply to North American Free Trade Agreement contract actions, which will be synopsisized in accordance with agency regulations.

☞ When preparing CBD synopses for SAs over \$25,000, include the following as part of *Item 17, "Description"* — (A) a description of the procedures to be used in awarding the contract (e.g., request for oral or written quotation or solicitation) and (B) the anticipated award date. (94-770, §5.207(c)(2)(xi))

☞ When synopsisizing any noncompetitive action, insert a statement of the reason justifying other than full and open competition, and identify the intended source(s) (see §5.207(e)(3)). (94-770, §5.207(c)(2)(xiv))

FUNCTION: Preaward Inquiries

No change.

FUNCTION: Solicitation Conferences/Site Visits

No change.


FUNCTION: Amending/Canceling RFQs

No changes.


FUNCTION: Processing Quotes

Duties	<ol style="list-style-type: none">1. Receive and control quotations.2. Identify variances from RFQ terms and conditions.
Conditions	Given an RFQ and quotes.

Performance Goals	All quotes are kept secure. Correctly identify all variances from RFQ terms and conditions. Correctly distinguish "minor irregularities and informalities" from differences that would make it difficult or impossible to fairly compare the quote with other quotes.
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 If solicited via FACNET, vendors must submit quotes by FACNET to be considered for award. However, this requirement does not take effect until the contracting office has published the appropriate notice in the Commerce Business Daily.


Look for the effective date of this policy in the Commerce Business Daily notice which announces that the contracting office has a certified interim FACNET. Such notices establish a date after which all quotes or other responses to FACNET solicitations must come through FACNET, unless otherwise authorized. (94-770, §4.505-1(d)).

 You must consider ALL quotations timely received from responsible sources. This is true whether or not you provided public notice of the purchase through posting, synopsising, or FACNET. (94-770, §5.101(a)(2))

FUNCTION: Late Quotations

No change.

FUNCTION: Application of Non-Price Factors

 In the past, contracting officers typically reverted to FAR Part 15 procedures, forms, and clauses for those actions under \$25,000 that involved the application of non-price factors on a “greatest value” basis. This is no longer necessary or encouraged.

FUNCTION: Price Analysis

No change.

FUNCTION: Price-Related Information From Offerors

No change. [We included this function because contracting officers are likely to require limited information on costs to verify price reasonableness for some sole source requirements or verify cost realism for some competitive actions under \$100,000. However, NEVER EVER ask vendors to supply “certified cost or pricing data.”]

In the past, contracting officers typically reverted to FAR Part 15 procedures, forms, and clauses for those rare actions under \$25,000 that required negotiations on the basis of limited cost information. This will no longer be necessary or encouraged.

FUNCTION: Cost Analysis

No change. [We included this function because contracting officers are likely to require limited information on costs to verify price reasonableness for some sole source requirements or verify cost realism for some competitive actions under \$100,000.]

In the past, contracting officers typically reverted to FAR Part 15 procedures, forms, and clauses for those rare actions under \$25,000 that required negotiations on the basis of limited cost information. This is no longer necessary or encouraged.

FUNCTION: Need for Discussions

No change.

FUNCTION: Factfinding

No change.

FUNCTION: Negotiation Strategy

No change.


FUNCTION: Conducting Negotiations

No change.

FUNCTION: Responsibility

No Change.

FUNCTION: Selection for Award

 When other than price related factors are considered in selecting the supplier, document the file to support the final contract award decision. (94-770, §13.106-2(b))

☞ There are new FPDS reporting fields for awards to small disadvantaged business; women owned business concerns, number of offers, award of task order contracts, and awards for commercial items. OFPP is revising the form. (94-701) Note that neither FASTA nor the new FAR language changes the requirement to complete the form on all actions above \$25,000.

FUNCTION: Debriefing

☞ When a supplier requests information on an award which was based on other than price alone, include a brief explanation of the basis for the contract award decision in the notice of award to that supplier. (94-770, §13.106-1(c)(2))

FUNCTION: BPA Calls

☞ No individual BPA call may exceed \$50,000, or \$100,000 when the procuring activity has certified interim FACNET. (94-770, §13.204)

☞ Generally make electronic calls against BPAs. Use oral calls instead of electronic calls only when the latter are not considered economical or practical. However, you may issue a paper call if necessary to ensure that the vendor and the purchaser agree on the transaction. (94-770, §13.204(b))

FUNCTION: Delivery Orders

No change.

FUNCTION: Purchase Orders

No change.

FUNCTION: Unpriced Orders

☞ You may use unpriced orders when prices are not expected to exceed \$50,000, or \$100,000 when the procuring activity has certified interim FACNET. (94-770, §13.502(b)(1))

☞ Unpriced orders can be conveyed electronically. (94-770, §13.502(c))

FUNCTION: Protests

COMING ATTRACTIONS: Changes are being proposed in the way that protests are handled by agencies, GAO, and GSBCA.

FUNCTION: Fraud and Exclusion

No change.

FUNCTION: Contract Administration Planning

No change.

FUNCTION: Post-Award Assistance to Vendors

No Change.

FUNCTION: Receipt, Inspection, And Acceptance

Duties	<ol style="list-style-type: none">1. Monitor compliance with Contract Clauses by both the contractor and Government personnel.2. Perform any actions required of the contracting officer under the terms of the contract.3. Inform the contractor of any potential breaches, and4. Resolve the problem, where possible, without resorting to a formal contractual remedy.
Conditions	Given a contract, the contract administration plan, and any other related document referenced in the contract.
Performance Goals	Properly enforce all contract and procedural requirements. Monitor actions of contracting officer representatives and other support personnel to preclude breaches by the Government. Identify and document potential breaches and report them to the contractor for correction as early as they occur. Accurately assess the impact of potential problems on performance and delivery requirements.

No Change.

FUNCTION: Delays

Duties	1. Determine whether the delay is excusable 2. If excusable, determine the consideration (e.g., a performance time extension).
Conditions	Given the contract and evidence of performance delays.
Performance Goals	Correctly distinguish delays that are beyond the contractor's control and are without the fault or negligence of the contractor. Negotiate reasonable consideration.

COMING ATTRACTIONS: Delays Under Part 12 Contracts

☞ Under the required clause at §52.212-4 for acquiring commercial items, contractors must notify the Government when there will be an excusable delay. Failure to notify the Government as soon as reasonably possible could result in termination for cause. Contractors cannot use “excusable delay” as defense if they fail to notify the Government about the excusable delay when it occurred. The only exception is if the contractor actually was not able to notify the Government immediately (e.g., delay due to a fire or flood). (94-790)

☞ Reasons for excusable delay are broader and more lenient under §52.212-4 than under the default clauses prescribed by Part 49. The standard changes from “causes beyond the control and without the fault or negligence” to “beyond the reasonable control of the Contractor and without its fault or negligence”. In particular, §52-212-4 expressly cites “delays of common carriers” as justifying a finding of excusable delay under 52.212-4, which is NOT a cited justification in Part 49 clauses. (94-790)

FUNCTION: Stop Work

No change.

FUNCTION: Remedies

Duty	Select and pursue a formal contractual remedy
Conditions	Given the purchase order, evidence of performance problems, and documentation of informal attempts to resolve the problems.
Performance Goals	Select the remedy that will best minimize the impact of the contractor's performance problems on the requirements, delivery schedule, and cost. Obtain reasonable consideration for any relief granted the contractor from purchase order terms and conditions. Document all decisions and contacts with the contractor sufficient to support the Government's position in the disputes or court proceedings. Correctly follow all prescribed procedures for the remedy.

COMING ATTRACTIONS: Remedies Under Part 12 Contracts

☞ The clause at §52.212-4, “Contract Terms and Conditions - Commercial Items”, provides the following remedies (expressly or implicitly):

- Rejection of nonconforming supplies or services prior to acceptance.
- Redress for breach of the implied warranty of merchantability.
- Revocation of acceptance for patent defects, fraud, gross mistake, or latent defect.
- Termination for cause.

In addition, addenda to that clause might provide for such remedies as those available under the offeror’s commercial warranties.

☞ If acceptance is revoked under the clause at §52.212-4, “Contract Terms and Conditions - Commercial Items”, the Government may demand:

- Correction or replacement of nonconforming supplies, or
- Repformance of nonconforming services at no increase in contract price, or
- An adjustment to the contract price to reflect the reduced value of the nonconforming supplies or services. (94-790)

☞ Under the clause at 52.212-4, acceptance is not final for patent defects, where, in accordance with customary commercial practice, items were accepted based on the seller’s assurances rather than on inspection of tendered items.

☞ Under the clause at 52.212-4, revocation of acceptance must occur (1) within a reasonable time after the defect was discovered or should have been discovered; and (2) before substantial change occurs in the condition of the item. This limitation does not apply to changes in condition caused by the defect. (94-790)

☞ Under the clause at 52.212-4, the Government can obtain redress for breach of the implied warranty of merchantability. The clause waives all other implied warranties (e.g., the implied warranty of fitness for a particular purpose and the implied warranty arising from course of dealing or trade usage) — but a contracting officer by tailoring can incorporate such warranties where consistent with commercial practice. Likewise, the contracting officer can agree to terms that disclaim the implied warranty of merchantability. (94-790)

FUNCTION: Termination for Cause

Duties	<ol style="list-style-type: none"> 1. Determine whether to cancel or terminate. 2. Cancel orders. 3. Terminate orders for cause.
Conditions	Given purchase orders, evidence of performance problems, requests for assurances to the vendor of performance, and requests for termination from the requiring activity and/or contractor.
Performance Goals	Cancel only when performance has not commenced or upon mutual agreement of the parties. Terminate for cause when there is no other alternative for obtaining performance, given the current contractor's problems and deficiencies, and the Government has a sustainable case for default.

COMING ATTRACTIONS: Terminations Under Part 12 Contracts

☞ The Government retains the right to terminate both for cause and convenience under §52.212-4, Contract Terms and Conditions - Commercial Items. You may follow the administrative guidance in Part 49 where consistent with the requirements and procedures in that clause. (94-790)

☞ The Government may terminate for cause under §52.212-4:

- In the event of any default by the Contractor, or
- If the Contractor fails to comply with any contract terms and conditions, or
- If the Contractor fails to provide the Government, upon request, with adequate assurances of future performance.

These are basically the same three causes in FAR Part 49 default clauses. (94-790)

☞ The “termination for cause” section of §52.212-4, “Contract Terms and Conditions - Commercial Items” does not require a cure or show cause notice prior to issuing a termination notice. However, you must request adequate assurances of future performance prior to terminating for failure to provide such assurance. That request does not have to conform to the exact language prescribed in Part 49 for a cure notice. (94-790)

☞ “In the event of termination for cause, the Government [under §52.212-4] shall not be liable to the Contractor for any amount, and the Contractor shall be liable to the Government for any and all rights and remedies provided by law”. Hence, the Government may seek any and all damages available for breach (except for consequential damages resulting from the seller’s breach). (94-790)

FUNCTION: Contract Modifications

Duties	<ol style="list-style-type: none">1. Determine whether a modification is needed.2. Prepare, negotiate, and execute the modification.
Conditions	Given the purchase order and a request to modify the order.
Performance Goals	Cancel the order and reissue the RFQ if performance has not commenced. Modify the order when the proposed change is within the scope of work.

COMING ATTRACTIONS:

☞ The clause at “**52.212-4 Contract Terms and Conditions - Commercial Items**” would NOT authorize unilateral changes (unless tailored to provide for such changes where consistent with commercial practice). Instead, the clause only allows supplemental agreements. (94-790)

☞ On constructive changes, the ratifying official may now be any official who has current authority to execute the contract action. Before, the ratifying official had to be an individual who had authority to execute the contract action at the time such action was necessary. (94-731)

FUNCTION: Termination for Convenience

Duties	<ol style="list-style-type: none">1. Determine whether to terminate for convenience.2. Cancel orders.3. Terminate orders for convenience
Conditions	Given purchase orders and requests for termination from the requiring activity and/or contractor.
Performance Goals	Cancel only when performance has not commenced or upon mutual agreement of the parties. Terminate for convenience if funds are insufficient, the requirement is no longer needed, or the quantity needed has been reduced. Also terminate for convenience if there has been a radical change in the requirement that is beyond the contractor's expertise.

COMING ATTRACTIONS: Terminations Under Part 12 Contracts

☞ The Government retains the right to terminate both for cause and convenience under §52.212-4, Contract Terms and Conditions - Commercial Items. You may follow the administrative guidance in Part 49 where consistent with the requirements and procedures in that clause. (94-790)

☞ Contracts for commercial items establishes a new basis for convenience termination settlements — “Percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus actual direct costs that the Contractor can demonstrate have resulted from the termination.” (94-790)

FUNCTION: Payment

No change.


FUNCTION: Closeout

No change.

FUNCTION: Claims

Duty	Analyze and recommend settlement positions and prepare a Contracting Officer's decision.
Conditions	Given a contract and a claim from a contractor.
Performance Goals	Correctly determine the validity of the claim and prepare a proper and complete decision. Protect the Government's interests while treating the contractor fairly and equitably within the terms of the contract.

COMING ATTRACTIONS: Changes in Claims Procedures

 The threshold for certifying a claim is now \$100,000. Contracting officer deadlines for issuing decisions on a claim reflect the new threshold of \$100,000 for certifying claims. Thresholds have also been increased to \$50,000 and \$100,000 respectively for the BCA small claim procedure and accelerated procedure. (94-730)