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Revolutionary FAR Overhaul (RFO) Update

This fourth installment of the *Contract Management* magazine coverage of the Revolutionary FAR Overhaul (RFO) details changes in word count, readability, reduction in imperative language, and more.

By Don Mansfield, CFCM

In our fourth installment of our series covering the Revolutionary FAR Overhaul (RFO), we cover deviation guidance for FAR parts 4, 5, 8, 9, 12, 26, 28, 30, 33, 40, 46, 48, and 49. As part of our coverage, we provide document statistics to assess the changes in terms of word count, readability (using the Flesch-Kincaid scale), and reduction of imperative language. The following summarizes the changes for each part in the order they were issued and provides commentary on the changes.

FAR part 4. Administrative Matters

FAR part 4 prescribes policies and procedures relating to the administrative aspects of contract execution, contractor-submitted paper documents, distribution, reporting, retention, and files. It also includes policies and procedures to implement security prohibitions and exclusions that restrict federal agencies from procuring, obtaining, or using certain products, services, or sources. Table 1 contains an analysis of the deviation guidance.

TABLE 1. FAR Part 4: Administrative Matters

Document Statistics:								
Word Count			Readability (Flesch-Kincaid)			Shalls/Musts		
Current	RFO	Net	Current	RFO	Net	Current	RFO	Net
22789	7817	-14972	15.5	13.8	-1.7	214	76	-138
Highlights: <ul style="list-style-type: none"> • Content rearranged into process-oriented subparts. • Security-related subparts, provisions, and clauses relocated to FAR part 40. • Consolidation of coverage for System for Award Management, representations and certifications, taxpayer identification number, and personal identity verification. • Consolidated six separate provisions into two. 								
Bottom line: Once upon a time, FAR Part 4 was modest in scope: eight subparts, all devoted to routine administrative housekeeping. Today it sprawls across 21, a jumble that long ago earned it the reputation as the FAR's Island of Misfit Rules. The latest overhaul attempts a rescue. Security-related material has been lifted out and reassigned to Part 40, where it more logically belongs. Other content has been consolidated, trimming the rule's bulk to roughly a third of its former size. The revisions, written in plainer language and presented with helpful tables, are easier to navigate. Yet for all the tidiness, the deeper reality remains unchanged: neither agencies nor contractors will find their administrative burdens meaningfully lighter.								

FAR part 5: Publicizing Contract Actions

FAR part 5 prescribes policies and procedures for publicizing contract opportunities and award information. Table 2 contains an analysis of the FAR part 5 deviation guidance.

TABLE 2. FAR Part 5: Publicizing Contract Actions								
Document Statistics:								
Word Count			Readability (Flesch-Kincaid)			Shalls/Musts		
Current	RFO	Net	Current	RFO	Net	Current	RFO	Net
8001	1961	-6040	15.4	11.8	-3.6	86	10	-76
Highlights: <ul style="list-style-type: none"> • New definitions for <i>notice</i> and <i>presolicitation notice</i>. • Retirement of the word “synopsis” (for the most part). • Reorganization of content into three time-phased subparts (i.e., presolicitation, solicitation, award). • Creation of four new tables to replace dense paragraphs. • Deletion of FAR subpart 5.4 (Release of Information). • Coverage of paid advertisements in FAR subpart 5.5 streamlined and moved to FAR 5.102. • Deletion of FAR subpart 5.6 (Publicizing Multi-Agency Use Contracts). • Deletion of FAR subpart 5.7 (Publicizing Requirements Under ARRA). 								
Bottom line: Overall, a significant improvement – probably the best we’ve seen so far. Roughly three-quarters of content was removed. Great use of tables to improve readability – let’s hope to see more of this. However, there is a mistake in Table 5-2 showing minimum timeframes for posting presolicitation notices. The table states that for acquisitions exceeding \$25,000 up to the simplified acquisition threshold, a presolicitation notice must be published 15 days before solicitation issuance for <i>any acquisition</i> . However, FAR 5.203(a) permits the contracting officer to shorten this period for acquisitions for commercial products and commercial services. Lastly, the clear distinctions between presolicitation notice, special notice, solicitation notice, and award notice are very helpful. Curiously, the title of FAR subpart 5.3 remains “Synopsis of Contract Awards” instead of “Award Notices.”								

FAR part 8: Required Sources of Supplies and Services

FAR part 8 deals with prioritizing sources of supplies and services for use by the Government. Table 3 contains an analysis of the deviation guidance.

TABLE 3. FAR Part 8: Required Sources of Supplies and Services								
Document Statistics:								
Word Count			Readability (Flesch-Kincaid)			Shalls/Musts		
Current	RFO	Net	Current	RFO	Net	Current	RFO	Net
15331	2251	-13080	14.2	14.8	0.6	208	27	-181
Highlights: <ul style="list-style-type: none"> • Mandates use of OFPP-designated “required use” contracts if a requirement can be met by a product or service available on such contracts. • Procedures for ordering under the Federal Supply Schedule (FSS) moved from FAR subpart 8.4 to the General Services Acquisition Manual (GSAM/R). • Guidance and procedures for the Federal Supply Schedule program moved from FAR part 38 and FAR subpart 8.4 to GSAM/R part 538. FAR part 38 deleted and reserved. • Coverage of the use of government sources by contractors moved from FAR part 51 to FAR part 8. FAR part 51 deleted and reserved. • Coverage of excess personal property is replaced with a cross-reference to applicable coverage in the Federal Management Regulation. 								
Bottom line: The overhaul of FAR Part 8 stripped away roughly 85% of its coverage, the steepest reduction yet in any part that wasn’t eliminated outright. At the heart of what remains is a new requirement: agencies must turn to OFPP-designated “required use” contracts. The mandate curtails an agency’s ability to shop around, trading discretion for uniformity. The hope is that this consolidation will streamline procurement, reduce duplication, and ultimately save taxpayer dollars. Whether it delivers on that promise, or simply reshuffles inefficiencies into a new form, is a question that only future analysis can settle.								

FAR part 9: Contractor Qualifications

FAR part 9 prescribes policies, standards, and procedures pertaining to prospective contractors’ responsibility; debarment, suspension, and ineligibility; qualified products; first article testing and approval; contractor team arrangements; defense production pools and research and development pools; and organizational conflicts of interest. Table 4 contains an analysis of the deviation guidance.

TABLE 4. FAR Part 9: Contractor Qualifications								
Document Statistics:								
Word Count			Readability (Flesch-Kincaid)			Shalls/Musts		
Current	RFO	Net	Current	RFO	Net	Current	RFO	Net
23367	19673	-3694	16.8	16.6	-0.2	258	131	-127
Highlights: <ul style="list-style-type: none"> • Removal of FAR subparts 9.6 (Contractor Team Arrangements) and 9.7 (Defense Production Pools and Research and Development Pools) • Relocation of coverage of special standards of responsibility and pre-award surveys to FAR Companion Guide 								
Bottom line: The removal of two subparts and relocation of guidance to the FAR Companion Guide explains the decrease in word count. Despite an attempt to rewrite the content in plain language, the gain in readability was minimal. Nothing remarkable.								

FAR part 12: Acquisition of Commercial Products and Commercial Services

FAR part 12 prescribes policies and procedures unique to the acquisition of commercial products and commercial services. It implements the statutory preference for the acquisition of commercial products and commercial services by establishing acquisition policies more closely resembling those of the commercial marketplace and encouraging the acquisition of commercial products and commercial services. Table 5 contains an analysis of the deviation guidance.

TABLE 5. FAR Part 12: Acquisition of Commercial Products and Commercial Services								
Document Statistics:								
Word Count			Readability (Flesch-Kincaid)			Shalls/Musts		
Current	RFO	Net	Current	RFO	Net	Current	RFO	Net
8772	5987	-2785	16.7	13.6	-3.1	79	16	-63
Highlights: <ul style="list-style-type: none"> • Simplified procedures for commercial acquisitions authorized by statute move from part 13 to part 12. • “Late is late” rule removed from FAR 52.212-1, Instructions to Offerors – Commercial Products and Commercial Services. • Elimination of FAR 52.212-3, Offeror Representations and Certifications – Commercial Products and Commercial Services. • Elimination of FAR 52.212-5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders – Commercial Products and Commercial Services. • Explicit recognition of construction in the definition of “commercial service.” • Over 40 provisions and clauses deemed no longer applicable to commercial contracts. 								
Bottom line: The deviation guidance is roughly one-third shorter in length – even considering the importation of a lot of FAR part 13 content. The content within the part is also better organized and easier to read. The removal of the “late is late” rule for submission of solicitation responses is long overdue. Having said that, there needs to be an alternate version of FAR 52.212-1 for the simplified procedures. RFO 52.212-1 still requests offers (not quotations), covers the intent to conduct discussions, and contains information regarding post-award debriefings. None of these are applicable to simplified acquisitions. The elimination of the consolidated provision for representations and certifications (FAR 52.212-3) and improving the clause describing the contract terms and conditions required to implement a long checklist of statutes and executive orders (FAR 52.212-5) should help make the government’s commercial solicitations easier to read. Lastly, the explicit reference to construction in the definition of “commercial service” is going to cause confusion. While never expressly prohibited from using FAR part 12 to purchase construction, it has been a longstanding practice to <i>not</i> use FAR part 12 for construction. Further, FAR 52.212-4 would likely require significant tailoring in contracts for construction to make it consistent with customary commercial practice. The FAR Companion Guide does not offer any guidance in this respect.								

FAR part 26: Other Socioeconomic Programs

FAR part 26 contains coverage of socioeconomic programs not otherwise covered in parts 19 and 22-25. Topics include the Indian Incentive Program, local preferences when contracting for major disaster or emergency assistance, and promotion of Historically Black Colleges and Universities (HBCUs) and Minority Institutions (MIs) in federal procurement. Table 6 contains an analysis of the FAR part 26 deviation guidance.

TABLE 6. FAR Part 26: Other Socioeconomic Programs

Document Statistics:

Word Count			Readability (Flesch-Kincaid)			Shalls/Musts		
Current	RFO	Net	Current	RFO	Net	Current	RFO	Net
3775	2149	-1626	16.2	16.3	0.1	32	13	-19

Highlights:

- All subparts remain, but content is reorganized to align with acquisition phases.
- Moving to FAR Companion Guide
 - » Procedures for challenges to representations under the Indian Incentive Program.
 - » Coverage of Disaster Response Registry.
 - » Procedures related to Food Donation Program .
- Deleted
 - » FAR 26.303, Data collection and reporting requirements related to HBCUs/MIs.
 - » FAR 26.601-26.603, Federal Leadership on Reducing Text Messaging while Driving.

Bottom line: Cut down a significant amount of coverage by relocating it to the FAR Companion Guide. No improvement in readability. FAR part 26 is not known to cause much friction in the acquisition process, so the changes are not likely to have a noticeable impact on the compliance burden for contracting officers.

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FAR part 28: Bonds and Insurance

FAR part 28 prescribes requirements for obtaining financial protection against losses under contracts that result from use of the sealed bid or negotiated methods. It covers bid guarantees, bonds, alternative payment protections, security for bonds, and insurance. Table 7 contains an analysis of the deviation guidance.

TABLE 7. FAR part 28: Bonds and Insurance								
Document Statistics:								
Word Count			Readability (Flesch-Kincaid)			Shalls/Musts		
Current	RFO	Net	Current	RFO	Net	Current	RFO	Net
10389	10366	-23	15.6	15.5	-0.1	147	147	0
Highlights:								
• N/A								
Bottom line: From the Practitioner Album: "All content in FAR part 28, Bonds and Insurance, has been retained with minimal deletions and minor updates made for plain language. No changes were made to provisions or clauses."								

FAR part 30: Cost Accounting Standards Administration

FAR part 30 describes policies and procedures for applying the Cost Accounting Standards Board (CASB) rules and regulations to negotiated contracts and subcontracts. Table 8 contains an analysis of the deviation guidance.

TABLE 8. FAR part 30: Cost Accounting Standards Administration								
Document Statistics:								
Word Count			Readability (Flesch-Kincaid)			Shalls/Musts		
Current	RFO	Net	Current	RFO	Net	Current	RFO	Net
8132	7271	-861	14.2	13.6	-0.6	113	92	-21
Highlights:								
• Reorganization of content into process-oriented subparts (i.e., Pre-award, Award, Post-award)								
Bottom line: Overall, an improvement in organization. A reduction in word count and a slight improvement in readability. The "Applicability" section contains the following statement: "During acquisition planning the contracting officer must determine if the contract will be a CAS-covered contract." There seems to be a fundamental misunderstanding of how to apply CAS to a particular contract. A contracting officer needs an offeror's response to the solicitation provision at FAR 52.230-1, Cost Accounting Standards Notices and Certification, to determine whether CAS – and what type of CAS coverage – will apply to the contract. The most a contracting officer can do during acquisition planning is determine whether CAS could <i>potentially</i> apply to a future contract.								

FAR part 33: Protests, Disputes, and Appeals

FAR part 33 prescribes policies and procedures for filing protests and for processing contract disputes and appeals. Table 9 contains an analysis of the deviation guidance.

TABLE 9. FAR Part 33: Protests, Disputes, and Appeals								
Document Statistics:								
Word Count			Readability (Flesch-Kincaid)			Shalls/Musts		
Current	RFO	Net	Current	RFO	Net	Current	RFO	Net
7877	5269	-2608	14.7	14.3	-0.4	103	51	-52
Highlights:								
<ul style="list-style-type: none"> • Requirement for contracting officers to report agency protests to the head of the contracting activity (HCA) as soon as practicable after a protest is filed. • Requirement for agencies to provide redacted copy of the source selection decision to protestors electing independent agency review at a level above the contracting officer. 								
Bottom line: As an advocate for transparency, I welcome the new requirement to provide the redacted source selection decision. Having said that, we should expect these documents to undergo greater scrutiny (i.e., more reviews) before they are finalized. This could have a negative impact on procurement lead time. Whether these new requirements will result in more protests resolved at the agency level – and less resolved at the Government Accountability Office and the Court of Federal Claims – remains to be seen.								

FAR part 40: Information Security and Supply Chain Security

FAR part 40 addresses broad security requirements that apply to acquisitions of products and services. It prescribes policies and procedures for managing information security and supply chain security when acquiring products and services that include, but are not limited to, information and communications technology (ICT). Table 10 contains an analysis of the deviation guidance.

TABLE 10. FAR Part 40: Information Security and Supply Chain Security								
Document Statistics:								
Word Count			Readability (Flesch-Kincaid)			Shalls/Musts		
Current	RFO	Net	Current	RFO	Net	Current	RFO	Net
1404	5212	3808	18.0	17.0	-1.0	4	26	22

Highlights:

- New subpart titled “Processing Supply Chain Risk Information.”
- Security prohibitions and exclusions from parts 4 and 25 moved to subpart 40.2.
- New subpart titled “Safeguarding Information” containing coverage moved from part 4.
- Five separate provisions merged into new provision.
- Seven separate clauses merged into new clause.

Bottom line: As a result of relocating several topics from FAR part 4, this is the first instance of an overhauled part being larger than the original. The consolidation of disparate security-related provisions and clauses brings some order to the chaos, which is an improvement in overall organization.



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FAR part 46: Quality Assurance

FAR part 46 prescribes policies and procedures to ensure that supplies and services acquired under government contract conform to the contract’s quality and quantity requirements. Included are inspection, acceptance, warranty, and other measures associated with quality requirements. Table 11 contains an analysis of the deviation guidance.

TABLE 11. FAR Part 46: Quality Assurance								
Document Statistics:								
Word Count			Readability (Flesch-Kincaid)			Shalls/Musts		
Current	RFO	Net	Current	RFO	Net	Current	RFO	Net
9712	9119	-593	15.9	15.9	0.0	112	108	-4
Highlights:								
<ul style="list-style-type: none"> • None 								
<p>Bottom line: This part was hardly touched – less than 600 words were removed. Despite claims of rewriting portions in plain language, there was no improvement in readability. Most of the changes were changing “shall” to “must” in line with plain writing guidelines.</p>								

FAR part 48: Value Engineering

FAR part 48 prescribes policies and procedures for using and administering value engineering techniques in contracts. Table 12 contains an analysis of the deviation guidance.

TABLE 12. FAR part 48: Value Engineering								
Document Statistics:								
Word Count			Readability (Flesch-Kincaid)			Shalls/Musts		
Current	RFO	Net	Current	RFO	Net	Current	RFO	Net
4357	1447	-2910	15.1	15.7	0.6	45	19	-26
Highlights:								
<ul style="list-style-type: none"> • ~70% reduction in word count. • Removal of content already stated in Value Engineering clauses. • Relocation of guidance to FAR Companion Guide. 								
<p>Bottom line: A significant reduction in word count. Despite an attempt at plain language rewrite, the result is less readable. The Practitioner Guide states that the introductory Scope section at 48.000 was deleted because it “did not add value.” This is strange because it reads like any other introductory Scope section in the deviation guidance issued for other parts. Are the drafters of the different parts talking to each other? Is there anyone overseeing the whole project to ensure consistency? Let’s hope we see more uniform drafting in the proposed rule.</p>								

FAR part 49: Termination of Contracts

FAR part 49 establishes policies and procedures relating to the complete or partial termination of contracts for the convenience of the government or for default. It prescribes contract clauses relating to termination and excusable delay and includes instructions for using termination and settlement forms. Table 13 contains an analysis of the deviation guidance.

TABLE 13. FAR Part 49: Termination of Contracts

Document Statistics:								
Word Count			Readability (Flesch-Kincaid)			Shalls/Musts		
Current	RFO	Net	Current	RFO	Net	Current	RFO	Net
25360	22775	-2585	15.4	14.2	-1.2	303	235	-68

Highlights:

- Plain language rewrite of the part.
- All clauses unchanged.

Bottom line: The plain language rewrite and relocation of some coverage to the FAR Companion Guide account for the decrease in word count and improvement in readability. Other than that, longstanding policies and procedures for contract termination were wisely left alone.

Conclusion

The more deviation guidance that the FAR Council issues, the clearer it becomes that the RFO is more an exercise in document editing than it is in regulatory reform. Viewed through that lens, it's fair to say that it has been successful.

The movement of guidance to nonregulatory sources, the plain language rewrites, and increased use of tables are all welcome changes. Having said that, I was expecting the RFO to result in (1) new authorities permitting contracting officers to do things that the FAR currently prohibits and (2) relief from regulatory burdens that the FAR currently imposes. That was how the RFO was advertised. We have not seen anything particularly noteworthy on either front. Perhaps the rulemaking process will result in some actual regulatory reform. **CM**

Don Mansfield is a consultant, trainer, writer, and speaker in federal contracting. He has over 30 years of experience working in the Department of Defense and industry. He is the owner of Don Acquisition LLC. Line-in line-out documents showing changes to the FAR based on the deviation guidance are available on his website at www.donacquisition.com.



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GAO Issues Warning Shot on AI Misuse

The Government Accountability Office may sanction protesters who use artificial intelligence to generate filings with fabricated citations.

BY STEPHEN L. BACON



During the past few years, artificial intelligence (AI) has been rapidly deployed across the economy. Government contractors have embraced this change, using AI for a variety of activities, including reviewing solicitations, drafting proposals, preparing contract deliverables, and tracking compliance, among other tasks.

Not surprisingly, some contractors have also started to use AI to draft bid protests. In seconds, contractors can generate what looks like a compelling protest using a large language model (LLM) that is available for free or through a low-cost monthly subscription.

It can be tempting for some contractors, particularly small businesses, to rely on a LLM to generate their protest if they do not have sufficient resources to retain legal counsel. But there are substantial risks associated with filing an AI-generated protest due to certain inherent limitations of LLMs that exist today.

In a series of recent decisions, the Government Accountability Office (GAO)

addressed the potential consequences that may be imposed for submitting protests that include fictitious legal authorities generated by AI “hallucinations.”¹ These decisions should serve as a stark warning to any company that intends to use AI to generate a bid protest without independently verifying its accuracy.

GAO May Impose Sanctions for AI Misuse

The GAO bid protest forum exists to provide for the “inexpensive and expeditious resolution of protests.”² Unlike the U.S. Court of Federal Claims, GAO does not require protesters to be represented by counsel. As a result, GAO routinely decides protests filed by *pro se* litigants that are not represented by counsel.

But GAO “draws no distinction between protests filed by those represented by counsel and protests filed by those not represented by counsel.”³ In all cases, GAO “expect[s] all parties to prepare and present their cases carefully and diligently.”⁴ This means that all parties, “including those

proceeding without counsel . . . have an obligation to accurately summarize factual or legal assertions, including cited decisions.”⁵

Moreover, GAO “reserves an inherent right to dismiss any protest and to impose sanctions against a protester, where a protester’s actions undermine the integrity and effectiveness of [GAO’s] process.”⁶ This “inherent right” is “governed not by rule or statute, but by the control necessarily vested in a forum to manage its own affairs.”⁷

During early 2025, in the span of just four months between May and August, GAO issued at least seven public decisions that addressed the use of AI by protesters. In these cases, the agency, intervenor, or GAO noticed that the protesters’ filings exhibited the hallmarks of AI-generated content. They included citations to non-existent cases, or to cases that did not in any way support the legal positions asserted by the protester.

In these initial decisions addressing AI misuse, GAO stopped short of exercising its inherent right to sanction

the protesters. Nevertheless, GAO advised the protesters “and future parties that appear before” GAO that “citations to non-existent authority may result in the imposition of appropriate sanctions” to include dismissal based on “the totality of the circumstances.”⁸

Then, on September 25, 2025, GAO carried out that threat and dismissed a series of three protests by the same company on the basis that it made repeated use of erroneous citations.⁹ GAO noted that the protester’s filings “(1) refer to fabricated or non-existent decisions; (2) fabricated or non-existent legal conclusions of decisions issued by [GAO]; or (3) otherwise objectively do not stand for the factual or legal propositions asserted by [the protester].”¹⁰

GAO found that the “multitude” of “problematic citations” in several filings was a “material aggravating factor” that warranted sanctions.¹¹ In addition, GAO was troubled by the fact that the protester’s misconduct continued even after it had been warned of the potential for sanctions in an earlier decision.

AI-Generated Protests: A Growing Trend?

GAO’s spate of recent decisions has now put contractors on notice that they may face consequences for using AI irresponsibly. As AI’s novelty begins to fade, it is only a matter of time before GAO will be less tolerant of AI misuse and more likely to sanction protesters for undermining the integrity of the protest process.

During the four-month span between May and August 2025, approximately 7% of all public decisions issued by GAO involved some apparent misuse of AI.¹² If this pattern continues, GAO is likely to become more aggressive in sanctioning

protesters to stem the tide of AI-generated protests with fake citations.

The recent surge of GAO decisions involving AI misuse suggests that many unrepresented small businesses are turning to AI to generate protest filings. Indeed, all the decisions that addressed AI misuse involved small businesses that were not represented by counsel.

Moreover, the results of those protests indicate that AI is not a panacea that will save contractors from a disappointing source selection outcome. Although companies may be able to use AI to generate a protest that appears facially credible, it is notable that the AI-generated protests reviewed by GAO thus far contained a number of glaring

procedural defects, including issues related to timeliness, mootness, standing, and the legal sufficiency of the grounds asserted.

Using AI Responsibly

Contractors are not prohibited from using AI to assist with preparing protest filings. But companies that decide to enlist AI for help must do so responsibly to avoid potential dismissal, as well as reputational damage they may suffer as a result of filing a protest laden with erroneous citations.

To be clear, responsible use of AI is an imperative for both *pro se* litigants and counsel that represent parties. The problem of citing fake cases is hardly limited to *pro se* litigants at GAO: courts

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across the country have warned and, in some cases, sanctioned attorneys for citing non-existent cases.¹³

For any company that decides to use AI to help with protest preparation, this problem can be avoided rather easily by independently checking any cases referenced in the AI-generated draft. GAO's decisions are available on its public website and, thus, protesters can quickly verify the existence of cases and any quotes generated by the AI. In addition, protesters should read the cases to ensure that they support any factual or legal propositions asserted in the AI-generated draft.

By carefully checking case citations, protesters that use AI should be able to avoid the severe sanction of dismissal.

But, of course, avoiding sanctions is not the ultimate goal of filing a protest.

A protester should be seeking to identify errors in the procurement process that, if corrected, could give them a substantial chance of award. AI can potentially assist with the identification and elaboration of protest grounds, but the technology has some inherent limitations that users need to appreciate. LLMs compound the problem of "hallucinations" with a tendency to confidently produce the outcome desired by the user regardless of whether it is right or wrong.

To illustrate, imagine an unsuccessful offeror that received the same adjectival ratings as the awardee on a solicitation's technical and past performance factors, but a 40% higher price. The offeror believes

the awardee's price is unrealistically low and prompts its preferred LLM to draft a protest challenging the agency's price realism analysis.

The LLM will likely generate an argument that appears to be a compelling price realism challenge. But it may include fake case citations and it likely will not verify that a price realism analysis was actually required by the solicitation.

Critically, "agencies are neither required nor permitted to evaluate price realism in awarding a fixed-price contract" unless a solicitation advises offerors that such an analysis will be conducted and that their proposals may be rejected on the basis of prices that are too low.¹⁴

Thus, if the solicitation at issue did not include this type of provision, an AI-generated price realism protest would be dismissed as legally insufficient regardless of how persuasive it may have appeared to the person who prompted the LLM.¹⁵

This hypothetical example demonstrates the danger of relying on AI-generated protests without seeking counsel from a bid protest domain expert who can spot where the AI output includes faulty or incomplete assumptions. Simply put, "you don't know what you don't know," and this saying often holds true for LLMs even though the model has access to vast amounts of information. That is because current model outputs are dictated by prompt inputs that reflect the user's blind spots.

This is not to say that LLMs cannot produce valid arguments if prompted by someone who does not have extensive bid protest knowledge and experience. They certainly can.

But contractors that use AI to generate protests are much more likely to assert legally insufficient grounds or



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completely miss grounds that could have been asserted to challenge an agency’s evaluation and award decision. Moreover, as the cases decided thus far suggest, AI-generated protests often lack sufficient context from the prompter to correctly analyze complex bid protest procedural rules surrounding issues such as timeliness and standing.¹⁶

Conclusion

The temptation to use AI for protest drafting is understandable, particularly for small businesses facing resource constraints. But contractors will have to weigh whether they are willing to accept the inherent risks associated with using AI to generate protests.

GAO’s recent warnings make clear that it will not tolerate AI-generated protests that contain fabricated authorities or mischaracterized legal precedent. Contractors that choose to use AI must implement rigorous verification processes for all citations and related legal assertions.

Although contractors can use verification to detect when a model has “hallucinated,” current LLMs possess other limitations that are much more difficult to detect for someone without sufficient domain expertise.

Given these limitations, contractors that are contemplating a protest should consider retaining counsel who can assist with identifying valid protest grounds and provide objective advice tailored to the contractor’s unique circumstances. **CM**

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The views expressed in this article are those of the author and do not necessarily reflect the views of Rogers Joseph O’Donnell or its clients. This article is for general information purposes and is not intended to be and should not be construed as legal advice.

ENDNOTES

- 1 Raven Investigations & Security Consulting, LLC, B-423447, May 7, 2025, 2025 CPD ¶ 112; Assessment and Training Solutions Consulting Corporation, B-423398, June 27, 2025, 2025 CPD ¶ 122; Wright Brothers Aero, Inc., B-423326.2, July 7, 2025, CPD ¶ 154; BioneX, LLC, B-423630, July 25, 2025, 2025 CPD ¶ 164; Oready, LLC, B-423524.2, August 13, 2025, 2025 CPD ¶ 194; Helgen Industries d/b/a DeSantis Gunhide, B-423635, August 26, 2025, 2025 CPD ¶ 201; IBS Government Services, Inc., B-423583, Aug. 29, 2025, 2025

- WL 2506894; Oready LLC, B-423649, et al., Sept. 25, 2025, 2025 WL 2732634.
- 2 31 U.S.C. § 3554(a)(1).
- 3 Oready, LLC, 2025 CPD ¶ 194 at 6.
- 4 Id.
- 5 BioneX, LLC, B-423630, July 25, 2025, 2025 CPD ¶ 164 at 2, n.2.
- 6 Raven Investigations, 2025 CPD ¶ 112 at 4.
- 7 Id.
- 8 Id.
- 9 Oready LLC, 2025 WL 2732634.
- 10 Id. at 5.
- 11 Id. at 10.
- 12 GAO issued ninety-nine reported decisions between May and August of 2025.
- 13 See Sanders v. United States, 176 Fed. Cl. 163, 168-170 (2025) (citing cases).
- 14 Facility Services Management, Inc., B-420102.3, Mar. 29, 2022, 2022 CPD ¶ 93 at 6.
- 15 Id. (dismissing price realism challenge as legally insufficient).
- 16 See, e.g., Raven Investigations, 2025 CPD ¶ 112 (dismissing protest as academic); Wright Brothers, 2025, CPD ¶ 154 (dismissing protest as untimely); BioneX (dismissing protest as legally insufficient); Oready, 2025 CPD ¶ 194 (dismissing protest as academic); Helgen Industries, 2025 CPD ¶ 201 (dismissing protest because the protester lacked interested party standing).

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‘Dear Clause, What’s the Point?’ The Lost Art of Storytelling in Contracting

A proper contract should chart a shared journey between a client and a contractor, with mutual goals, clear roles, and a common understanding of success.

By Olga Wall

Somewhere between the bullet-proof clauses, boilerplate language, and enough cross-referencing to induce vertigo, we in the acquisition profession managed to forget something rather crucial: the contract is supposed to tell a story.

Not a fantasy. Not a fairytale. And certainly not something fit for bedtime (there are other sleeping aids). No, a proper contract should chart a shared journey between a client (such as the government) and a contractor, with mutual goals, clear roles, and a common understanding of success.

But instead, what do we often end up with? A document that reads like it was written by an over-caffeinated committee, translated into legal Esperanto, and formatted by someone with a grudge against whitespace.

It doesn't have to be this way.

Contracts Are Not Legal Fortresses

We often treat contracts like suits of armor: impenetrable, joyless, and designed more to deflect blame than to drive outcomes. But the best contracts aren't defensive, they're directional. They don't just

guard against what could go wrong; they illuminate what should go right.

A good contract tells a clear story: what we're setting out to achieve, how we'll get there, what happens when plans change, who owns what, and how disagreements will be resolved. In other words, it manages risk intelligently and transparently. Yet far too often, contracts dodge these questions entirely, burying them in vague and reused language that obscures rather than clarifies.

The reality is that bringing risk to the table early doesn't weaken trust; it lays its foundation. When risks and nuances are surfaced at the start, both sides show they are serious about navigating challenges *together* to make the contract succeed. That clarity brings client, contractor, and every stakeholder into alignment before the turbulence of implementation begins. That's where storytelling skills matter. A well-written contract becomes the map that marks each fork and obstacle with a solution, guiding progress towards success without losing direction.

To write contracts like this requires more than compliance checklists and good intentions. It demands a skill that's been tragically under-taught in the acquisition world: *storytelling*.

No, Not *That* Kind of Storytelling

This isn't about adding flourishes or inventing dragons. Storytelling in contracting is about framing intent with precision. A well-written contract should allow any reader, whether they're legal, technical, financial, or operational, to understand how the story is meant to unfold.

It should describe the journey ahead: what the client is trying to achieve, how the seller or contractor will help them get there, what success looks like from both sides, and what could happen along the way.

It should anticipate the unexpected. A good contract outlines not just the happy path, but the possible (known) obstacles, what happens when things go off-script, how decisions will be made in those moments, and what actions must be taken to course-correct. It should also cover what happens when the unknown occurs with precision and detail to avoid delays and failure.

A contract should define the steps, roles, and responsibilities, while making clear how progress will be evaluated, what evidence of performance is required, and how the buyer will determine when (and whether)

TABLE 1. Unspoken Risks and How to Write for Them

RISK AREA	COMMONLY IGNORED IN CONTRACTS	NARRATIVE APPROACH THAT HELPS
Scope Creep	Vague deliverables; no limits on iterations	Define boundaries, version control, and roles
Delays	No consequence or contingency language	Acknowledge potential blockers and fallback options
Partner Default	Silence on subcontractor issues or remedies	Detail escalation steps and communication protocols
Payment Disputes	Rigid or unclear invoicing terms	Provide sample timelines, cut-off dates, expectations, and formats
Termination	Generic clause with no operational roadmap, procedures, or timelines	Explain wind-down steps, cost expectations, timelines, and dispute resolution
Contextual Shifts	No flexibility for evolving needs or emergencies	Build in review points and adaptive mechanisms

full payment is warranted. In short, the contract should tell a coherent story of purpose, process, and accountability.

It means writing documents that make sense not only to legal reviewers perched aloft in their ivory towers, but also to the implementers in the field who, more often than not, are trying to make sense of everything at 1:00 a.m. with one bar of Wi-Fi.

If no one truly understands what a contract means, things go wrong. And rest assured, they will go wrong. Then all the clauses and subclauses in the world won't help one bit.

Recent waves of mass government contract terminations have turned what should be orderly wind-downs into bureaucratic nightmares. Agencies and contractors scramble to determine exactly what work was accomplished, who is entitled to which payments, and how to fairly allocate liabilities. Subcontractors – often small businesses or foreign partners operating in fragile environments – find themselves caught in the crossfire, facing real financial peril and uncertainty.

Clear contract and subcontract clauses could have turned messy terminations into orderly transitions. By explicitly defining procedures for rapid subcontract closeout, such language would have shielded small and foreign businesses – the most vulnerable participants – from financial disruption.

Transparent terms for payment timelines, deliverable acceptance, and liability allocation would have accelerated settlements with the government, reduced disputes, and helped prime contractors avoid costly legal entanglements during already resource-constrained periods.

Without clear, well-structured contracts that anticipate these challenges, disputes multiply, delays drag on, and valuable partnerships fracture. This isn't just paperwork; these are livelihoods, missions, and sometimes even lives hanging in the balance.

For example, the staff of a local business in Yemen that was forced to close faced imprisonment because the business lacked the funds to comply with

local regulations. The business never received the funds because the prime contractor withheld payment amid an unresolved dispute with the government over termination costs.

Meanwhile, U.S. small businesses – the lifeblood of innovation and local employment – are shuttering their doors, powerless to enforce their rights against primes, ensnared in poorly drafted contracts that effectively tied their hands and left them exposed to disastrous deals.

We could all point fingers at the government for abrupt terminations, but that misses the point. When signing contracts, we must be fully aware of potential liabilities and proactively simulate “doomsday” scenarios. Anticipating the worst isn't paranoia; it's prudent contracting.

FY26: The Environment May Evolve, But the Work Remains the Same

As FY26 begins, both government and industry are pushing forward with bold

TABLE 2. Contracting Training Areas

SKILL AREA	WHY IT MATTERS IN CONTRACTING	SUGGESTED TRAINING OR DEVELOPMENT APPROACH
Problem Framing	Clarifies what the government is trying to solve before jumping to solutions	- Work breakdown structure workshops - Needs statement labs - Market Research Lab & Simulation
Narrative Thinking	Helps contract writers communicate intent, not just requirements	- Plain language writing - Storyboarding for acquisition
Human-Centered Design	Ensures contracts reflect real user needs and implementation contexts, and takes into consideration user experience	- Contract Writing Workshop - Implementation Adventure: A Contract Simulation Game
Communication & Negotiations	Strengthens ability to write for both implementers and reviewers	- Writing for outcomes - Peer review and red teaming sessions - Negotiation Basics, Advanced and Simulations
Collaboration Dynamics	Builds understanding of stakeholder roles and shared accountability	- Role mapping workshops - Cross-functional co-design sessions - SOO creation workshops - Facilitated proposal-to-SOW sessions
Systems Thinking	Understands how clauses, schedules, and deliverables interact as a complete system	- Contract architecture training - FAR mapping & use-case walkthroughs

Flowchart: Writing a Contract for Services

Writing a Contract for Services: A Smarter Sequence. This practical roadmap shows how a contract should unfold, from identifying the problem to awarding the contract, paired with targeted training to build the skills that make it possible.

Acquisition Planning Phase: Define the Problem and Context

STEP 1: Define the Problem and Objectives

What to do: Clearly articulate what needs to be achieved and why it matters.

Training Ideas:

- Problem framing workshops
- Stakeholder needs analysis
- Human-centered design basics

STEP 2: Understand the Market and Operating Environment

What to do: Identify affected stakeholders, existing solutions, constraints, and opportunities.

Training Ideas:

- Contractor outreach and engagement best (and worst) practices
- Contextual research techniques
- Market research and industry simulation for acquisition planning

Acquisition Design Phase: Craft the Narrative

STEP 3: Frame the Purpose and Desired Outcomes

What to do: Define the contract's purpose, key results, deliverables, and how performance will be measured.

Training Ideas:

- Writing for outcomes
- Performance-based contracting fundamentals
- Logical framework (logframe) training

STEP 4: Tell the Story

What to do: Organize terms into a coherent narrative: goals, roles, risks, milestones, remedies.

Training Ideas:

- Narrative thinking in contracting
- Plain language writing
- Risk management fundamentals

STEP 5: Write the Scope and Define the Work

What to do: Clearly describe services, tasks, deliverables, timelines, and quality standards.

Training Ideas:

- Statement of Work (SOW) writing labs
- Statement of Objectives (SOO) writing labs
- Task/work breakdown and scheduling
- Quality assurance principles
- Stakeholder engagement and communication
- Contract governance and oversight basics

STEP 6: Define Terms and Conditions

What to do: Include core clauses covering payment, changes, termination, liability, dispute resolution, and compliance.

Training Ideas:

- Walk the contract from award to closeout (simulation/role play training)
- FAR and agency-specific training for effective contracting
- Contract law basics

Selection & Award Phase: Finalize and Prepare to Perform

STEP 7: Award the Contract and Set the Stage

What to do: Secure approvals, finalize negotiations, and prepare for implementation.

Training Ideas:

- Productive negotiations to achieve value, not just price
- Contract award and start-up best practices
- Ethics and compliance in contracting
- Buyer/seller communication for stronger delivery

changes: new technologies, new policies, and a renewed appetite for simplification, accessibility, and speed. Procurement reform is back in fashion, automation is everywhere, and nearly every agency or organization has some form of “transformation” underway.

Yet amid all the noise about modernization, the essential work of the contracting professional has not shifted; understand what is being procured, why it matters, and how success will be measured — and then capture it in clear, unambiguous language.

No policy memo and no artificial intelligence tool can substitute for the judgment, context, detail, and communication it takes to write a contract that actually works. If we train only for speed and not for clarity, we are simply accelerating the path to confusion.

Even the smartest system can't read the room. Writing a good contract still requires what AI can't offer: situational awareness and the ability to frame intent in messy, real-world terms. The heart of contracting is still human.

From Templates to Tales

We don't need better templates. We need better narrators.

A well-written contract should feel like a conversation between future collaborators. It should anticipate what might go awry, make clear how to get back on track, and reflect the spirit of what we're building together, not just the terms under which we'll get a refund if it all collapses.

Which brings us to the real point of this article: we need to invest in the contracting workforce. Not just in regulation fluency, but in the skills that make contracts usable, understandable, and (dare I say) occasionally even elegant.

Even the smartest system can't read the room. Writing a good contract still requires what AI can't offer: situational awareness and the ability to frame intent in messy, real-world terms. The heart of contracting is still human.

Suggested Skill Areas for Modern Contract Writers

Table 2 shows a proposed menu of training areas that would equip contracting professionals to think narratively, frame problems clearly, and write contracts that don't induce migraines.

Conclusion

If we teach our workforce to write contracts properly, the results will ripple far beyond just getting the paperwork right. Those contracts won't merely be practical; they'll save taxpayer money, catch waste before it happens, and include clear remedies that allow both parties to exit gracefully when needed.

They will attract better vendors and expand the pool of qualified suppliers, because people naturally prefer to work with contracts they understand. *After all, clarity breeds confidence, and confidence breeds competition.*

But the true power lies closer to home. When our own contracting professionals are well-trained, deeply knowledgeable, and empowered to become the best at what they do, the mission becomes more than just a job.

It becomes a challenge worth tackling, an intellectual puzzle that's rewarding to solve, and yes, a bit exciting. This kind of engagement is what keeps people in government service longer than any pay grade or ribbon ever could.

Rewriting and simplifying regulations is a necessary first step, but it is pointless without investing in people.

So, let's stop writing contracts that confuse and confound and start writing contracts that connect and inspire.

If we don't learn to build relationships grounded in clear stories, shared purpose, and mutual reward, there's no hope for efficient government spending, real impact for citizens, warfighters, and humanitarian beneficiaries, or accountability to taxpayers. **CM**

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FUNDAMENTALS OF CONTRACT MANAGEMENT

Subcontracts for Commercial Products and Services

BY JIM KIRLIN, CPCM, CFCM, NCMA FELLOW

A guiding principle of the Federal Acquisition System is to maximize the use of commercial products and commercial services (FAR 1.102(b)(1)(i)). FAR Part 12 Acquisition of Commercial Products and Commercial Services and FAR Part 44 Subcontracting Policies and Procedures require the flow-down of the government's commercial policy to subcontractors. The chart below shows the two clauses containing the commerciality requirements for the prime and the subcontractor.

Jim Kirlin, CPCM, CFCM, NCMA Fellow is the author/co-author of three books on contract management.

Subcontracts for Commercial Products and Services		
	For Other Than Commercial Products and Commercial Services	For Commercial Products and Commercial Services
FAR Clause for Prime Contract	52.244-6 Subcontracts for Commercial Products and Commercial Services	52.212-5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders— Commercial Product and Services
Commerciality Requirement in Prime Contract Clause	<p>(b) To the maximum extent practicable, the Contractor shall incorporate, and require its subcontractors at all tiers to incorporate, commercial products, commercial services, or non-developmental items as components of items to be supplied under this contract.</p> <p>(c)(1) The Contractor shall insert the following clauses in subcontracts for commercial products or commercial services: [clauses follow]</p> <p>(c)(2) While not required, the Contractor may flow down to subcontracts for commercial products or commercial services a minimal number of additional clauses necessary to satisfy its contractual obligations.</p>	<p>(a) The Contractor shall comply with the following Federal Acquisition Regulation (FAR) clauses, which are incorporated in this contract by reference, to implement provisions of law or executive orders applicable to acquisitions of commercial products and commercial services: [clauses follow]</p> <p><i>[Paragraphs (b) and (c) list clauses that the government may require the contractor to comply with]</i></p>
Requirement to Flow Down to Subcontracts	<p>(d) The Contractor shall include the terms of this clause, including this paragraph (d), in subcontracts awarded under this contract.</p>	<p>(e)(1) Notwithstanding the requirements of the clauses in paragraphs (a), (b), (c), and (d) of this clause, the Contractor is not required to flow down any FAR clause, other than those in this paragraph (e)(1), in a subcontract for commercial products or commercial services. Unless otherwise indicated below, the extent of the flow down shall be as required by the clause-[clauses follow]</p> <p>(e)(2) While not required, the Contractor may include in its subcontracts for commercial products and commercial services a minimal number of additional clauses necessary to satisfy its contractual obligations.</p>