Welcome!!!

Why are we here?

What are the ‘take aways’?

Can I use this at my desk, in ‘my world’?

Instructor Introductions

Presentation is designed for soon-to-be or newly appointed CORs

Students are encouraged to participate

Classroom discussions are on a non-attribution basis
# Four Day Course Schedule

## DAY 1
- Course Overview & Introductions
  1. What is a COR?
     - Who Has the Authority?
  2. What Do I Need to Know about Ethics and Integrity?
     - Ethical Case Studies
  3. How Do I contribute to Planning the Acquisition?
     - Loose Lips Sink Ships Case
  4. How Am I Involved in Awarding the Contract?
     - Finding Base Support Case

## DAY 2
- 5. What's In My Contract?
  - Uniform Contract Format Knowledge Check
- 6. What if I Need to Modify the Contract?
  - Taking the Plunge
- 7. What if the Contract is Changed by Mistake?
  - Money for Wafers
  - It's a Calamity
- 8. What Can I Say and What Should I Document?
  - Is It Knight or Day? Case

## DAY 3
- 9. Are There Special Considerations for Service Contracts?
  - Smoothing Over the Situation Case
- 10. What is Contract Administration?
  - It's in the Wiring
- 11. How Do I Monitor Performance?
  - The Grass Isn't Greener Case

## DAY 4
- 12. How Do I Handle Issues with a Contractor?
  - Terminations Knowledge Check
- 13. Are There Special Considerations for Construction Contracts?
  - The Galley Case
- 14. Are There Special Considerations for R&D Contracts?
  - Test Assessment
  - DAU Assets Brief (If Time Permits)

**Graduation Surveys – PLEASE DON'T FORGET!!!**

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### Course Administration

#### Class Times

#### Lunch

#### Breaks

#### Computers

#### Group Exercises

#### Special Needs

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Administration (cont..)

- Restrooms
- Area restaurants
- Sodas & Snacks
- Coffee fund
- Parking
- Dress Code: Business Casual
- Smart Phones **mute/silent or off**
- E-mail
- Classroom Computers

Student Materials

- Student Guide
  - Lessons
  - Exercises
  - Appendix
    - Glossary
    - Articles
- Slide Book
Passing the Course

• Assessment will be given on the last day
  – 25 Questions: Multiple Choice, True/False and Matching
  – Must achieve 80% to pass the course

• Class participation in discussions and exercises is expected
• Attendance: Mandatory 100%
  – Absences, not to exceed 2 hours, must be approved by the instructor.

DAU Policies

- Non Attribution
- Academic Integrity
  ✓ Copying, sharing or exchanging of exam information before, during or after COR 222 is an integrity issue!
A DAU certificate for 32 hours of training hours will be given

Based on Student Locator Information course completion will be available on ATTRS

Course Feedback

Metrics That Matter
End of Course Survey

Please complete by following email link
Student Introductions

What’s your job?

Are you or have you been a COR?

Types of contracts you have handled?

When I retire I want to…?


What is a COR?
What Does A COR Do?

The COR’s key role is to:

- Observe
- Document and
- Communicate

contractor performance to the contracting officer (KO) and contractor

*For clarification:* In this course, the title “COR” is synonymous with that of a COTR, ACOR, QAE/QAS, etc.

What Is A COR?

- A Government employee
- A technical expert
- Qualified by training
- Specifically designated in writing
- Responsible for specific contract administration functions
COR Authority and Appointment

A COR has **Specific** Delegated Authority

- Source of COR authority is the Contracting Officer (KO)
  - A COR must be designated/appointed by the KO in writing
- Authority specified in COR Designation Letter
  - Specifies scope and limitations of authority delegated
  - Separate designation made for each contract/order
- COR is **NOT** authorized to re-delegate any responsibilities delegated to them
  - Includes replacements, peers or subordinates
- COR must resign in writing

COR Designation Acceptance

Acknowledge acceptance of the duties by signing and returning the Designation Letter to the KO

Contracting Officer Representative Tracking Tool (CORT-T)
DoD COR Program & Certification Guidance

Policy:
• 30 Mar 15 New DoD Instruction 5000.72 – Released 30 Mar 15
  – Standard Policy and procedural guidance for all DOD
  – Individual services and agencies can only add additional requirements

Guidance:
• DoD COR Handbook – Published 22 Mar 12
  – Provides tips, tools, instructions and best practices for COR related duties

DoDI 5000.72 – 26 March 2015

Title DoD Standard for Contracting Officer’s Representative (COR) Certification

OVERVIEW
Mandates:
• Minimum training and experience requirements
• COR Program Coordinator be established
• COR performance be part of annual performance appraisal

Provides:
• Guidance on OGE Form 450 filer determinations
• COR nomination Process
• Guidance on potential COR duties
Type A

Type A Work Effort

• Low performance-risk, fixed-price requirements without incentives. Attributes of such requirements might include, for example: lack of technical or administrative complexity, no identifiable risk factors, limited requirement for technical expertise, low likelihood of modifications, effort is a follow-on to an existing contract, etc.

• COR duties/responsibilities are generally limited to minimal technical and/or administrative monitoring of the contract.

Type A Experience and Training Standards

• Experience:
  – 6 months general experience
  – Relevant experience as determined by supervisor and KO

• Training:
  – DAU’s CLC 106 (8 hrs on-line)
  – COR or CLC 206 if in contingency environment
  – Agency Ethics & CTIP (Combatting Trafficking in Persons)
Type B

Type B Work Effort

• Other than low risk requirements. Attributes of such requirements might include, for example: the nature of the work is more complex, effort will be performed in multiple regions or in remote geographic locations, contract contains incentive arrangements or cost sharing provisions, contract is a cost-type or T&M/LH type.
• COR duties/responsibilities are of increased complexity.

Type B Experience and Training Standards

• Experience:
  – 12 months general experience
  – Relevant experience as determined by supervisor and KO
• Training:
  – DAU’S COR or CLC 222 course or equivalent (e.g. ALMC)
  – COR or CLC 206 if in contingency environment
  – Agency Ethics & CTIP

Type C

Type C Work Effort

• Unique contract requirements that necessitate a professional license, technical license or higher education, beyond the type B requirements.
• Such requirements might include, for example: environmental remediation, major weapons systems, medical/dental services, & veterinarian services, etc.
• COR duties/responsibilities involve highly complex or specialized requirements.

Type C Experience and Training Standards

• Experience:
  – 12 months general experience
  – Relevant experience as determined by supervisor and KO
• Training:
  – DAU’S COR or CLC 222 course or equivalent (e.g. ALMC)
  – Contingency module if in contingency environment
  – Mandatory/Specialized Training determined by Agency
  – Agency Ethics & CTIP
Where Does the COR Fit?

The Contracting Process

Pre-Award and Solicitation
- Requirements Determination
- Market Research
- Acq Planning
- Competition Requirements
- RFP

Evaluation and Award
- Evaluation/Negotiation
- Selection
- Award

Proposal Preparation

Negotiation

Contract Administration

Kick off
- Contract/System Compliance
- Performance Monitoring
- Contract Modifications
- Completion, Final Payment, Closeout

Subcontracting
- Delivery & Compliance
- Changes
- Invoicing
- Scheduling Monitoring

Acceptance
- Claims & Disputes
- Closeout & Collection

Note: shaded represents contractors activities during each Phase


What is the Flow of Authority?

CONSTITUTION

President

Head of Agency

Chief Acquisition Office or Senior Procurement Exec

Head of Contracting Activity

Contracting Officer

Contracting Officer Representative

Contracting Officer (KO) Authority

Agent of the Government
• Authority comes in the form of a Warrant
• States the limitation of authority and is to be displayed in a prominent place

Gives the KO the authority to obligate the Government, award contracts, and direct the contractor

Types of Authority

EXPRESSION AUTHORITY
(Written)
Warrant is issued to KO and COR designation letter details duties.

IMPLIED AUTHORITY
(Unwritten)
CORs need to be careful using implied authority!
What are the CORs Duties?

What type of duties will a Contracting Officer’s Representative be asked to accomplish?

- Know the contract
- Work with your contractors
- Provide technical direction and guidance
- Liaison on technical matters between the KO and the contractor
- Support the mission and recommend changes
- Monitor and evaluate performance
- Ensure satisfactory, timely, delivery within the financial constraints of the contract

FYI: Possible CORs Duties/Responsibilities

<table>
<thead>
<tr>
<th>ACTION</th>
<th>COR/Functional Office</th>
<th>Contracting Office</th>
</tr>
</thead>
<tbody>
<tr>
<td>Conduct market research</td>
<td>Responsible</td>
<td>Assist</td>
</tr>
<tr>
<td>Prepare SOW/PWS</td>
<td>Responsible</td>
<td>Assist</td>
</tr>
<tr>
<td>Prepare QASP</td>
<td>Responsible</td>
<td>Assist</td>
</tr>
<tr>
<td>Prepare IGCE</td>
<td>Responsible</td>
<td>Assist</td>
</tr>
<tr>
<td>Prepare GFP list</td>
<td>Responsible</td>
<td>Assist</td>
</tr>
<tr>
<td>Develop sources</td>
<td>Assist</td>
<td>Responsible</td>
</tr>
<tr>
<td>Prepare solicitation</td>
<td>Assist</td>
<td>Responsible</td>
</tr>
<tr>
<td>Conduct pre-bid conference</td>
<td>Assist</td>
<td>Responsible</td>
</tr>
<tr>
<td>Evaluate proposals</td>
<td>Assist</td>
<td>Responsible</td>
</tr>
<tr>
<td>Award contract</td>
<td>N/A</td>
<td>Responsible</td>
</tr>
<tr>
<td>Conduct contract surveillance</td>
<td>Responsible</td>
<td>Assist</td>
</tr>
<tr>
<td>Request modifications</td>
<td>Responsible</td>
<td>Assist</td>
</tr>
<tr>
<td>Make modifications</td>
<td>Assist</td>
<td>Responsible</td>
</tr>
<tr>
<td>Conduct progress meetings</td>
<td>Assist</td>
<td>Responsible</td>
</tr>
<tr>
<td>Conduct inspection/acceptance</td>
<td>Responsible</td>
<td>Assist</td>
</tr>
<tr>
<td>Evaluate contractor’s performance</td>
<td>Responsible</td>
<td>Assist</td>
</tr>
<tr>
<td>CPARS input</td>
<td>Responsible</td>
<td>Assist</td>
</tr>
</tbody>
</table>

COR Record Keeping

COR Files Must Contain:
• COR letter of designation
• All documentation of actions taken such as:
  – Copy of the contract and ALL modifications
    • Performance Work Statement (PWS)/Statement of Work (SOW)
      with attachments
  – Copy of acceptance documents & invoices
  – Memorandums for Record of actions issues
  – Quality Assurance Surveillance Plan
  – Performance assessments (negative & positive)
  – Weather Reports

COR file is retained for 3 years

COR No No’s

• Modify (“change”) the contract
  - Promise or authorize more work
  - Grant deviations or waivers of contract terms and conditions
  - Approve/Authorize Overtime
• Disclose source selection information
• Divulge budget information
• Get involved with subcontractors
### The Top Five Do’s and Don’ts

<table>
<thead>
<tr>
<th>#5</th>
<th>Don’t exceed Your Authority!</th>
</tr>
</thead>
<tbody>
<tr>
<td>#4</td>
<td>Do keep the KO informed!</td>
</tr>
<tr>
<td>#3</td>
<td>Complete COR Training &amp; stay current</td>
</tr>
<tr>
<td>#2</td>
<td>Promptly: “inspect” and “accept,” approve or disapprove invoices and let the KO know there is a problem (in writing).</td>
</tr>
<tr>
<td>And the Number One (#1) to do for the COR is</td>
<td></td>
</tr>
</tbody>
</table>

And ….# 1

**Read The Contract!**
Who Has Authority and Why?

- A new organization is coming to your organization and you need to increase contract services
- Review invoices for acceptance
- The contractor is working on site and finds old drums of solvents
- Change contractor work schedule
- Release of Government Property to the contractor
- Conduct surveillance to determine contractor performance
- Change Government inspection schedule
- Order overtime for the contractor
- Conduct inspection and acceptance

Acquisition Procedures

Our Job…

✓ The Right Stuff …
✓ Delivered to the Right Place…
✓ At the Right Time…
✓ At the Right Price…
✓ Using a Smart Business Arrangement!

Acquisition vs. Contracting

• **Acquisition** — is defined as “the act of acquiring.” In DoD this includes not only an item but also may include the research and development, test and evaluation, production, fielding, operating, maintenance and disposal of a system.

• **Contracting** — is the process of acquiring goods and services. It is only one function within the acquisition environment.
What is a Contract?

A promise for the breach of which the law provides a remedy or the performance of which the law recognizes as a duty and there is legal recourse.

- **FAR Definition:** “Contract” means a mutually binding legal relationship obligating the seller to furnish the supplies or services (including construction) and the buyer to pay for them.

- **What is an agreement?**
  Mutual assent between two or more legally competent persons, ordinarily leading to a contract.
FAR Organization Structure

- Subchapter A. General
- Subchapter B. Acquisition Planning
- Subchapter C. Contracting Methods & Contract Types
- Subchapter D. Socioeconomic Programs
- Subchapter E. General Contracting Requirements
- Subchapter F. Special Categories of Contracting
- Subchapter G. Contract Management
- Subchapter H. Clauses & Forms

FAR Parts

FAR -- Part 1 Federal Acquisition Regulation System
FAR -- Part 2 Definitions of Words and Terms
FAR -- Part 3 Improper Business Practices and Personal Conflicts of Interest
FAR -- Part 4 Administrative Matters
FAR -- Part 5 Publicizing Contract Actions
FAR -- Part 6 Competition Requirements
FAR -- Part 7 Acquisition Planning
FAR -- Part 8 Required Sources of Supplies and Services
FAR -- Part 9 Contractor Qualifications
FAR -- Part 10 Market Research
FAR -- Part 11 Describing Agency Needs
FAR -- Part 12 Acquisition of Commercial Items
FAR -- Part 13 Simplified Acquisition Procedures
FAR -- Part 14 Sealed Bidding
FAR -- Part 15 Contracting by Negotiation
FAR -- Part 16 Types of Contracts
FAR -- Part 17 Special Contracting Methods
FAR -- Part 18 Emergency Acquisitions
FAR -- Part 19 Small Business Programs
FAR -- Part 20 [Reserved]
FAR -- Part 21 [Reserved]
FAR -- Part 22 Application of Labor Laws to Government Acquisitions
FAR -- Part 23 Environment, Energy and Water Efficiency, Renewable Energy Technologies, Occupational Safety, and Drug-Free Workplace

### FAR Parts Con’t

| FAR -- Part 24 Protection of Privacy and Freedom of Information |
| FAR -- Part 25 Foreign Acquisition |
| FAR -- Part 26 Other Socioeconomic Programs |
| FAR -- Part 27 Patents, Data, and Copyrights * |
| FAR -- Part 28 Bonds and Insurance |
| FAR -- Part 29 Taxes |
| FAR -- Part 30 Cost Accounting Standards Administration |
| FAR -- Part 31 Contract Cost Principles and Procedures |
| FAR -- Part 32 Contract Financing |
| FAR -- Part 33 Protests, Disputes, and Appeals |
| FAR -- Part 34 Major System Acquisition |
| FAR -- Part 35 Research and Development Contracting |
| FAR -- Part 36 Construction and Architect -- Engineer Contracts |
| FAR -- Part 37 Service Contracting |
| FAR -- Part 38 Federal Supply Schedule Contracting |
| FAR -- Part 39 Acquisition of Information Technology |
| FAR -- Part 40 [Reserved] |
| FAR -- Part 41 Acquisition of Utility Services |
| FAR -- Part 42 Contract Administration and Audit Services |
| FAR -- Part 43 Contract Modifications |
| FAR -- Part 44 Subcontracting Policies and Procedures |
| FAR -- Part 45 Government Property |
| FAR -- Part 46 Quality Assurance |
| FAR -- Part 47 Transportation * |
| FAR -- Part 48 Value Engineering * |
| FAR -- Part 49 Termination of Contracts |
| FAR -- Part 50 Extraordinary Contractual Actions And The Safety Act |
| FAR -- Part 51 Use of Government Sources by Contractors |
| FAR -- Part 52 – Clauses |
| FAR -- Part 53 Forms |
Summary

• Course Introduction
• COR Appointment and Authority
• KO Authority
• COR Duties
  – Record Keeping
  – Do’s and Don’ts
• Introduction to Acquisition Environment
  – What is a Contract
  – Federal Acquisition Regulations
What Do I Need to Know About Ethics and Integrity?

Not a Laughing Matter

"He sold us five and a half thousand boxes with no slots!"

"Miss Dagen, will you send someone in here who can distinguish right from wrong?"
### The Standard

Avoid even the APPEARANCE of anything less than complete:  

**integrity, objectivity, and impartiality**

Legislation and policies can’t force ethical behavior

---

### Ethics in Government – the Basics

- **Principles of Ethical Conduct for Government Officers and Employees**
  - Presidential Executive Order 12674, April 1989
  - Employee’s Oath of Office

- **Federal laws and regulations governing:**
  - Gov’t. employees
  - Contractors

- **United States Office of Government Ethics (OGE)**
  - Federal Ethics laws >100 Pages of Statutes

- **Department of Defense:**
  - Joint Ethics Regulation (DoD 5500.07-R)
  - Standards of Conduct (DoDD 5500.07)
Ethical Foundation

Employee Responsibilities under Executive Order 12674 (As Amended)

<table>
<thead>
<tr>
<th>DO</th>
<th>DO NOT</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Place <strong>Loyalty</strong> to the Constitution, the Laws, and Ethical Principles above Private Gain</td>
<td>• Use Nonpublic Information to Benefit Yourself or Associates</td>
</tr>
<tr>
<td>• Act Impartially to all Groups, Persons, and Organizations</td>
<td>• Solicit or Accept Gifts from Parties Doing Business With or Seeking Official Action from DOD</td>
</tr>
<tr>
<td>• Give an Honest Effort in the Performance of your Duties</td>
<td>• Make Unauthorized Commitments or Promises</td>
</tr>
<tr>
<td>• Protect and <strong>Conserve Federal Property</strong></td>
<td>• Use Federal Property for Unauthorized Purposes</td>
</tr>
<tr>
<td>• Disclose Fraud, Waste, Abuse, and Corruption</td>
<td>• Take Jobs or Hold Financial Interests that Conflict with our Government Responsibilities.</td>
</tr>
<tr>
<td>• Fulfill Obligations as Citizens and Pay your Taxes</td>
<td>• Take Actions that even <strong>Appear</strong> to be illegal or Unethical</td>
</tr>
<tr>
<td>• Comply with Equal Opportunity Laws</td>
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</tbody>
</table>

Standards of Conduct and “The COR”

• **Fiduciary Responsibility**
• **Procurement Integrity**
  – Post Government Employment
• **Conflicts of Interest**
• The “**Usual suspects**”
  – Fraud, Waste and Abuse
  – Bribes
  – Kickbacks
  – Gratuities and Gifts

Ethics in Government Contracting

"In order to maintain public confidence in the federal procurement process, government and contractor employees must follow exemplary standards of conduct."

John Cibinic and Ralph Nash
Administration of Government Contracts

- 41 USC Chapter 21 – Restrictions on Obtaining and Disclosing Certain Information (Procurement Integrity Act (PIA))
- 18 USC § 201 – Gratuities
- 18 USC § 207 – Representation Restrictions
- 18 USC § 208 – Acts affecting a personal financial interest

Fiduciary Relationship

Definition: a relationship founded on trust or confidence relied upon by one person in the integrity and fidelity of another.
Restrictions on Obtaining & Disclosing...

Certain Information
(Formerly known as the *Procurement Integrity Act*)

- Provides that a person may not knowingly obtain “source selection information” or “contractor bid or proposal information” before contract award, other than as provided by law
- Ban applies to everyone, including Federal employees & contractor employees
- Prohibits certain Government officials from accepting post government employment

41 U.S.C. Chapter 21

Obtaining and Disclosing - Ramifications

- If an individual improperly discloses or obtains Source Selection Information (*SSI*) or Contractor Bid and Proposal Information (*CBPI*)
  - In exchange for anything of value, or
  - In order to obtain for himself, or give to anyone else, a competitive advantage in the award of a federal contract
- The maximum penalty is:
  - Five (5) years in prison,
  - Civil penalty of $50,000 for each violation
    - $500,000 for an organization
  - Adverse personnel action (e.g., termination)
Post Government Employment

Your role as a COR may impact Private Employment opportunities

- Restrictions (18 U.S.C. § 207)
  - Agency officials participating personally and substantially in a Federal agency procurement for a contract shall report any contact with the contractor regarding employment and reject the opportunity or disqualify themselves from involvement in the procurement.
  - DOES NOT prohibit acceptance of employment
  - MAY restrict scope of employee’s activities (1 & 2 year influence/communication restrictions)

- Greater prohibitions apply to officials involved in acquisitions exceeding $10M (41 U.S.C. 2101-2107)
- Civil and Criminal penalties vary by the statute violated

---

Post Government Employment – Con’t

<table>
<thead>
<tr>
<th></th>
<th></th>
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</thead>
<tbody>
<tr>
<td>DOES NOT prohibit acceptance of employment</td>
<td>Agency officials participating personally and substantially in Federal agency procurement shall report any contact with the contractor regarding employment and reject the opportunity or disqualify themselves from involvement in the procurement.</td>
<td>Avoid any activity that would affect the public's confidence in the integrity of the Federal Government, even if it is not an actual violation of the law</td>
</tr>
<tr>
<td>MAY restrict scope of employee’s activities</td>
<td>Greater prohibitions apply to officials involved in acquisitions &gt; $10M</td>
<td>Obtain counseling and written advice concerning restrictions on seeking other employment from their Ethics Counselor</td>
</tr>
<tr>
<td>“Cooling Off” period (1 &amp; 2 year influence/communication restrictions)</td>
<td>Civil and Criminal penalties vary by the statute violated</td>
<td></td>
</tr>
</tbody>
</table>

Organizational Conflict of Interest

- Refers to a situation which an individual, company or contractor may be unable to compete for, or continue a government contract because:
  - They are unable to provide impartial advice or assistance to the Government
  - Their objectivity in performing a contract may be impaired; or
  - They have an unfair competitive advantage due to involvement in other activities or relationships they are performing for, or have with, the government.

Conflict of Interest - Actual Conflict

- Cannot participate personally and substantially in any matter (through decision, advice, recommendation or investigation) that would affect the financial interests of:
  - You, your spouse, or your minor child;
  - Your general partner;
  - An organization in which you are serving as officer, director, trustee, general partner or employee; OR
  - An organization with which you are negotiating for employment (or have an arrangement for future employment)

18 USC § 208
Question for Discussion

An agency is about to award a contract to ACME Corporation
• You own stock in ACME

What would you have to do if the KO assigns you as the COR?

Contractor Standards of Conduct

• Contractors must abide by standards of conduct as established by:
  – Statute
  – Regulation
  – Contract

• Violations could result in contractors being subjected to criminal, civil, administrative, and contractual remedies.
Contractor – Business Ethics/Conduct Code

Implemented by FAR Clause 52.203-13
- For contracts over $5 million and 120 day or longer period of performance, the Contractor Shall:
  - Establish a code of business ethics and conduct
  - Provide a copy to all employees working on the contract and promote compliance with the code among the contractor’s employees
  - Flow down to Subcontractors

1) Promote business ethics and early discovery of improper conduct in the performance of government contracts
2) Institute ongoing business ethics training for its employees
3) Establish internal control system to facilitate timely discovery of improper conduct in connection with the performance of government contracts and ensure that corrective actions are promptly taken

Conduct & Integrity - Bribery

The term “bribery” means offering or giving something of value to a Government official or for a Government official to solicit or receive something of value in return for preferential treatment

- Soliciting or accepting Bribes:
  - May not solicit or accept any gratuity, gift, favor, entertainment, loan, or anything of monetary value
  - Criminal offense to seek, receive, or agree to accept anything of value
    - Being influenced in an official act
    - Committing or allowing fraud
Conduct & Integrity - Kickbacks

The term “kickback” means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind provided to improperly obtain or reward favorable treatment in connection with a prime contract or a subcontract relating to a prime contract

- Prohibits kickbacks to prime contractors, prime contractor employees, subcontractors, and subcontractor employees
  - May not attempt, contemplate or receive a kickback(s)
  - Inclusion of kickback amounts in contract prices prohibited
- Penalties for any person who knowingly and willfully engages in prohibited conduct: 41 USC § 8706 and 8707
  - Criminal: 10 years imprisonment
  - Civil: fine of not more than $10,000 per occurrence

Congress intended the Act to embrace the full range of Government contracting

Conduct & Integrity – Gifts

Defined to include nearly anything of market value

- Does not include items clearly not gifts, such as publicly available discounts and commercial loans etc.
- General Rules:
  - You may not solicit gifts
  - You may not accept gifts from “prohibited sources”
    - A “prohibited source” is one who does, or seeks DOD business or one who could be substantially affected by your official decisions
  - You may not accept gifts given to you because of your official position as a Government official
- Exceptions to prohibition against gifts from outside sources:
  - Unsolicited gifts with a market value of $20 or less per occasion, aggregating no more than $50 in a calendar year from any single source;
  - Gifts motivated by a family relationship or personal friendship
  - Free attendance at certain widely-attended gatherings
Conduct & Integrity – Gratuities

- Gratuities:
  - Gratuities constitute a crime when offered or given to a Government official or when a Government official solicits or receives a gratuity
  - 18 U.S.C. § 201
  - To be categorized as a gratuity, the item being offered must be a thing of value and be presented with the intent of corruption or favorable treatment

As a participant in the acquisition process, the COR must constantly be on guard of improper actions or those that can be construed as such

What is Fraud?

ANSWER:
A dishonest and deliberate course of action which results in the obtaining of money, property or an advantage to which the recipient would not normally be entitled.

EXAMPLE:
Could include falsifying records and books of accounts, kickbacks, or concealing a foreign-made item for a domestic product.
What is Waste?

Involves the expenditure or allocation of resources significantly in excess of need.

EXAMPLE: An example would be the negligent or reckless requisition of three times as much perishable produce as required by a military dining hall. It need not be for private use or personal gain, but it still signifies poor management.

What is Abuse?

Abuse is the intentional or improper use of Government resources.

EXAMPLE: Could include misuse of grade, position, or authority or misuse of resources such as tools, vehicles, or copying machines.
Why Good People Do Bad Things

Lack of Awareness → Competing Priorities → Careerism → Best Outcome?

The Challenge

Decision Process

Peer Pressure

Time / Cost Constraints

Others

Unethical Behavior Early Warning Signs

- “Everybody does it.”
- “Well, maybe just this once…”
- “No one will get hurt.”
- “No one will notice the difference.”
- “I don’t care how, just get it done.”
- “We didn’t have this conversation.”
Watch for Indicators

- Unauthorized product substitution
- Errors in cost reporting
- Potential defective pricing
- Incorrect performance payment requests
- Weak discipline in charging of labor hours
- Use of erroneous overhead rates
- Frequent discovery of errors

Is Ignorance a Defense?

- Is ignorance of the rules a defense if disciplinary action is taken against the employee?
  - NO
  - Expect periodic training where you work
Procurement Integrity & Employment

<table>
<thead>
<tr>
<th>Darleen Druyun</th>
<th>Michael Sears</th>
</tr>
</thead>
<tbody>
<tr>
<td>Former top Air Force Acquisition Official</td>
<td>Former Boeing Chief Financial Officer</td>
</tr>
<tr>
<td>• Nine months in federal prison</td>
<td>• Four months in federal prison</td>
</tr>
<tr>
<td>• Seven months in community facility</td>
<td>• 200 hours of community service</td>
</tr>
<tr>
<td>• 150 hours of community service</td>
<td>• Fined $250,000</td>
</tr>
<tr>
<td>• $5,000 fine</td>
<td></td>
</tr>
</tbody>
</table>

Bribery and Bid-Rigging

<table>
<thead>
<tr>
<th>Former Army Colonel Moran, Former Commander, US Army Contracting Command, Korea</th>
</tr>
</thead>
<tbody>
<tr>
<td>Graduate of Industrial War College</td>
</tr>
</tbody>
</table>

What Colonel Moran Did

Bribery and Bid-Rigging

- Centered around former Army COL Richard Moran, CDR, USAKCC, and Wife, Gina Moran
- 11 Count Indictment, Bid-Rigging Scheme
- Awarded Numerous Contracts in Exchange for Cash Gratuities; in One Case, Demanded $500,000 for his “Services” (Installment Plan).

Unjustified Sole Source Award Indicators

- Tailored specifications
- Vague justification
- Above or just below cost estimate
- Previous competitive procurement
- Split purchase to avoid competition

Fraudulent Sole Sourcing

When caught, Moran was on the verge of awarding a Sole-Source Vehicle Lubrication Contract, $5 Million a Year, 10 Option Years (Required an Exception to Policy). Contract was Re-competed and awarded for $1 Million a Year.

The Outcome

16 Jan 02, CID Search Moran’s Quarters, Find over $700,000 in Cash (in $100 bills)

Sentenced to 54 months in federal prison for his conviction on federal corruption charges.
Bribes, Bid Rigging & Kickbacks

Major Cockerham accepted millions of dollars in bribes from contractors who had DoD contracts in Iraq and Kuwait that he either awarded to the contractors or administered himself.

$9.1M in "accounted for" Kickbacks

Mr Cockerham: 17.5 years / $9.6M fine
His sister: 6 years / $3.1M fines
Wife: 3.5 years / $1.4M fines
Niece: 1 year / $5M fines

Charges convicted of: Money Laundering, Bribery, and Conspiracy.

Sadly... there were more involved!!

How We Detect Fraud

- Hotline tip 47%
- Management review 12%
- Internal audit 15%
- Account reconciliation 5%
- External audit 7%
- Other 14%
Conclusion

- **What you should know:**
  - Ethical rules governing government officials are stricter than the general rules governing private-sector employees
  - Know the Joint Ethics Regulation (JER)
  - Contact your supervisor and ethics counselor when questions come up
  - Report fraud, waste and abuse to the appropriate investigative agency

Review Questions

- What statutes covers Government employee ethical conduct
- What does fiduciary relationship mean
- What is conflict of interest
- How might you report a suspected incident of fraud and to whom
- What adverse actions or penalties might result from unethical behavior
Lesson Related DAU Training

- [WWW.dau.mil](http://WWW.dau.mil)
- Click on iCatalog
- Click Continuous Learning
- Browse for CLCs or CLMs:

<table>
<thead>
<tr>
<th>Course #</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>CLC 065</td>
<td>Suspension and Debarment</td>
</tr>
<tr>
<td>CLC 132</td>
<td>Organizational Conflicts of Interest</td>
</tr>
<tr>
<td>CLM 003</td>
<td>Overview of Acquisition Ethics</td>
</tr>
<tr>
<td>CLM 049</td>
<td>Procurement Fraud Indicators</td>
</tr>
</tbody>
</table>
Encyclopedia of Ethical Failure

Department of Defense
Office of General Counsel
Standards of Conduct Office
Updated October 2014


Encyclopedia of Ethical Failure Topics

- Abuse of Position
- Bribery (18 U.S.C. § 201-Type Violations)
- Conflicts of Interest (18 U.S.C. § 208-Type Violations)
- Credit Card Abuse
- Fraud (Violations Not Covered Elsewhere)
- Gambling and Other Contest Violations (41 C.F.R. § 102-74.395)
- Gift Violations (18 U.S.C. § 201 and 5 C.F.R. § 2635)
- Involvement in Claims Against the Government or in Matters Affecting the Government (18 U.S.C. § 205-Type Violations)
- Misuse of Government Resources and Personnel
- Morale, Welfare, and Recreation (MWR) Issues
- Political Activity Violations
- Post-Employment Violations (18 U.S.C. § 207-Type Violations)
- Time and Attendance Violations
- Travel Violations
Case Studies of Ethical Failures

- See ethical cases in Lesson 2 student book
- Read the cases and consider the circumstances that led to the ethical failures

How Do I Contribute To The Pre-Award Contracting Process?

Many Things to Consider

The COR’s Role During Pre-Award Process

- Identify and Define the Requirement
- Acquisition Planning
- Market Research
- Develop the Requirements Documents
- Government Property
- Independent Government Estimate
- Purchase Request (PR) and Funding

“Supporting the Mission”

What Mission?
- The customer’s mission
- The customer is ...
  - The requiring activity
  - The user
  - AND the taxpayer

Related Service Acquisition Processes

1. Form the Team
   - Leadership Support
   - Build the Team
2. Review Current Strategy
   - Conduct Historical Analysis
   - Define Stakeholder & Customer needs
3. Market Research
   - Analyze Market
   - Identify suppliers
4. Requirements Definition
   - Develop Requirements Roadmap
   - Draft PWG and OASDP
5. Acquisition Strategy
   - Business Strategy
   - Source Selection Strategy
What Requirement?

Work with the IPT to . . .

- **Define** the requirement
- **Develop** the strategy for procuring the requirement
- **Develop** the written requirements package
- **Decide** how the requirements will be met and completed
- **Determine** how much the requirement will cost

---

Condo for Rent - Example

**Condo for Rent**
- One-bedroom
- High-rise unit
- Overlooks the ocean
- Nestled among lush greens
- Lovely ocean view from every window!

Near Palm Beach in Jupiter, FL
Weekends $200 for three nights
$400 for the week.
Developing the Requirements Document

The KO and contractor need a concise description of what the customer needs… good questions to ask:

- The intended use for the product or service
- How often it will be used and/or quantity of item needed
- The competitive climate
- Resources and research available on the product or service
- Statutes, rules, policies or legislative action that might impact
- Current environment, constraints or framework
- Controls available to ensure successful performance
- Items to be physically delivered i.e. deliverables (design, report, prototype, software)
- Priorities
- Risks

Acquisition Planning

Agencies shall perform acquisition planning and conduct market research for all acquisitions…

FAR 7.102(a)
Acquisition Planning – The Process

Acquisition Background & Objectives
- Statement of Need
- Applicable Conditions
- Cost
- Capability or Performance
- Delivery/Performance Period
- Risks
- Acquisition Streamlining

Plan of Action
- Sources
- Competition
- Contract Type
- Budget/Funding
- Product/Service Description
- Test & Evaluation
- Environmental/Energy
- Security
- Milestones
- Participants
- Priorities/Allocations
- Contractor vs Gov't
- Inherently Gov't
- Management
- Information
- Make or Buy
- Logistics
- Considerations
- GPP
- Contract Admin
- Crisis
- Situations/Contingency

Agency or local level processes and procedures will specify when a “formal” written Acquisition Plan is mandatory.


Acquisition Planning – Avoid...

How the Customer explained it
How the Project Leader understood it
How the Analyst designed it
How the Programmer wrote it
How the Business Consultant described it
How the Project was documented
What Operations installed
How the Customer was billed
How the effort was supported
What the Customer really wanted

FYI: Acquisition Planning & The QASP

A Quality Assurance Surveillance Plan (QASP) Should Include:
- Description of Roles and Responsibilities of those Implementing the QASP
- Explanation of Methods and Frequency
- Documentation Levels required by Government and Contractor
- Procedures for Resolving Discrepancies
- How COR will Notify Contractor of Deficiencies, and
- How COR will determine Contractor's Degree of Responsibility

Using ARRT is a DoD “Best Practice”
The QASP is NOT incorporated into the contract
Don’t duplicate the contractors Quality Control program, practice insight rather than oversight

Market Research Overview

**Policy:** Agencies must conduct market research appropriate to the circumstances:
- Before developing new requirements documents
- Before soliciting offers for acquisitions > SAT

**Fundamentals**
- Become an informed buyer
- Determine the most suitable approach to acquire supplies and services

**Goals:** Gathers current data on existing market sectors to learn/identify:
- Potential sources of supply
- Commercial product characteristics
- Market characteristics
- Commercial item standards and best practices (quality assurance)
- Emerging technologies
- Vendor capabilities
- Non-developmental item solutions
- Government leverage opportunities

**Results:**
- Help determine commercial versus non-commercial
- Help determine appropriate contract type and incentives
- Help determine if requirement is limited/sole-source or competitive
- Help prepare budget estimates
- Help write a better PWS, SOW or SOO (or... define the requirement)
- Attract and/or increase competition
Market Research – Approaches

**STRATEGIC**

**Market Surveillance**

- **Ongoing Familiarity With a Market**
  - Trade Shows
  - Research Reports
  - Trade Journals
  - Symposia Proceedings
  - Internet Searches
  - Professional Organizations
  - Other sources

**TACTICAL**

**Market Investigation**

- Collect, Evaluate & Analyze Specific Information to Meet Agency Needs
  - Identify potential sources
  - Survey Manufacturers
  - Analyze Responses
  - Terms and conditions

**Determine Availability**

- Commercial?
  - Commercial “of a type”? 
- Non-commercial - New development?
- Requirement revisions?
- Timeliness, quality, & cost Tradeoffs?

**Note:** Agency R&D programs often a type of strategic market research
- Broad Agency Announcements (BAA)
- Small Business Innovative Research (SBIR) Topics

Market Research – Techniques

Market Research (MR) used to identify potential sources in the marketplace and more… it is not a source selection process… Personnel conducting MR activities are free “encouraged” to engage potential sources (one-on-one is allowed) to gather information on the goods and services offered in the marketplace.

- *Myth Busters Memorandum OFPP*

Common techniques used by KO and PM include:

- Industry Day Conferences
- Pre-Solicitation Conference
- Draft RFP/Specifications
- Site Visits
- “White Papers”
- One-on-One Meetings
Market Research - Emerging Trends

The need to improve our efforts and ability to conduct strong Market Research is vital!


CLC 004 - Market Research 3-hour online learning module (http://icatalog.dau.mil/)

Defining Requirements

When developing requirements:

- Use market research
- Promote full and open competition
- Limit use of restrictive provisions to satisfy agency needs
- Look for commercial solutions
- Limit Design Specs, focus on functional, performance & physical characteristics

Developing Requirements - Specifications

What is this?

- Galvanized heavy gauged spring
- No slip finger grip ends
- Interlocking bite
- Outer-locking coils to maintain stability
- Non Staining
- Non-strategic, environmentally friendly materials

Developing Requirements - Specifications

<table>
<thead>
<tr>
<th>DESIGN</th>
<th>PERFORMANCE</th>
<th>FUNCTIONAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Describes in precise detail materials employed&lt;br&gt;• Manner work is to be performed&lt;br&gt;• How to do it!</td>
<td>• Sets forth an objective or standard to be achieved&lt;br&gt;• Contractor expected to exercise ingenuity in achieving objective or standard, selecting the means and assuming corresponding responsibility&lt;br&gt;• Preferred for service contracts</td>
<td>• Describes work to be performed in terms of end purpose or ultimate objective&lt;br&gt;• May be described as a “subset” of performance specifications&lt;br&gt;• Preferred for supply contracts</td>
</tr>
</tbody>
</table>

Many Specifications “mingle” the types together
Where to Find Specifications

<table>
<thead>
<tr>
<th>DoD specifications</th>
<th>Government Specifications (Other than DoD)</th>
<th>Commercial Item Descriptions</th>
</tr>
</thead>
<tbody>
<tr>
<td>• MIL-STD-961</td>
<td>• GSA FPMR 101-29 HDBK</td>
<td>• DoD 4120.24-M</td>
</tr>
<tr>
<td>• DoD 4120.24-M</td>
<td></td>
<td>• GSA FPMR 101-29 HDBK</td>
</tr>
</tbody>
</table>

Non-government (Commercial) Specifications

• Applicable National or International Technical, Professional, or Industry Standards Body;
  – American National Standards Institute (ANSI)
  – American Society of Mechanical Engineers (ASME)
  – International Electro-technical Convention (IEC)
  – International Organization for Standardization (ISO), etc.

Statement of Work (SOW)

The portion of the contract that describes work to be done through the use of:

- Specifications & Detailed Quality Standards
- Minimum requirements
- Quantities
- Performance dates
- Time and location of performance
Performance Work Statement (PWS)

Means a statement of work for performance-based acquisitions which describes required results in clear, specific and objective terms with measurable outcomes.

Statement of Objectives (SOO)

Government Prepared Document Incorporated into the Solicitation that:
- States the overall performance objectives
  Used in Solicitations when Government Intends to Provide:
  - Maximum flexibility to each offeror to propose an innovative approach

Offerors then Write SOW or PWS Based on their Approach
- Methods
- Skill Mix
- Schedules
- Quality Control
Winning Offerer SOW/PWS Incorporated into Final Contract
How to Write a SOW / PWS / SOO

Visit the Service Acquisition Mall for help!
http://sam.dau.mil/Content.aspx?currentContentID=step_four_requirements_definition

Make sure you understand:
- Work to be performed
- Location of the work
- Period of performance and timeline
- Deliverable schedule
- Any distinct requirements
  - Security clearances
  - Travel required
  - Special skills or knowledge


Government Property – Policy & Processes

FAR Part 45 - Government Policy
DFARS Part 245 - DoD Policy
- Reporting of GFE to the DoD UID Registry
- Tagging, Labeling and Marking of GFP
- Reporting Loss of Government Property
- Contractor Property Management System Admin
- Reporting, Reutilization, and Disposal
- Procedure, Guidance and Information (PGI)

DFARS 252.211-7007 and 252-245-7001 through 7004

DoD Instruction 4161.2
Government Property

**Government Property**

**Government Furnished Property (GFP)**

"Any property in possession of, or directly acquired by, the Government and subsequently furnished to the contractor for performance of a contract. Contractor Acquired Property that is subsequently delivered to the Government for use on the same or another contract is considered GFP."

**Contractor Acquired Property (CAP)**

"Any property acquired, fabricated, or otherwise provided by the contractor for performing a contract, and to which the Government has title."

Although Government may have a right to the title, CAP has not yet been delivered.

---

**Government Property - Classifications**

*Property FAR 45.101*

- **Personal Property**
  - Equipment
    - For Repair
    - For "Use"
  - Special Tooling
  - Material
- **Real Property**
  - Special Test Equip.
  - Special Equip.

*They can either be GFP or CAP*

Note: Each Class of property has its own qualifiers and descriptions.
Planning for Property - Basic Policy

Contracting officers shall provide property to contractors ONLY when it is clearly demonstrated…
• Government’s best interest
• Benefit significantly outweighs increased cost of administration
• Providing property does not substantially increase Government’s risk
• Requirements cannot otherwise be met

When the Government does provide property, we must:
• Provide it to the contractor in a timely manner
• Ensure it is suitable for its intended use

Government Property Administration during the life of the contract and property disposition will be discussed in more detail in Lesson 11.
Independent Government Estimates

Estimate of resources and cost a prudent contractor will incur in the performance of a contract for complex requirements or non-commercial items

- An unbiased realistic cost/price estimate
  - Ensure final contract price is both fair and reasonable, achieving both best value and sharing of risk between government and contractor

- Does estimate agree or conflict with market research?
  - Well-documented IGEs provide essential program knowledge needed to evaluate and negotiate contractor proposals
  - Poor IGEs can sub-optimize a program, waste resources, and may lead to contract failure or default

- IGE is considered confidential information that should not be discussed or shared with contractor or potential offerors

IGE Cost Terms

<table>
<thead>
<tr>
<th>Direct Cost:</th>
<th>Indirect Cost:</th>
</tr>
</thead>
<tbody>
<tr>
<td>A cost that is specifically identified with a particular final cost objective or contract and includes labor, materials and other direct costs</td>
<td>Any cost not directly identified with a single final cost objective but identified with two or more final cost objectives, also referred to as overhead or burden</td>
</tr>
</tbody>
</table>

- General and Administrative (G&A): includes general and executive office, executive compensation, cost of staff services such as: legal, accounting, financial, administrative, and similar expenses

- Overhead: Indirect costs related to support of specific operations, such as material overhead, site overhead and labor overhead

Learn. Perform. Succeed. 3 - 30
Components of Contract Price

Contract Price = Cost + Profit

Direct Cost
- ODC
- Direct Labor
- Direct Material

Indirect Cost
- G&A
- Overhead
- Cost of Money

Overhead Cost of Money
- Money

Cost Elements Labor Estimate Rate
- Direct Labor (Guard) $20.00
- Overhead Fringe $ 9.00 45%
- Overhead Facilities $12.00 60%
- Overhead Bench $ 4.00 20%

Subtotal $45.00

G&A $ 9.00 20%

Subtotal $54.00

Profit $ 8.10 15%

Hourly Price Rate $62.10
You should understand the rules attached to government funds so as to avoid any personal liability on your behalf or on your KO’s behalf.

Funding Limitations

“Misappropriation” Act (Purpose)
- Requires funds to be used only for the purposes and programs for which the appropriation was made – otherwise considered misappropriated funds.
- aka “The Purpose Statute”

Bona Fide Need Rule (Time)
- Requires funds to be used only for needs or services in the year of the appropriations obligation period.

Anti-Deficiency Act (Amount)
- Prohibits making or authorizing an obligation in excess of the amount available.
- Forbids obligation to pay money from the US Treasury in advance of an appropriation.
- Requires agency to fix responsibility for violations of the Act.
## Major Appropriation Categories

<table>
<thead>
<tr>
<th>APPN CAT</th>
<th>SCOPE OF WORK EFFORT</th>
<th>FUNDING POLICY</th>
<th>OBLIGATION PERIOD</th>
</tr>
</thead>
<tbody>
<tr>
<td>RDT&amp;E</td>
<td>Development, Test &amp; Evaluation, Equipment and Software for T&amp;E, and Operations at R&amp;D Facilities</td>
<td>Incremental</td>
<td>2 Years</td>
</tr>
<tr>
<td>PROC SCN</td>
<td>Hardware, Production Labor, Initial Spares, Equipment and Software $&gt;250K SCN Ship Building and Conversion Navy</td>
<td>Full</td>
<td>3 Years</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>5 Years - SCN</td>
</tr>
<tr>
<td>O&amp;M</td>
<td>Civilian Salaries, Travel, Fuel, Supplies, Minor Construction &lt;$750K, Replenishment Spares, Equipment &amp; Software &lt;$250K</td>
<td>Annual</td>
<td>1 Year</td>
</tr>
<tr>
<td>MILPERS</td>
<td>Military Pay &amp; Allowances, PCS Moves, Retired Pay Accrual</td>
<td>Annual</td>
<td>1 Year</td>
</tr>
<tr>
<td>MILCON</td>
<td>Major Construction Projects $&gt;1M</td>
<td>Full</td>
<td>5 Years</td>
</tr>
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</table>

## Appropriation Life-Cycle

<table>
<thead>
<tr>
<th>Account Title</th>
<th>Years After Appropriation First Authorized</th>
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</thead>
<tbody>
<tr>
<td></td>
<td>1</td>
</tr>
<tr>
<td>O&amp;M</td>
<td>C</td>
</tr>
<tr>
<td>RDT&amp;E</td>
<td>C</td>
</tr>
<tr>
<td>PROCUREMENT</td>
<td>C</td>
</tr>
<tr>
<td>MILCON / SCN</td>
<td>C</td>
</tr>
</tbody>
</table>

- **C** = Current
- **E** = Expired
- **X** = Canceled

**Available for New Obligations & Payments**
- Available for Upward Obligations, Adjustments, & Payments on Prior Obligations.
  - Not Available for New Obligations

**No Longer Available for Upwards Adjustments to Obligations or to Liquidate Recorded Obligations**
- Closed
Purchase Request (PR) Package

**The purchase request package**

- Is the official request for action
- Authorizes the contracting process to begin
- Is coordinated and signed by a responsible official of the initiating office
- Forms the core information of the solicitation document and resulting contract
- Provides funding and financial officer certification as to the availability of funds

**Elements of the PR Package**

The PR establishes the baseline for the contractual action

- Preparing the purchase request is critical to the success of an acquisition

  ✓ Requirements Documents, SOO, SOW, PWS
  ✓ Quality Assurance Surveillance Plan
  ✓ Funding Certification
  ✓ Contract Data Requirements List (CDRL - DD Form 1423)
  ✓ DD Form 254 (DOD Contract Security Classification Specification)
  ✓ Government Furnished Property
  ✓ Acquisition Strategy/Acquisition Plan or update of Acquisition Plan
  ✓ Source List

  ✓ DD Form 2579 (Small Business Coordination Record)
  ✓ Sole Source Justification: Justification and Approve (J&A) coordination
  ✓ Independent Government Estimate
  ✓ Patents List
  ✓ Deliverable List
  ✓ Award Fee Plan/Incentive Fee Plan
  ✓ Synopsis Text
  ✓ Source Selection Plan/Evaluation Factors
Summary

• Acquisition Planning ✓
• Market Research ✓
• Identify and Define the Requirement ✓
  - Develop the Requirements/Specifications Documents ✓
• Independent Government Estimate ✓
• Types of Appropriated Funds ✓
• Government Property ✓
• Purchase Request (PR) and Funding ✓
  - Elements of a PR Package ✓

Loose Lips Sink Ships - Exercise

1. Identify the major issues in this case.
2. Did Mr. Sperry act properly by contacting the contractors at Power Surge and Bolt?
3. Should Mr. Sperry have used the information provided by Power Surge and Bolt in the purchase request?
4. Were there potential problems with using both contractor’s information?
5. How should Mr. Sperry have developed the requirements document?
Lesson Related DAU Training

**www.dau.mil**
- Click on iCatalog, Click Continuous Learning, Browse for CLs:

<table>
<thead>
<tr>
<th>Course #</th>
<th>Title</th>
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<tbody>
<tr>
<td>CLC 004</td>
<td>Market Research</td>
</tr>
<tr>
<td>CLC 051</td>
<td>Managing Government Property in the Possession of Contractors</td>
</tr>
<tr>
<td>CLC 108</td>
<td>Strategic Sourcing Overview</td>
</tr>
<tr>
<td>CLE 017</td>
<td>Technical Planning</td>
</tr>
<tr>
<td>CLE 028</td>
<td>Market Research for Engineering &amp; Technical Personnel</td>
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<tr>
<td>CLL 019</td>
<td>Technology Refreshment Planning</td>
</tr>
<tr>
<td>CLL 043</td>
<td>Green Logistics: Planning for Sustainability</td>
</tr>
<tr>
<td>CLM 031</td>
<td>Improved Statement of Work</td>
</tr>
<tr>
<td>CLM 039</td>
<td>Foundations of Government Property</td>
</tr>
</tbody>
</table>

How Am I Involved in Awarding the Contract?

The Contracting Process

Potential COR Roles & Responsibilities in the Contracting Process

Acquisition Planning
- Market Research
- Requirement Definition
- Written Acquisition Plan

Contract Formation
- Evaluation Criteria
- Source Selection Team

Contract Administration
- Performance Monitoring
- Guidance & Direction
- Inspection, Acceptance, Payment
- Closeout
- Document, Document, Document

Pre-Award Contracting Process

Begin

Plan the Approach

Source Selection
Plan & Evaluation Factors

Requirements & Criteria

Proposals

Evaluate
Determine Competitive Range

Proposal Updates
(Final Proposal Revisions)

Lessons Learned

Market Research

Customers Needs

Debrief

Contract Award

Decision/Documentation

Compare Proposal Ratings

Evaluate Revised Proposals

Contracting Officer's Role

Contracting is responsible for:

- Source of Supplies & Services – Order of Priority
- Competition
- Socio-Economic Programs
- Methods of Acquisition
- Solicitation and Contract Development
- Source Selection and Award

They assist with all other aspects of the procurement
### Order of Priority

#### Supplies
- Any special law from Congress
- Agency Inventories
- Excess from other agencies
- Blind and Severely Handicapped (Ability One)
- Wholesale Supply Sources (e.g. GSA, DLA, and VA)
- Commercial Sources

#### Services
- Blind and Severely Handicapped
- Commercial Sources

---

### May I Request a Particular Contractor?

- Competition In Contracting Act (CICA) – 1984
  - Full and Open Competition
  - Full and Open Competition *after* Exclusion of Sources
  - Other than Full and Open Competition
    - Approval and Documentation Requirements (J&A)

- Only one Responsible Source
- Urgent and Compelling
- Industrial Mobilization
- International Agreement
- Authorized/Required by Statute
- National Security
- Public Interest
FYI: Socio Economic Considerations

Full and Open “after exclusion of sources” includes Set-Aside Programs
- Small Business
- 8(a) Program – Socially and Economically Disadvantaged
- Economically Disadvantaged Women Owned Small Business (EDWOSB)
- Women Owned Small Businesses (WOSB)
- Service Disabled Veteran Owned Small Business (SDVOSB)
- Historically under utilized Zone Small Business (HUBZone)
- Local Firms – Disaster or Emergency (Stafford Act)

- Socio-Economic programs - powerful influence on U.S. economy
- Set-Aside Programs established by public law, executive order or other legislation
- Agencies develop socio-economic goals per fiscal year
- Set-Aside program “order of preference” at KO discretion

Acquisition Methods

SAP = Simplified Acquisition Procedures

Market Research

RFQ FAR 8.4
Quote & Evaluation
Award
Blanket Purchase Agreements

RFQ FAR 13
Quote & Evaluation
Issue
Blanket Purchase Agreements

IFB FAR 14
Bid & Evaluation
Award

RFP FAR 15
Proposal & Evaluation
Award

IDQ/IFWAC

Sealed Bidding

Contracting by Negotiation

TOPR FAR 16.5
Proposal & Evaluation
Issue or Award

PR Package Preparation

FYI: Acquisition Lead Time

Procurement Acquisition Lead Time (PALT) is the amount of time to get an action “on contract” from receipt of a completed requirements package. There is no one standard or prescribed metrics; it is established and monitored at the organizational level.

**TYPICAL / AVERAGE PALT’s**

<table>
<thead>
<tr>
<th>Action</th>
<th>Dollar Value</th>
<th>Timeline (days)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Simplified Acquisition</td>
<td>≤ $25K</td>
<td>10 – 25</td>
</tr>
<tr>
<td>Procedures (SAP)</td>
<td>&gt; $25K</td>
<td>15 – 45</td>
</tr>
<tr>
<td>GSA/FSS Orders</td>
<td>≤ $150K</td>
<td>10 – 25</td>
</tr>
<tr>
<td></td>
<td>&gt; $150K</td>
<td>60 – 90</td>
</tr>
<tr>
<td>Sealed Bid</td>
<td>&gt; $150K</td>
<td>60 – 90</td>
</tr>
<tr>
<td></td>
<td>&gt; $5M</td>
<td>90 – 120</td>
</tr>
<tr>
<td>Competitive Proposals</td>
<td>≤ $5M</td>
<td>60 – 90</td>
</tr>
<tr>
<td></td>
<td>&gt; $5M</td>
<td>90 – 180</td>
</tr>
<tr>
<td>TO/DO - IDIQ</td>
<td>One source</td>
<td>15 – 60</td>
</tr>
<tr>
<td></td>
<td>Fair Opportunity</td>
<td>30 – 90</td>
</tr>
</tbody>
</table>

Contract Families

<table>
<thead>
<tr>
<th>Fixed Price</th>
<th>Cost Reimbursement</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Firm Fixed Price</td>
<td>• Cost</td>
</tr>
<tr>
<td>• Fixed Price w/ Economic Price Adjustments</td>
<td>• Cost Sharing</td>
</tr>
<tr>
<td>• Fixed Price Incentive Firm</td>
<td>• Cost Plus Incentive Fee</td>
</tr>
<tr>
<td>• Fixed Price w/ Prospective Price Redetermination</td>
<td>• Cost Plus Award Fee</td>
</tr>
<tr>
<td>• Fixed Ceiling Price</td>
<td>• Cost Plus Fixed Fee</td>
</tr>
<tr>
<td>• Firm Fixed Price Level of Effort</td>
<td>• Time &amp; Material (T&amp;M)</td>
</tr>
<tr>
<td>• Indefinite Delivery/Indefinite Quantity</td>
<td>• Labor Hour</td>
</tr>
<tr>
<td>• Definite Quantity</td>
<td>• Letter</td>
</tr>
</tbody>
</table>

Selecting Contract Type is a function of “Risk” Allocation

Objective: negotiate contract type and price (or estimated cost and fee) resulting in reasonable contractor risk and provide greatest incentive for efficient and economical performance

Factors in Selecting Contract Types

- Fair and realistic price competition
- Degree of uncertainty
- Complexity of requirement
- Risk of performance
- Shared responsibility
- Length of contracting period
- Contractor’s accounting system
- Cost, schedule, performance, other incentives may be added, such as award fee

• Affects how a COR monitors the contract/contractor
• Some types require more surveillance than others

The Subject Matter of the Contract

- Architect and Engineering
- Construction
- Research and Development
- Supplies
- Services
  - Advisory and Assistance Services
- Utilities
- Information Technology
FYI: T&M / Labor-Hour Contracts

- Used when not possible to estimate extent, duration and cost of the work to any reasonable degree of confidence
- Fixed hourly labor rate (fully loaded)
  - Overhead, G&A, Profit
- Materials at cost or catalog price
  - Includes all material indirect costs
- Requires surveillance
  - No positive cost control or labor efficiency incentives

**Bottom-line:** Used only when no other contract type possible

- Contract must include a ceiling price that contractor exceeds at its own risk

SOURCE SELECTION

*Source Selection* refers to the process used for competitive, negotiated contracts to obtain the best value for the Government
Selecting a Source - Spectrum

**Solicitation Requirements**

- **General**
  - Customer Knowledge
  - Rotate Sources
  - Example: Gov't Purchase Card buy

- **Non Complex**
  - No Defined Factors or Relative Importance
  - Min Documentation
  - Example: Purchase Order

- **Evaluation Criteria and Proposal Requirements**
  - All source selections shall evaluate cost or price, and the quality of the product or services

**Formal Source Selection Techniques**

- **Best Value Continuum**
  - **Lowest Price Technically Acceptable**
    - Best Values is expected to result from selection of the technically acceptable proposal with the lowest evaluated price
  - **Tradeoff Process**
    - Appropriate when it is in Government’s best interest to consider award to other than lowest priced or highest technically rated offeror
    - Trades better quality, technical ability or performance for price

DoD Source Selection Procedures

- Standardized methodology and uniform guidance to conduct Source Selections
- Directs use of standardized rating criteria
- Required use of descriptions for “Technical” and “Past Performance” evaluation factors

Effective 1 July 2011

Source Selection Process

Source Selection Plan → RFP to Industry → Proposals From Industry → Evaluation of Proposals

Discussions (if necessary) → Final Proposal Revisions → Select the “Best Value” → Contract Award

Where to find the SS Procedures Guide
acc.dau.mil/Contracting
Solicitation - Evaluation Factors

The SOW, PWS, Specifications, etc. are near complete after the acquisition planning and market research process

- It is time to develop the Evaluation Factors
- Why should COR be concerned with evaluation factors and selecting the contractor?

Two Categories of Evaluation Factors

<table>
<thead>
<tr>
<th>Cost or Price</th>
<th>Quality of Product or Service</th>
</tr>
</thead>
<tbody>
<tr>
<td>Responsibility</td>
<td>Technical</td>
</tr>
<tr>
<td>Certs and Reps</td>
<td>Past Performance</td>
</tr>
<tr>
<td>Responsive</td>
<td>Small Business</td>
</tr>
</tbody>
</table>

- Evaluation factors define how (and ultimately who) the awardee will be selected
- Who is selected influences probability of successful contract performance
Evaluation Criteria and Proposal Evaluation

Non-price evaluation factors should be:
- Clear
- Relevant
- Ultimately, Differentiate between proposals
  
  Avoid
- Too many factors and/or sub factors
- Factors which unfairly limit competition
  Tailor the factors to the individual procurement

Proposals will be evaluated against the evaluation factors in the solicitation
- Technical evaluation team responsible for evaluating technical proposals:
  - Assign ratings to proposals
  - Make recommendations to KO on clarifications needed and deficiencies identified
  - Reviewing revised offers
  - Assist KO during negotiations
  - Participating in unsuccessful offeror debriefings

Evaluation Process

Initial Evaluation
- Offeror Proposals
- Evaluation Factors

Discussions
- Competitive Range Determination
- Discussions
- Final Proposal

Final Evaluation
- Revise
- Final Evaluation Briefing
- Best Value Decision

Award
- Debrief
- Award
Evaluation Results - Documentation

Ensure proposals are evaluated and results documented based solely on the factors and subfactors contained in the solicitation

– Proposal are not evaluated against each other for technical merit

Protests risks are significant if we don’t follow our own rules!


What is a Protest?

Protest means a written objection by an interested party to any of the following:

• A solicitation or other request by an agency for offers for a contract for the procurement of property or services
• The cancellation of a solicitation
• An award or proposed award of the contract
• A termination or cancellation of an award of a contract

“Interested party” … means an actual or prospective offeror whose direct economic interest would be affected by the award of a contract or by the failure to award a contract.

Protests Continued

- **Primary Impact**: delay award and performance of the contract
- Technical experts, source selection evaluators, and KO may be called upon to testify before the judge or through sworn deposition
- **Filing Details**: No later than 10-days after the basis of protest is known or should have been known of “adverse action”
  - Debriefs are critical
  - Protests can occur before award decision – Competitive Range

If source selection team deviates from solicitation evaluation criteria and award basis; protest likely to be *Sustained*

Exercise: Finding Base Support

1. **What is the Subject Matter of the Contract?**
2. **What Method of Acquisition Would you be Using?**
3. **Are there small business considerations?**
4. **What contract type would we consider using?**
5. **Is it commercial or non-commercial?**
6. **What evaluation criteria would you recommend?**
Summary

• This lesson covered the following topics:
  – Sources of Supply
  – Competition
  – Socio-Economic
  – Contract Types
  – Methods of Acquisition
  – Solicitation and Contract Development
  – Source Selection and Award
    • Protests

• Now that we know how a contract or order is put in place; Next we’ll learn and understand:
  – How to read contracts and their various formats

Lesson Related DAU Training

www.dau.mil
• Click on iCatalog
• Click Continuous Learning
• Browse for CLs:

<table>
<thead>
<tr>
<th>Course #</th>
<th>Title</th>
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<tbody>
<tr>
<td>CLC 007</td>
<td>Contract Source Selection</td>
</tr>
<tr>
<td>CLC 063</td>
<td>Sole Source Proposal Technical Evaluations</td>
</tr>
<tr>
<td>CLC 005</td>
<td>Simplified Acquisition Procedures</td>
</tr>
<tr>
<td>CLC 030</td>
<td>Essentials of Interagency Acquisitions/Fair Opportunity</td>
</tr>
<tr>
<td>CLM 025</td>
<td>Commercial-Off-the-Shelf (COTS) Acquisitions for Program Managers</td>
</tr>
<tr>
<td>FAC 023</td>
<td>Basic Contracting for GSA Schedules</td>
</tr>
<tr>
<td>FAC 039</td>
<td>GSA’s Government Wide Acquisition Contracts (GWACs) for IT Service</td>
</tr>
</tbody>
</table>

Set-Aside Decision Process

Small Business Programs Decoded

To use this chart: Start here and follow the decision chart. Where indicated, jump to the next chart for the applicable set-aside category.

Developed in cooperation with Contractor Veterans, Defense Acquisition University. These small business decision charts were created to help contracting officers make decisions about set-asides. The charts are based on the selection rules and implementation guidance (published at FAR 19.500).
“The cost of a public building was met by appropriations from the treasury or through public subscription. The... seemed to have made a fetish of keeping the public informed of the progress and cost of public works.

When the architect and the building commission had agreed on the design, a herald in the marketplace invited bids for parts of the work. The architect was expected to draw up specifications for each part and contracts were awarded to the lowest bidders, each backed by a guarantor. Since there is no sign of profit for the guarantors, they were probably performing a civic service.

Instructions to contractors were probably posted on a wooden bulletin board... they included requests for tenders, specifications for materials and workmanship, the length of the working day, fines for overruns, and procedures for the resulting lawsuits. Citizens were no less eager than now to know what became of the taxpayers money.”
How Do I Read My Contract?
Understanding Contract Formats

On Deck

Understanding how to read your Contract is crucial to:

- Understanding what is to be delivered & how to monitor performance
- Knowing when a change or modification might be needed
- Knowing how to communicate with the contractor
- Avoiding improper changes

Learn where to begin  How to read a contract  Understand the scope of the contract  Know how to request changes
Remember: COR Responsibilities

- Read and know the contract
- Have or develop technical expertise
- Manage relationships
- Monitor and document performance
- Manage property
- Inspect and accept deliverables
- Recommend changes or remedies
- Review/approve reports and invoices

What is a Contract?

A promise for the breach of which the law provides a remedy or the performance of which the law recognizes as a duty and there is legal recourse

- What is an agreement?
  Mutual assent between two or more legally competent persons, ordinarily leading to a contract

Elements of a Contract
- Offer
- Acceptance
- Mutual consideration
- Legal purpose
- Contractual capacity
Start with the Contracting Officer

• Who is my Contracting Officer (KO)?
  – The KO is the one who designated you as COR
• Refer to your designation letter to see generally and specifically what they want you to do
• The KO is entrusting you to oversee the contract
• Take time to get to know your KO and develop some ground rules for how and when you will interact-communicate

Depending on how your supporting contracting office is structured; you may communicate and interact with contract specialists who support a KO

What Are We Looking For

• Contract type
• Deliverables
• Invoicing Requirements
• Reports
• Security Requirements
• GFP Requirements
• Price/Cost Ceiling
• Special Clauses
• Subcontracting Requirements
Contract Formats

- Uniform Contract Format
- Standard Commercial Contract Format
- Delivery/Task Orders

Class Exercise

Let’s take out our contract samples and see what we can learn about contracts in general and specifics for this contract!

Can you find the different Parts?
### Uniform Contract Format

#### Part I - The Schedule
- A. Solicitation/Contract Form
- B. Supplies or Services and Prices/Costs
- C. Description/Specifications/Statement of Work
- D. Packaging and Marking
- E. Inspection and Acceptance
- F. Deliveries or Performance
- G. Contract Administration Data
- H. Special Contract Requirements

#### Part II - Contract Clauses
- I. Contract Clauses

#### Part III - List of Documents, Exhibits, & Other Attachments
- J. List of Attachments

#### Part IV - Representations and Instructions*
- K. Representations, Certifications, and Other Statements of Offerors or Respondents
- L. Instructions, Conditions, and Notices to Offerors or Respondents
- M. Evaluation Factors for Award

* Part IV is used in the solicitation but is not part of the contract

### Section A: The Contract Form

- The contract can be awarded using one of several different Forms, such as the SF (Standard Form) 26 or SF 33

You can learn a great deal right from this form
Contract Numbers

**DAU003** – **12** – **C - 0007**

<table>
<thead>
<tr>
<th>ITEM</th>
<th>POSITION</th>
</tr>
</thead>
<tbody>
<tr>
<td>Activity Address Code (Dept/Agency)</td>
<td>1 – 6</td>
</tr>
<tr>
<td>Fiscal Year (FY) – Last two digits only</td>
<td>7 – 8</td>
</tr>
<tr>
<td>Type of Procurement Instrument</td>
<td>9</td>
</tr>
<tr>
<td>Four Digit Serial Number - Sequential</td>
<td>10 – 13</td>
</tr>
<tr>
<td>Amendments, Modifications, Calls or Order Numbers (Supplemental PIINs)</td>
<td>2, 4 or 6 alpha-numeric</td>
</tr>
</tbody>
</table>

Section B: Supplies or Services & Prices/Costs

- **Characteristics:**
  - Single Unit Price
  - Separately Identifiable
  - Separate Delivery Schedule
  - Single Accounting Classification

- **CLIN =** Contract Line Item Number
- **Policy:** contracts shall identify the items or services to be acquired as separate CLINs unless it is not feasible to do so
### Section B Continued: CLINs

- **SubCLINs** – separately identified line items under the CLIN
  - Provide flexibility to further identify elements within a contract CLIN for tracing performance or simplifying administration
  - Used instead of the CLIN for payment, delivery tracking, funds accounting or management purposes

- **Informational SubCLINs**
  - Information that relates directly to the CLIN e.g. parts of a kit or subassembly
  - Not used for separate pricing or delivery, but may be used for management purposes or when using multiple accounting citations

### Section B Continued: Options

- **Option CLINs**
  - The specifics are determined at time of award
    - But the option CLIN total is not included in the contract value amount until it is exercised
  - **Section B** or **Section H** may have details on how and when the option will be exercised
  - For contracts funded with Annual Appropriations
    - May have a base year and then 4 sets of option CLINs for 4 additional one-year options
### Section C: Description/Specifications/Statement of Work

#### Typical Section C Document Formats
- Statement of Work (SOW)
  - Major weapon system contracts
  - Non-performance based service contracts
- Performance Work Statement (PWS)
  - Performance based service contracts
- Statement of Objectives (SOO)
  - Research and Development (R&D)
  - Non developmental Items (NDI)

#### Section C is one of three places you might find the description of work
- A statement of work (SOW) could be here in full text, or
- SOW could be referenced in Section C, but included in the contract as an attachment in Section J, or
- Work detail could be so succinct that no SOW is required and all the “detail” is laid out in Section B as part of the CLIN description
  - e.g., simple commodity, service or National Stock Numbers (NSN)

### Sections D & E

#### Section D: Packaging and Marking
- Provides instructions to the contractor if there is any packaging or marking requirements

#### Section E: Inspection and Acceptance
- Provides information on how inspection and acceptance will be done
- Includes Inspection and Acceptance clauses
Sections F: Deliveries or Performance

- Details *where* and *when* delivery is to be made at CLIN or SubCLIN level
  - May be a date, an event/milestone, or state “As Required”
  - FOB Origin or Destination?
  - What is the implication of “origin”
- Period of Performance
- Stop Work Order and Suspension of Work clauses

Section G: Contract Administration Data

- Accounting and Appropriations Data
  - Line of Accounting (*LOA*)
  - Accounting Classification Requirements Number (*ACRN*)
- Limitation of Funds and Limitation of Cost
- Invoice Payment Instructions
- Identification of the COR and/or KO by name
- Information for Filing Patent Forms
- Other Administrative or Clerical Information
Section H: Special Contract Requirements

Section H is another section that requires careful review and understanding

- Where any unique or special clauses should be located
- Potential requirements (terms and conditions) include:
  - Government Site Support
  - Task or Delivery Order ordering Details
  - Organizational Conflict of Interest Mitigation
  - Key or Essential Personnel
  - Associate Contractor Agreement(s)

Part II Contract Clauses

- **Section I: Contract Clauses**
  - Many in Section I typically incorporated by reference (IBR)
  - Many are required by statute
  - Different variations of the clause may be in the contract depending on contract type
  - The date in the title is important – if a newer clause is released it is **NOT** automatically included in the contract!

- **Clause**: Term or condition used in contracts or in both contracts and solicitation

- **Provision**: Term or condition used only in the solicitation and applies before contract award
Part III, List of Documents, Exhibits & Other Attachments

Section J: List of Attachments

- Lists all attachments to the contract
  - Typically attachments, if not classified or large documents, are physically attached in Section J
- Most common attachments/exhibits include:
  - SOW/PWS, if not in Section C
  - Contract Data Requirements List (CDRLs)
  - Government Furnished Property Inventory
  - Security Requirements (DD 254)
  - Award/Incentive Fee Plan
  - Drawings/Specifications

FYI: The Contractor’s Proposal

Although the contractor’s technical proposal is a consideration for award decision – it is normally not part of the resultant contract

Two options exist:
- Formally incorporate contractor’s proposal into final contract
  - Section J Attachment
- Include any specific details of importance from proposal in resultant contract
  - Either by special clause or updated SOW/PWS or standard

Decision to incorporate contractor’s technical proposal should be carefully considered and only when in government’s best interest


Commercial Contract Format

(a) Standard Form (SF) 1449
(b) Continuation of any block from SF 1449
   (1) Block 10, (2) Block 18B for remittance address; (3) Block 19 for contract line item numbers; (4) Block 20 for schedule of supplies/services; or (5) Block 25 for accounting data
(c) Contract clauses
   (1) 52.212-4, Contract Terms and Conditions -- Commercial Items;
   (2) Any addendum to 52.212-4
   (3) 52.212-5, Contract T&Cs Required to Implement Statutes and Executive orders
(d) Any contract documents, exhibits or attachments
(e) Solicitation provisions
   (1) 52.212-1, Instructions to Offerors -- Commercial Items
   (2) Any addendum to 52.212-1;
   (3) 52.212-2, Evaluation -- Commercial Items
   (4) 52.212-3, Offeror Representations and Certifications -- Commercial Items.

Commercial Contract Features

- This format used for buying commercial items or services
- CF uses as its contract award form a Standard Form 1449, Solicitation/Contract/Order for Commercial Items
- It is a streamlined contract document
  - CLINs, delivery dates, funding, clauses and SOW/PWS also included

52.212-4 Contract Terms and Conditions—Commercial Items
- Single clause incorporates all major contract administration topics:
  - Inspection/Acceptance
  - Changes
  - Disputes
  - Invoicing
  - Payment
  - Termination

The Commercial Contract Format allows us to incorporate industry terms and conditions (financing, warranties, etc.) not normally used in federal contracting
Delivery Orders/Task Orders

**Delivery Orders**
- Order for Supplies or Commodities
- Definite Quantity Contracts
- Indefinite Quantity Contracts
- Requirements Contract

**Task Orders**
- Order for Services
- Indefinite-Delivery Contracts
- Slang “IDIQ”

**Task and Delivery Characteristics:**
- Do not contain all UCF/Commercial parts and terms and conditions, normally just those applicable to the Order such as:
  - CLINs
  - SOW/PWS
  - Delivery Instructions
  - Unique requirements
- Typically awarded using the DD Form 1155 or SF1449

- Task/Delivery Order terminology also used when procuring off of FSS or GWACs
- CORs designated at the “Order” level

Contracts Are Always Perfectly Clear…??

What If the Contract is Contradictory?

FAR 52.215-8 Order of Precedence

• Defines how to resolve any inconsistency in the contract by giving “precedence” in the following order:
  (a) The Schedule (excluding the specifications) - Sections A - H
  (b) Representations and other instructions – Sections K- M
  (c) Contract clauses – Section I
  (d) Other documents, exhibits, and attachments – Section J
  (e) The specifications

Summary

• You now know where to begin
  – Read the contract and talk to your KO
• You have learned how to read a contract
  – Both UCF and Commercial Formats
  – You understand what is in the contract and where
• You understand concept of Task and Delivery Orders

• Next we’ll work on equally important topics:
  – Understanding “the scope” of the contract
  – Learn how changes are made to the contract
**UCF: Test Yourself**

Match the section in the Uniform Contract Format with its correct title:

<table>
<thead>
<tr>
<th>Section A</th>
<th>1. List of Attachments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section B</td>
<td>2. Packaging and Marking</td>
</tr>
<tr>
<td>Section C</td>
<td>3. Special Contract Requirements</td>
</tr>
<tr>
<td>Section D</td>
<td>4. Inspection and Acceptance</td>
</tr>
<tr>
<td>Section E</td>
<td>5. Supplies/Services and Prices/Costs</td>
</tr>
<tr>
<td>Section F</td>
<td>6. Contract Clauses</td>
</tr>
<tr>
<td>Section G</td>
<td>7. Description/Specifications/Statement of Work</td>
</tr>
<tr>
<td>Section H</td>
<td>8. Contract Administration Data</td>
</tr>
<tr>
<td>Section I</td>
<td>9. SF 33/SF 26</td>
</tr>
<tr>
<td>Section J</td>
<td>10. Delivery date and performance</td>
</tr>
</tbody>
</table>

What If the Contract Needs to Be Changed?

Contract Modifications

Any WRITTEN Change in the Terms and Conditions of the Contract

Could be simple as:
• Adding funds
• Exercising an option

• A contract is a living document and changes with every Modification
• It is important that you keep your copy of the contract current with the latest changes
When Does a Contract Need to Be Changed?

Examples of when a Contract Modification should be executed

- Adding or removing funding
- Changing delivery or period of performance (POP) date
- Changing any of the terms and conditions (T&Cs) in any part of the contract (including attachments)
- Changing what you need or where you need it
- Correcting mistakes
- Exercising options
- Suspend/Stop work
- Terminating work (partial or full)
- Adding additional work (there are limitations)

Modification Numbering

Modifications are *usually* issued using the Standard Form (SF 30)
- Known as a “Supplemental Procurement Instrument Identification Number (SPIIN)
- May contain a mix of six (6) alpha and numeric characters
- Issued with sequential numbers, e.g.
  - A00001, A00002 – Administrative Mods
  - P00001, P00002 – Procurement Mods

- Task/Delivery Orders have a four character SPIIN (e.g. E003)
  - Modifications to TO/DO’s have a two character SPIIN (e.g. 08)
### Types of Contract Modifications

#### Unilateral
- Modification signed *only* by the Contracting Officer (KO)
  - Make Administrative Changes
  - **Issue** Change Orders
  - Make changes authorized by clauses other than Changes Clause
    - Options, Suspension of Work, etc., incremental funding are common modifications in this category
  - Issue Termination Notices

#### Bilateral
- Supplemental Agreement; Modification signed by *both* Contractor and KO
  - Make negotiated Equitable Adjustments
  - Definitize letter contracts
  - Reflect other agreements between the Parties modifying the terms

---

### Change Orders

- **Written modification signed by KO, directing contractor to make a change without prior agreement**
  - Authorized by the “Changes Clause”
  - Contractor *must* continue performance, as changed
  - Creates “undefined” Government liability and Contractor may be entitled to an equitable adjustment
  - Definitization schedule must be established

- **52.212-4 Contract Terms and Conditions - Commercial Items**
  - Changes in terms and conditions of this contract may be made *only* by written agreement of the parties
Changes Clause

Specifies limits on what can be changed without prior contractor agreement

• Supplies
  – Changes to drawings, design or specification
  – Method of shipping or packing
  – Place of delivery

• Services
  – Description of services to be performed
  – Time of performance (hours of day or days of week)
  – Place of performance of services

FAR Clauses
52.243-1 Fixed Price
52.243-2 Cost Reimbursement
52.243-3 Time & Material
52.243-4 Construction

Supplemental Agreements

• Modification based on an agreement of the parties regarding the change(s)
• Incorporates any adjustment to contract cost and/or schedule as a result of the change(s)
• Often involves contractor submitting a proposal and detailed negotiations
Mutual “Consideration”

• Each party must give something to get something in return
• Modifications must be supported by new consideration
  – Typically contractor receives more money, government receives more “stuff”
• Consideration doesn’t have to be monetary, it could be:
  – Improved warranties
  – Expedited delivery
  – Quality or performance improvements
    • Improved Reliability, Maintainability, or Supportability
  – Additional products and services [where legally permissible]

FYI: No Cost Extensions

• “No cost extension” is a popular concept associated with extending the Period of Performance (POP) at no apparent additional cost to the Government
  – Is the Government receiving any additional benefit?
  – Cannot excuse late delivery without consideration
• No employee of the Government may alter a contract to prejudice the rights of the Government unless the Government receives corresponding, tangible, contractual benefits

Only the KO can approve a change to the contract
Options

- Provides government flexibility
  - Does not have to be exercised
- Conditions needed to "Exercise" an Option
  - Fulfills existing need, already priced on the contract
  - Option is most advantageous method for Government to fulfill the existing need
    - Market research is required
    - Price must still be fair and reasonable
    - Funds must be available
  - Exercised via modification
    - May be done unilaterally
  - Contractor must be notified of Government’s intent to exercise option

COR Role in Options

- During pre-award phase of the acquisition
  - Make known the necessity for options
- Prior to exercising option
  - Assists KO in drafting the required Determination and Finding (D&F): • Assess alternative procurement methods • Determine the continuing need and if still in best interests of the Gov’t • Complete market research on current pricing • Determine funds are available
FYI: Option to Extend Services

52.217-8 Option to Extend Services
The Government may require continued performance of any services within the limits and at the rates specified in the contract. These rates may be adjusted only as a result of revisions to prevailing labor rates provided by the Secretary of Labor. The option provision may be exercised more than once, but the total extension of performance hereunder shall not exceed 6 months. The Contracting Officer may exercise the option by written notice to the Contractor within ____.

[insert the period of time within which the Contracting Officer may exercise the option].

Other Modification Scenarios

• Delays and Suspension of Work
• Novation Agreements /Name Change
• Value Engineering Change Proposal
• Acceleration
• Indemnification

Warning

*Increased quantity* is usually **not** an authorized reason for a modification
– **SCOPE** determination required


Cardinal Change

Is a change beyond the scope of contemplated work
- "Reasonably" contemplated
- Would not have altered the "field of original competition"

- May require a new contract award for the additional work
- Requires a justification and approval (J&A) for sole source if the work is added to the/an existing contract

Contractor can decline the change if they believe it is outside the scope of the contract

Case Law on Scope

- Basic standard... is the modified job essentially the same work as the parties bargained for when contract awarded.
  - Plaintiff has no right to complain if the project it ultimately constructed was essentially the same as the one it contracted to construct.
  - Conversely, there is a cardinal change if the ordered deviations altered the nature of the thing to be constructed.
- Each case must be analyzed on its own facts and in light of its own circumstances, giving just consideration to the magnitude and quality of the changes ordered and their cumulative effect upon the project as a whole.

CICA – "would the modification have altered the field of original competition"
Changes to Contract Requirements

| Will changes to the requirements result in: |  |
|-------------------------------------------|  |
| Increase | Additional effort that results in an increase in the price/cost of the contract |
| Decrease | Effort that has not been completed is deleted, resulting in a decrease in contract price/cost |
| Substitutions | Work tasks, technology or brands are changed resulting in a increase or decrease to contract price/cost |

How to Determine What is in “Scope”

- What is to be done under the contract?
- What are the deliverables?
- Who is going to do it?
- When is it going to be done?
- How will it be done?
- How will you know when it is done?
- How much will it cost?

What was the intent of the original contract?
**Tips for Staying “In Scope”**

- When analyzing the proposed change consider whether:
  - Function of the item or service has changed
  - Basic contract purpose has changed
  - Dollar value of the change is proportionate to the price of the original contract
  - Competitive factors are still the same
  - Specifications or SOW changes are extensive
  - Reasonably contemplated by the parties
  - Cumulative effect of all changes on the contract

---

**Can the COR Modify the Contract?**

- The answer is **NO!**
  - Only a Contracting Officer (KO) may modify the contract
  - Done in **writing** by the issuance of a modification

- The COR may/will **assist** the KO in many significant ways:
  - Identify to KO the need for changes, as soon as possible
  - Provide documentation to support the modification
  - Provide a technical evaluation, if required
  - Support any negotiations, if required
  - Monitor the contract as modified

- The COR shall **not** encourage the contractor to perform any change prior to official direction from the KO
Technical Evaluations

- A detailed, documented analysis of the contractor’s proposal
  - Often prepared by the COR
  - Encompasses technical aspects of the proposal
    - Schedule, methodology, materials, equipment, labor mix, etc.
- Used by the KO to support negotiations
- Assess the benefit and impact of the change on the outcome desired by the Government

Technical Evaluation Con’t

- **Determine the technical validity of the change:**
  - Necessary and appropriate solution (in scope)
  - Technical merit that will meet the Government’s requirement
  - Cost and delivery implications versus technical merit (impact)
- **Review proposed basis of estimate (BOE)**
  - Labor type, profile and amount proposed
  - Other direct costs (travel, materials etc)
- **Tradeoff analysis**
Summary

- Modifications address conditions that arise or information not known at the time of contract award
- The KO is the only individual authorized to modify a contract
  - Done in writing
- The proposed modification must be in scope of the original contract
- The COR is usually the 1st to know when a modification is necessary – work with the KO

Next what happens if a contract is modified improperly?

Exercise: Taking the Plunge

1) What should John Plunger do next?
2) What is the potential impact on the Government if Mr. Kimball’s recommendation is enacted?
3) How should a change to this contract be accomplished?
Exercise: Uplifting Experience

1) What should John Mover do next?
2) What is the potential impact on the Government if Mr. Lifter’s recommendation is enacted?
3) What has to be done...into the contract?
4) How should a change to this contract be accomplished?
5) What are the issues with Admiral Moveit’s request?
# What If the Contract is Changed by Mistake?

## How Does it Happen?

<table>
<thead>
<tr>
<th>Constructive Change</th>
<th>Oral or written act (or failure to act) by an authorized Government official in <em>position of authority</em> construed by contractor as having same effect as a written change order (existing contract)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unauthorized Commitment</td>
<td>An agreement that is not binding solely because the government representative who made it <em>lacked the authority</em> to enter into that agreement on behalf of the government (both existing or no contract)</td>
</tr>
</tbody>
</table>
Constructive Change

Must involve:
- **Order**: improper word or deed by Government
  - Could be “inaction”
- **Acted upon**: required contractor effort that was not part of the contract (did not “volunteer”)

Must Result in:
- **Increase cost**: change in performance beyond original contract requirement

Common Types
- Contract Misinterpretation
- Defective Specifications
- Interference/Failure to Cooperate
- Withhold Superior Knowledge
- Acceleration

Common Causes

- Inadequate or defective requirements documents
- Improperly interpreted specifications
- Overly strict (over zealous) inspection
- Failure to recognize Government caused delays
- Improper technical direction
FYI: How to Avoid

**Acquisition Planning**
- Careful preparation of requirement documents
- Removing ambiguities/inconsistencies in PWS/SOW

**Read Your Contract**
- Clearly know what the contract requires
- What does it state… not what it ought to say

**Document**
- Maintain (keep) good records
- Documentation can eliminate misunderstanding

**Communicate**
- Always act in good faith
- Follow the proper procedures

CORs Role in Resolution

The COR plays a vital role in the resolution of a constructive change:

- Provide all pertinent existing documentation to KO
- Identify the actual changes in contract performance that have occurred
- Prepare a technical analysis/evaluation, if the contractor submits a proposal based on the change
- Assist the KO in negotiations
- Educate contractors regarding the proper notification and handling of changes
Establishing Your Authority

STATEMENT of LIMITATION of AUTHORITY

You are hereby notified that I DO NOT have the authority to direct you in any way to alter your contractual obligation. Further, if the Government, as a result of the information obtained from today's discussion DOES desire to alter your requirements, changes will be issued in writing and signed by the contracting officer. You should take no action on any change unless and until you receive such a contract modification.

FYI: Notification of Changes Clause

- FAR 52.243-7 Notification of Changes:
  - Clause requires contractor to notify the KO promptly when someone, other than the KO, has directed a change to the contract as written
  - Used on contracts over $1M
- It is a good idea to remind the contractor of its risk and responsibility periodically
Unauthorized Commitment

An unauthorized commitment requires ratification

- **Ratification**: The act of *approving* an unauthorized commitment by an official who has the actual authority to do so

The ratification process is similar across Federal Agencies. Organizations will have their own required formats and routing procedures for processing ratifications.

Notional Ratification Process

- Individual creating unauthorized commitment will submit a statement detailing:
  - Why normal procedures were not followed?
  - Did government have a *bona fide* need for service/good?
  - Did or will the government receive a benefit?
  - Was money available at the time of the action

- Senior Leader advises KO:
  - Concurrence that commitment should be ratified
  - Steps taken to prevent recurrence
  - Complete purchase description and funding
  - Description of disciplinary action taken or reasons why none was taken
**Determination & Finding**

KO completes D&F stating:
- Commitment was not made to evade normal statutes/regulations
- Result of urgent requirement or mistake of fact by government personnel
- Contractor “reasonably” relied on Implied Authority
- Contractor has no other remedy to obtain relief
- Contract would otherwise be proper i.e. funds available, legitimate requirement, etc.
- Price is fair & reasonable
- KO recommendation to ratifying official

---

**Summary**

- KO is responsible for contracts and modifications
- Process is designed to protect interests of the Government
- Make sure contractors know you do not have contractual authority
- If action is not ratified, the individual responsible for may be held personally accountable for restitution to the contractor!
- Regularly brief to all personnel on processes
Exercise: Money for Wafers

1. How should Dave have handled the increase in funding?
2. How should the contractor have handled the additional work under the contract?
3. Is the Government obligated to pay the contractor?
4. Will the Government pay the contractor?
5. Can the contracting officer retroactively fund this research?
6. Did Dave have the authority to issue directions for additional work without consulting the contracting officer?
7. What will the contracting officer need to do in order for the Government to pay this contractor?

Exercise: It’s a Calamity

1. Is there an issue?
2. What leads you to believe there may have been an unauthorized commitment?
3. If you determine there has been an unauthorized commitment, what is your next step as COR?
4. Can the KO proceed with a ratification action?
5. What steps should be taken to process the ratification?
6. Are there any other potential implications as a result of this action?
7. Should any action be taken against Karen?
8. Do you think Karen acted in bad faith?
9. How could this have been prevented?
What Can I Say and What Should I Document?

Lesson 8

Effective COR communications is a critical element of contract performance monitoring.

- Identify the duty to provide technical clarification to the Contractor without creating an unauthorized obligation or constructive change to the contract.
- Distinguish between formal and informal communication and its effect on giving technical direction.

Overview

- Working with the Contractor
- Communicating with the KO and the Functional Team
- Formal versus Informal Communication
- Understanding Guidance and Technical Direction
- Limitations on Communications

Develop A Solid Working Relationship

- Cooperation and Good Faith
- Mutual Confidence and Respect
- Problem Identification
- Problem Resolution
- Consideration Required
- Competitors Complaints
Communication Is Vital

So all this talk of constructive changes and unauthorized commitments has you scared?

- Observation, communication and documentation are your biggest responsibilities

Working with the Contracting Team

Communicating with the Contracting Officer
- When you observe or anticipate failure of the contractor or government to meet respective contractual obligations
- When you know the contract needs to be changed
- When the contractor is failing to make satisfactory progress or has quality issues
- When there are issues with the invoice
- You anticipate cost growth

Working with the Contracting Specialist
- Works day-to-day requirements for the KO
- Communicates with the KO
- Working representative of the KO
- Lacks KO warrant authority requiring coordination and signature of the KO
- Knows the contract and performs many contract administration functions
FYI: Communicating with Your Boss

The KO is 1st in your chain-of-command when it comes to issues relating to your functions and duties as a COR

• Your supervisor may not direct you to take actions that are not within the delegated scope of your COR authority or that impact the contract
Formal Communications

• Occurs between government and contractor individuals (KO, COR, HCA) who are authorized to represent the contracting parties
• Usually in writing, but oral communication is also acceptable i.e. briefings, VTC, meetings
  – Oral communication should be confirmed in writing


Formal Communication No-No’s

• The COR shall never change:
  – pricing, cost, or fee
  – quantities
  – quality
  – scope of the contract
  – labor mix
  – terms and conditions

• The COR shall NOT:
  – make commitments or promises (oral or written) to any contractor
  – issue instructions (oral or written) to a contractor to start or stop work
  – authorize additional GFP
  – approve overtime
  – direct the subcontractors
  – accept non-conforming deliverables

What Should You Document?

- Contemporaneous documentation is vital
- Prepare Memorandum of Records for all meetings, significant verbal communication like phone calls, site visits and trips
- Maintain and print copies of any significant emails, all correspondence regarding performance
- Property, security, acceptance and invoice issues

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What Should You Document?

PROTECT THE GOVERNMENT’S INTERESTS
Informal Communication

Occurs between any government employee without contractual authority and any contractor employee

- Encouraged and expected in performance of oversight and performance monitoring responsibilities


How Should You Give “Guidance”?

It is natural to have questions, so cooperation is essential

- Guidance should only address or clarify government’s “intent” and document any deficiency in performance caused by a difference in interpretation

- If the contractor is incurring additional cost you have gone beyond guidance

Giving Technical Direction

One of the primary functions of the COR may involve the issuance of **technical guidance** to the contractor

- Statements of Work are frequently inexact, resulting in the need for technical instructions or clarifications as the work progresses
  - If there is disagreement, go see your KO

---

Technical Direction -- Yes

- Fill in details or otherwise serve to accomplish the contractual SOW
- Guidelines to the contractor which assist in the interpretation of drawings, specs, or technical portions of the SOW
- Shift in the work emphasis
Technical Direction -- No

- Shall **not** be used to:
  - Assign additional work under the contract
  - Direct a change as defined in the contract clause entitled “Changes”
  - Increase or decrease the estimated contract cost, the fee, LOE, or POP; or
  - Change any of the terms, conditions, or specifications of the contract

Prime vs Subcontractor Communication

- **Prime** has contract performance liability
  - If the sub “fails” it is up to the prime to resolve
- There is no “privity” between the government and the subcontractors. When it comes to subs, for you this means NO:
  - Communications
  - Technical direction
  - Approval of subs

FYI: Communicating Good Deeds

You may not recognize a contractor employee's superior performance i.e. don’t include them in your quarterly awards program that means no coins, certificates etc. that come directly from you.

Other Limitations on Communication

• You may not approve/disapprove:
  – Leave
  – Hours of work
  – Hiring/termination etc. for a contractor’s employee

• You may need contractor personnel to sign Non-Disclosure Agreements (NDA) to limit their communications
Safeguard Proprietary Data

• For all data, you are limited by the restrictive markings or limited rights and handle accordingly
• Confidential, secret or competition sensitive contractor information
  – Examples: trade secrets, cost/price information, technical data
• Stamped with a restrictive marking
  – Any marking evidencing limited disclosure is sufficient

The Bottom Line on Communication

• Know the limitations on your authority
• Communicate with the KO and the contractor
• Discuss performance problems as they arise
• Understand marking and safeguarding rules
• Most important is… documenting your communications
Exercise: Knight and Day

1. Do you agree with Day’s understanding of his responsibility and authority to provide technical direction as the COR? Why or Why Not?

2. Is the contractor entitled to the cost incurred? How about additional profit?

3. What instructions should the KO provide the COR?
Are There Special Considerations for Service Contracts?

Service Contracts - Defined

“Service contract” directly engages the time and effort of a contractor whose primary purpose is to perform an identifiable task rather than furnish an end item of supply.

- May be either a non-personal or personal services contract
- May be performed by either professional or non-professional personnel
- May be done on an individual or organizational basis

Overview of Services Environment

The government is now spending more on services annually than on Major Defense Acquisition Programs.

Service acquisitions have a direct impact on meeting DoD mission requirements.

Congress is very aware of the dollars being spent on services so we are seeing increased legislation relating to service contracts.

Chances are - as a COR you will be responsible for a service contract.

Total DoD Dollars Obligated in FY13

<table>
<thead>
<tr>
<th>Supplies &amp; Equipment</th>
<th>$ 307.5 B Obligations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Clothing, Textiles, &amp; Subsistence</td>
<td>Facilities S&amp;E</td>
</tr>
<tr>
<td>Misc S&amp;E</td>
<td>$15.0 B, 7%</td>
</tr>
<tr>
<td>Aircraft, Ships/Subs, &amp; Land Vehicles</td>
<td>$53.3 B, 37%</td>
</tr>
<tr>
<td>Facilities Related Services</td>
<td>$23.7 B, 15%</td>
</tr>
<tr>
<td>Transportation Services</td>
<td>$8.6 B, 5%</td>
</tr>
<tr>
<td>Medical Services</td>
<td>$13.2 B, 8%</td>
</tr>
<tr>
<td>Electronics &amp; Communication</td>
<td>$16.9 B, 10%</td>
</tr>
<tr>
<td>Equipment Related Services</td>
<td>$16.0 B, 10%</td>
</tr>
<tr>
<td>Logistics</td>
<td>$8.3 B, 5%</td>
</tr>
<tr>
<td>Research &amp; Development</td>
<td>$28.1 B, 18%</td>
</tr>
<tr>
<td>Knowledge Based Services</td>
<td>$34.3 B, 21%</td>
</tr>
<tr>
<td>Sustainment S&amp;E</td>
<td>$39.0 B, 26%</td>
</tr>
<tr>
<td>Electronic &amp; Communications Equipment</td>
<td>$19.4 B, 13%</td>
</tr>
<tr>
<td>Weapons &amp; Ammunition</td>
<td>$17.9 B, 12%</td>
</tr>
</tbody>
</table>

Note: Dollars and percent's may not add due to rounding

Services Taxonomy

Knowledge Based
- Engineering Management Services
- Program Management Services
- Management Support Services
- Administrative & Other Services
- Professional Services
- Education & Training

Facility Related
- Architect/Engineering Services
- Operation of Government Owned Facilities
- Machinery & Equipment Maintenance
- Building & Plant Maintenance
- Natural Resource Management
- Utilities
- Housekeeping & Social Services
- Purchases & Leases

Equipment Related
- Maintenance, Repair and Overhaul
- Equipment Modification
- Installation of Equipment
- Quality Control
- Technical Representative Services
- Purchases & Leases
- Salvage Services

Electronics & Communications
- IT Services
- Telecom Services
- Equipment Maintenance
- Equipment Leases

Medical
- General Medical Services
- Dentistry Services
- Specialty Medical Services

Logistics Management
- Logistics Civil Augmentation Program
- Logistics Support Services

Transportation
- Transportation of Things
- Transportation of People
- Other Travel & Relocation Services

Research and Development
- Systems Development
- Operational Systems Development
- Technology Base
- Commercialization

Construction
- Structures & Facilities
- Conservation & Development Facilities
- Restoration Activities

9 Services Portfolio Groups - 40 Service Portfolios

Services Contracting Topics

➢ Labor Law Requirements

- Professional Contractor Employees
- Personal versus Non-Personal Services
- Inherently Governmental
- Advisory & Assistance Services
- Inspection of Services Clauses
- Performance Based Services
  - Performance Work Statement
  - Quality Assurance Plan

Labor Standard Statutes

- **Service Contract Labor Standards**
  - Formerly: Service Contract Act (SCA) of 1965
- **Fair Labor Standards Act (FLSA)**
- **Drug Free Workplace**
- **EEO Compliance (EEO)**
- **Convict Labor**
- **Professional Employees**

Contractors and Subcontractors must:
- Pay service employees in various classes no less than the monetary wage rates and fringe benefits found prevailing in the locality, or rates contained in a contractor's collective bargaining agreement (CBA)
- Applies to Contracts in excess of $2,500 for which principal purpose (subject matter) of the contract is to procure services
- Applies to work performed in U.S. and some Territories

Wage and Hour Division of the U.S. Department of Labor:
- Publishes wage classifications and prevailing wage rates by locality (Wage Determination)
- Investigates, interviews and directs; and is final authority on labor matters - not the agency

Contracting Officer
- Initiate procedural actions by reporting/notifying complaint to DOL
- Suspension of payments
- Issue suspension or termination

Contractor
- Post and pay prevailing wage rates
- Safe and sanitary workplace
- Maintain employee records and payrolls
Additional Labor Law Requirements

**Fair Labor Standards Act (FLSA) – Establishes:**
- Minimum wage and overtime pay requirements
- Recordkeeping requirements
- Youth employment standards
Applies to employees in private sector and in Federal, State, and local governments

**Drug Free Workplace - Requires contractors to:**
- Notify employees the unlawful manufacture or use of controlled substances is prohibited in contractor’s workplace
- Specify actions taken for violations of such prohibitions
- Establish drug-free awareness program

**Equal Employment Opportunity**
- Requires all agencies ensure compliance with EEO clauses and regulations
- Promote equal employment opportunity for all persons, regardless of race, color, religion, sex, or national origin.

Professional Services Personnel

Many services contracts have work requirements that necessitate professional personnel categories; examples include:
- Medical
- Engineering support
- Advisory and Assistance
- Security and Intelligence

**Professional Contractor Personnel Requirements:**
- Definition of professional employees
- Contract performance requirements
- Compensation
- Solicitation and evaluation requirements

**Professional Personnel Examples**
- Accountants
- Architects
- Dentists, doctors, pharmacists, nurses etc.
- Engineers
- Scientists
Personal vs. Non-Personal Services

**Non-personal Services Contract**
A contract under which the personnel rendering the services are not subject, either by the contract's terms or by the manner of its administration, to the supervision and control usually prevailing in relationships between the Government and its employees.

**Personal Services Contract**
A contract that, by its express terms or as administered, makes the contractor personnel appear to be, in effect, Government employees.

FYI: What’s the Difference?

- The difference between government employees and contractor personnel is **control**.
  - Under a non-personal services contract, the **contractor** directs its employees and dictates its employees' compensation, benefits and rewards.
- “Control” is the means and manner of a worker's performance, extent of direction and supervision, type of work required, and compensation.

*The government hires a contractor for the work products, not for the individual contractor employee.*
FYI: Contractor’s in the Workplace

Many service contracts involve contractors supporting operations and missions on government installations
- They range from custodial and maintenance, personnel and operations support (staff augmentation) to highly skilled technical expertise
- **Advisory and Assistance Services:**
  - Engineering support
  - Information Technology
  - Acquisition support services

Many of these services have specialized requirements & regulations governing their use
- These services carry unique challenges for COR monitoring

Personal Service Contract Challenges

It is not an Employer Relationship
- Determining who should perform tasks or how it is done
- Pressuring/influencing contractor to use “favorite” employees, or insist on particular personnel actions
- Use government and contractor personnel interchangeably
- Rating individual contractor employee performance
- Require “out of scope” work or “inherently governmental functions.”

Preventing Personal Service Contracts
- Develop well-defined PWS or SOW
- Work effort should not require your “supervision”
- Liaison with the contractor POC not with employees
- Monitor the contract -- don’t supervise the employees
- Notify KO if contract has problems -- don’t fix it by supervision
- Document problems, discuss with POC and KO

Required services are specified in the contract -- there are NO “other duties as assigned”

Maintain an “Arms Length” Relationship
Inherently Governmental Functions

- Functions that are so intimately related to public interest as to mandate performance by government employees, such as:
  - Direction/control of federal employees
  - Determination of budget policy, guidance and strategy
  - Resource allocation or program management duties
  - Approval of contractual documents or administering contracts
  - Obliging Congressional authorized funding
- Only government officials can legally perform “inherently governmental functions”

FYI: Security and Safety

<table>
<thead>
<tr>
<th>Contractor Employee Identification</th>
<th>Contractor Employee Safety</th>
</tr>
</thead>
<tbody>
<tr>
<td>Often difficult to distinguish contractor personnel from government employees, may lead to:</td>
<td>The government does not assume responsibility for protection of contract workers</td>
</tr>
<tr>
<td>- Disclosure of proprietary information</td>
<td>Government personnel must avoid taking actions which would put them in direct control of a worksite owned or solely controlled by the contractor</td>
</tr>
<tr>
<td>- Release of procurement or source selection sensitive information</td>
<td>The SOW/SOO/PWS must be reviewed by the appropriate functional experts before inclusion of safety and health requirements in the contract</td>
</tr>
<tr>
<td>- Risk of unauthorized work direction</td>
<td>Conversion to improper personal service contract</td>
</tr>
<tr>
<td>- Conversion to improper personal service contract</td>
<td>Best Practice: contracts should require contractor personnel to wear some form of identification (i.e. company badges/shirts)</td>
</tr>
</tbody>
</table>

Information and Physical Security

Care must be taken to protect sensitive/proprietary information from unauthorized personnel
- Government must comply with restrictions on disclosing government and contractor information
- Release of non-public information
- Release of advance procurement and source selection information
- Trade Secrets Act (proprietary information)
- Release of Intelligence

Concerns have been raised in allowing contractor support personnel to perform end-of-day security checks
- If contractor is required to perform end of day security check, address requirement in the SOW
- Several different contractors working in close proximity
- Inappropriately places one contractor responsible for the security check of another

Bottom Line: Ensure that disclosure and discussion of sensitive or proprietary information is only with those who have a need to know!
Bottom Line: Security checks should be the responsibility of government employees who are authorized to control the premises

Services Contracting Topics

- Labor Law Requirements
- Professional Contractor Employees
- Personal versus Non-Personal Services
- Inherently Governmental
  - Advisory & Assistance Services
- Inspection of Services Clauses
- Performance Based Services
  - Performance Work Statement
  - Quality Assurance Plan
Understanding Different Types of Support

- Advisory and Assistance Services (A&AS) or CAAS
- Federally Funded Research and Development Corporations (FFRDC)
- Intergovernmental Personnel Act (IPA)

Advisory and Assistance Services (A&AS)

**Definition:** those services provided under contract by non-governmental sources to support or improve:
- Organizational policy development
- Decision-making
- Management and administration
- Program and/or project management and administration
- R&D activities

May be used at all organizational levels to help managers achieve maximum effectiveness or economy in their operations
- Often categorized as:
  - Systems Engineering and Technical Assistance (SETA) or
  - Technical Engineering Management Support (TEMS)
  - Less flattering… “Beltway Bandits”

Generally “for profit” companies
A&AS Applications and Restrictions

May be used to:
- Obtain outside points of view to avoid limited judgment on issues
- Obtain advice regarding developments in industry, university, or foundation research
- Obtain opinions, special knowledge, or skills of noted experts
- Enhance the understanding of, and develop alternative solutions to, complex issues
- Support and improve the operation of organizations
- Ensure the more efficient or effective operation of managerial or hardware systems

Shall not be used to:
- Perform work of a policy, decision-making, or managerial nature which is the direct responsibility of agency officials
- To bypass or undermine personnel ceilings, pay limitations, or competitive employee hiring procedures
- As a preferential basis to contract former Government employees
- To specifically aid in influencing or enacting legislation
- Acquire skills readily available within the agency or another Federal agency

FYI: A&AS Limitations

- A contractor that provides systems engineering and technical direction for a system but does not have overall contractual responsibility for development and integration of that system…

- Prohibits that contractor from
  - Being awarded a contract to supply the system or any of its major components; or
  - Being a subcontractor or consultant to a supplier of the system or any of its major components
What is an FFRDC?

• *Federally Funded Research and Development Centers*  
  - IAW FAR 35.017
• Employs private sector resources to accomplish tasks integral to the mission and operation of the sponsoring agency
• Beyond normal access to Government and supplier data

National Science Foundation (NSF) maintains master list of FFRDCs

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Services Contracting Topics

• Labor Law Requirements
• Professional Contractor Employees
• Personal versus Non-Personal Services
• Inherently Governmental
• Advisory & Assistance Services
  - Inspection of Services Clauses
  - Performance Based Services
    - Performance Work Statement
    - Quality Assurance Plan
Service Contract Inspection Clauses

**Standard contract inspection clauses provide the Government with broad and comprehensive rights to inspect contractor’s work**

**Government Rights**
- Re-performance by contractor
- Perform the service and charge the contractor
- Reduce contract price
- Terminate the contract

**Contractor Requirements**
- Provide and maintain an inspection system acceptable to the Government
- Maintain records of observations and deficiencies
- Perform in accordance with contract requirements
- Take action to correct deficiencies

"The significant problems we face cannot be solved at the same level of thinking we were at when we created them."
Performance-Based

In lessons three (3) and four (4) we introduced the Service Acquisition Process and key Steps. In this lesson we concentrate on the PWS and the QASP.

What is Performance-Based

Performance-based means structuring all aspects of an acquisition around the purpose of the work to be performed with the contract requirements set forth in clear, specific, and objective terms with measurable outcomes as opposed to either the manner by which the work is to be performed or broad and imprecise statements of work.

Performance-Based Acquisition Policy

The rise and evolution of performance based acquisition policy, procedures, training and tools...

GAO reports, OFPP studies, and internal DoD agency audits identified problems with Government contracting:

- Vague statements of work
- Insufficient use of firm pricing arrangements
- Lack of quantifiable performance standards
- Inadequate performance surveillance
- Cost overruns and performance delays
- Claims and assorted performance problems
- Dissatisfied Customers
Elements of Performance Based Acquisition

FAR 37.6 defines the mandatory elements as follows:
1. A performance work statement (PWS)
3. Use of performance incentives when appropriate

Performance Versus Detail Information

PERFORMANCE DOC

Ensure students do not have to wait more than 20 minutes to be picked up at any of the 12 bus stops, 24 hours a day.

DETAIL DOC

Pick up students with a 40 passenger bus at twelve bus stops every 20 minutes, 24 hours per day.
Service Acquisition Process

1. Form the Team
   - Leadership Support
   - Build the Team

2. Review Current Strategy
   - Conduct Historical Analysis
   - Define Stakeholder & Customer needs

3. Market Research
   - Analyze Market
   - Identify suppliers

4. Requirements Definition
   - Develop Requirements Roadmap
   - Draft PWS and QASP

5. Acquisition Strategy
   - Business Strategy
   - Source selection strategy

6. Execute Strategy
   - Build/Revise contract
   - Award Contract
   - Roll out strategy

7. Performance Management
   - Build & Manage Relationships
   - Assess Performance


The Seven (7) Step PBSA Process

Step One – Form the Team

Step Two – Review Current Strategy

Step Three – Market Research

Step Four – Requirements Definition

Step Five – Acquisition Strategy

Step Six – Execute Strategy

Step Seven – Performance Management

Step Four – Requirement Definition

FYI: The ARRT Suite

Builds Your Documents:
- Performance Work Statement (PWS)
- Quality Assurance Surveillance Plan (QASP)
- Performance Requirements Summary (PRS)
- Evaluation Factors Component (SSP)
- Performance Reporting Module
- Coming soon: ICGE Tool

Provides an Easy to use Step by Step Approach
- Wizards provide guidance to help build documents Performance Based requirements
- Proven methodology for building better requirements.

Download from:
Current ARRT Workflow & Products

Project: Maintain the Clark River Channel
Choose a document below to edit

PWS Performance Work Statement
The Performance Work Statement (PWS) clearly describes the project requirements, mission, scope, tasks, and standards.

QASP Quality Assurance Surveillance Plan / Surveillance Matrix
The Quality Assurance Surveillance Plan (QASP) is the document government personnel use to determine if the contractors are meeting the performance standards contained in the contract. The QASP identifies what is going to be inspected, the inspection process, and who will do the inspecting. The results of these inspections will then be used to document contractor performance.

PRS Performance Requirement Summary
The Performance Requirement Summary (PRS) is the combination of tasks and standards that defines the requirements for the contractor.

Related Documents
Related Documents are a list of documents that are associated with a Project. These might include published documents referenced as compliance standards, official policy relevant to this PWS, and other necessary external document references.

Roadmap Provides the Linkage

Acquisition Vision
Stakeholder Desired Results
- A
- B
- C

Requirements Roadmap
Objective Standards AQL Inspection Incentive

Performance Work Statement or SOO

Quality Assurance Surveillance Plan

Business Strategy
Incentives
Eval Factors for RFP

Other uses
- CDRLs-reports
- Contract Line Item structure
- ACRNs-funding
In Step 4 Our Focus is to develop the Performance Objectives, Standards and Method of Assessment.

### Acquisition Vision
- A...
- B...
- C...

### Stakeholder Desired Results
- A...
- B...
- C...

### Roadmap to...Monitoring

#### Performance Objectives, Standards and Method of Assessment

<table>
<thead>
<tr>
<th>Objective</th>
<th>Standard</th>
<th>Tolerance/ AQL</th>
<th>What / Data Source</th>
<th>Who</th>
<th>How / Method</th>
<th>Calculation</th>
<th>Incentive</th>
</tr>
</thead>
<tbody>
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</tr>
</tbody>
</table>

**Alignment**

#### SAMPLE - BOS Acquisition

<table>
<thead>
<tr>
<th>Desired Outcome</th>
<th>Performance</th>
<th>Inspection</th>
<th>Incentive</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Objective</td>
<td>Standard</td>
<td>Tolerance/ AQL</td>
</tr>
<tr>
<td>Engineering and construction services that support the requirements of the overall base and tenant organizations</td>
<td>Maintain and retrieve base infrastructure drawings and documentation</td>
<td>Routine drawings retrieved within 8 business hours</td>
<td>95% within target</td>
</tr>
<tr>
<td>Hours of Service support 7am – 6pm</td>
<td>Priority – within 15 minutes</td>
<td>95% within target, 100% within 4 business hours</td>
<td>COR</td>
</tr>
<tr>
<td>Correct document provided</td>
<td>95% of the time</td>
<td>COR</td>
<td>Request log</td>
</tr>
<tr>
<td>BOS = Base Operations Support</td>
<td>Zero Tolerance for incorrect retrieval resulting in a loss of service (e.g., cut lines)</td>
<td>COR</td>
<td>Request log</td>
</tr>
</tbody>
</table>

Performance Reporting

How do you capture and present performance results?

Performance Work Statement
Performance Objective 1
1.0 Objective/Standard
1.1
1.2
Performance Objective 2
2.0 Objective/Standard
2.1
2.2

Quality Assurance Surveillance Plan
Performance Objective 1
1.0 Objective/Standard
Metric
Method of Assessment
Performance Objective 2
2.0 Objective/Standard
Metric
Method of Assessment

COR collected Metrics Data based on QASP

Key Performance Indicators
(Leadership Slides, limited in number)


Cost or Budget
Customer Satisfaction
Performance
Small Business Goals

Inspection and Metrics linked to PWS Performance Objectives and Standards

Customer Satisfaction Summary

• Work with FACTS not guess work
• Customer Complaints and steps taken to validate complaints
  ✓ Actions taken to resolve complaint
• Survey Results and dates
• Must have the Back up Data!

Latest Addition to ARRT… Evaluation

Contractor Quality Control Plan

The QASP is based on the premise that the contractor, not the Government, is responsible for managing and ensuring quality control meets the terms of the contract

- Contractor develops Quality Control Plan for their internal use to ensure that they perform and deliver quality service
- Quality Control Plan often a part of contractor’s original proposal and in many cases, incorporated into resultant contract.
Quality Assurance Surveillance Plan

- Should include...
  - Description of roles and responsibilities of those who will implement and manage the QASP
  - Explanation of methods and frequencies
  - The level of documentation required by both the Government and the contractor
  - Procedures for resolving discrepancies
  - How the COR will notify the contractor of deficiencies
  - How the COR will determine the contractor’s degree of responsibility
  - The QASP is NOT incorporated into the contract

Don’t duplicate the contractors QA program practice insight rather than oversight

Service Acquisition Training Assets

- Integrates Sourcing Process and Learning assets with Product Service Code Knowledge
- Aligns with DPAP Service Taxonomy
- http://sam.dau.mil

Guidebook for the Acquisition of Services

Department of Defense June 5, 2012

Services Courses
- Services Acquisition Workshop (SAW)
- ACQ 265 Mission-Focused Service Acquisition
- CLC-013 Services Acquisition
Getting to Assets and Tools

Acquisition Center of Excellence - Services
Summary Monitoring Service Contracts

- Labor Laws and the Service Contract Act
- Professional Contractor Employees
- Inspection of Services Clauses
- Personal versus Non-Personal Services
  – Inherently Governmental
- Advisory & Assistance Services
- Performance Based Acquisition
  – ARRT and Training Assets
  – Requirements Roadmap
  – Quality Assurance Plan
Exercise: Smoothing Over the Situation

1) Where should the contractor’s supervisor have been situated?
2) How could the agency have provided (prior to contract award) for the proper supervision of contractor’s employees?
3) Whose responsibility is it to assure that the PWS or SOW is appropriately written?
4) Assume you had been a member of the acquisition team in the planning or formation stage of the acquisition: describe how you might have influenced the contract and Statement of Work.
5) Will the COR be held personally liable for the manner in which A-76ers, Inc.’s employees have been treated under this contract?

Lesson Related DAU Training

www.dau.mil
- Click on iCatalog
- Click Continuous Learning
- Browse for CLs:

<table>
<thead>
<tr>
<th>Course #</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>CLC 013</td>
<td>Services Acquisition</td>
</tr>
<tr>
<td>CLC 064</td>
<td>Wage Determinations for Service and Construction Contracts</td>
</tr>
<tr>
<td>ACQ 265</td>
<td>Mission Focused Service Acquisition</td>
</tr>
<tr>
<td>WSM 012</td>
<td>Service Acquisition Workshop</td>
</tr>
<tr>
<td>WSM 008</td>
<td>Developing Performance Requirements for Service Acquisitions</td>
</tr>
</tbody>
</table>

What is Contract Administration?

**Definition**

All relationships between Government and contractor that arise from contract performance

Includes all dealings between the parties from time of contract award until work completed and accepted, payment made and any/all disputes resolved

**Primary Goals**

The Government obtains the needed work: on time (schedule), location and quantity

Obtains the identified level of quality called for by the contract

The Parties are in compliance with all requirements of the contract

Contractor receives proper compensation (payment)

Both parties fulfill all contractual requirements
COR Contract Administration Overview

- Common COR Contract Administration Functions
  - Inspection and Acceptance (Quality Assurance)
  - Approving/Reviewing Payment Requests
    - Invoices and Vouchers
  - Monitoring & Documenting Performance
    - In progress
    - Formal Past Performance
  - Contract Close-out

Note: Your COR Designation or Delegation Letter will identify the specific roles, responsibilities & tasks assigned to you depending on your Contract/Order.

Inspection, Acceptance and Payment

- The process is different...
  - For Supplies, Services and Construction
  - Depending on the Contract Type
  - For Commercial or Non Commercial Items

- The process starts at contract award and does not end until contract closeout.
Inspection and Acceptance

**Inspection**
- Examining and testing supplies or services (including when appropriate, raw materials, components, and intermediate assemblies) to determine whether they conform to contract requirements

**Acceptance**
- Constitutes government acknowledgment supplies or services *conform* with applicable contract quality and quantity requirements and to other terms and conditions of the contract
Government Right to Inspect

- The contractor is expected to deliver supplies and services meeting all contractual requirements
- Government has the right to inspect all materials and workmanship at any time, place where work on a contract is being performed
  - Basis of contract inspection clauses
- Inspections may:
  - Occur at any time prior to acceptance
  - Be announced or unannounced
  - Not unduly delay work
  - Not include directions that would change the contract

Quality Assurance Requirements

The government’s role in inspection is communicated by the quality assurance requirements we select for the contract
- There are four (4) methods/categories of government contract quality assurance (inspection):
  - Commercial Items 52.212-4(a)
    - Gov’t reserves the right to inspect items tendered
    - Post acceptance rights
  - Inspection by Contractor 52.246-1
    - At or below the SAT
    - Gov’t does not approve inspection system or review records
  - Standard inspection requirements
    - Gov’t approves contractor inspection system and record access
    - Provisions/Clauses: 52.246-2 through 52.246-9
  - Higher level contract quality requirements – 52.246-11
    - Gov’t involved in inspection throughout contract
    - ISO, ANSI, ASME, MIL-Q etc.
    - See 46.202-4(b)
Commercial Item Inspection

Government relies on contractors' quality assurance systems as a substitute for Government inspection and testing before tender for acceptance unless customary market practices for the commercial item being acquired includes in-process inspection

• Any in-process inspection conducted by the Government shall be accomplished in a manner consistent with commercial practices

Inspection by Contractor

At or below the simplified acquisition threshold (SAT)

• Government shall rely on contractor to accomplish all inspection and testing needed to ensure supplies or services conform to contract quality requirements before tendered for acceptance

• Exception: KO determines inspection necessary to protect government's interest, consider:
  - The nature of the supplies and services being purchased and their intended use;
  - The potential losses in the event of defects;
  - The likelihood of uncontested replacement or correction of defective work; and
  - The cost of detailed Government inspection
Standard Inspection

Above simplified acquisition threshold (SAT)
• Government shall rely on contractor to accomplish all inspection and testing needed to ensure supplies or services conform to contract quality requirements before tendered for acceptance
  • Contractor provides and maintains an inspection system that is acceptable to the Government
  • Government has the right to make inspections and tests while work is in process
  • Contractor required to keep complete, and make available to the Government, records of its inspection work

Higher Level Quality Requirements

Appropriate in contracts for complex or critical items or when technical requirements of the contract require:
• Control of such things as work operations, in-process controls, and inspection
• Attention to such factors as organization, planning, work instructions, documentation control, and advanced metrology

Contract must specify the higher-level quality standard(s)
• Examples of higher-level quality standards are:
  - International Organization of Standards (ISO): 9001, 9002, or 9003
  - American National Standards Institute (ANSI)
  - American Society for Quality (ASQ)
  - American Society of Mechanical Engineers (ASME)
  - ASTM International – American Society for Testing and Materials
  - DoD Index of Specifications and Standards
**Inspection Clauses**

<table>
<thead>
<tr>
<th>Clause</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>52.246-1</td>
<td>Contractor Inspection Requirements</td>
</tr>
<tr>
<td>52.246-2</td>
<td>Inspection of Supplies—Fixed Price</td>
</tr>
<tr>
<td>52.246-3</td>
<td>Inspection of Supplies—Cost-Reimbursement</td>
</tr>
<tr>
<td>52.246-4</td>
<td>Inspection of Services—Fixed Price</td>
</tr>
<tr>
<td>52.246-5</td>
<td>Inspection of Services—Cost-Reimbursement</td>
</tr>
<tr>
<td>52.246-6</td>
<td>Inspection—Time-and-Material and Labor-Hour</td>
</tr>
<tr>
<td>52.246-12</td>
<td>Inspection of Construction</td>
</tr>
</tbody>
</table>

(e) (1) When supplies are not ready at the time specified by the Contractor for inspection or test, the Contracting Officer **may charge to the Contractor the additional cost of inspection or test.**

(2) The Contracting Officer may also charge the Contractor for any additional cost of inspection or test when prior rejection makes re-inspection or retest necessary.

(f) The Government has the right either to reject or to require correction of nonconforming supplies. Supplies are nonconforming when they are defective in material or workmanship or are otherwise not in conformity with contract requirements.
Inspection of Supplies-Cost Reimbursement

52.246-3

(f) At any time during contract performance, but no later than 6 months (or such other time as may be specified in the contract) after acceptance of the supplies to be delivered under the contract, the Government may require the Contractor to replace or correct any supplies that are nonconforming at time of delivery. Supplies are nonconforming when they are defective in material or workmanship or are otherwise not in conformity with contract requirements. Except as otherwise provided in paragraph (h) of this clause, the cost of replacement or correction shall be included in allowable cost, determined as provided in the Allowable Cost and Payment clause, but no additional fee shall be paid.

FYI: Inspection Examples

- 100% Inspection
  - Expensive and time consuming
  - Inspection of Services clause
- Periodic Inspection
  - Planned and limited inspections
  - Less time consuming
- Random Sampling
  - Assumes acceptable performance if specific number of inspections are acceptable
  - Appropriate for frequently occurring tasks

- Visual dimensional checks
  - Examination, personal judgment
  - Reveals surface defects, missing pieces, parts out of alignment
- Conducting or witnessing physical or performance tests
  - Involves more objectivity
  - Chemical tests for composition
  - Physical tests to determine hardness
Inspection Standard – Example (DPI)

Standards

International Organization for Standardization (ISO)
- ISO 5969. Non-destructive testing - Postpaint testing and magnetic particle testing - Viewing conditions
- ISO 3452-1. Non-destructive testing - Penetrant testing - Part 1: General principles
- ISO 3452-3. Non-destructive testing - Penetrant testing - Part 3: Reagents for test solutions
- ISO 3452-4. Non-destructive testing - Penetrant testing - Part 4: Equipment
- ISO 3452-5. Non-destructive testing - Penetrant testing - Part 5: Penetrant testing at temperature higher than 50 °C
- ISO 3452-6. Non-destructive testing - Penetrant testing - Part 6: Penetrant testing at temperatures lower than 10 °C
- ISO 12706. Non-destructive testing - Penetrant testing - Vocabulary
- ISO 23377. Non-destructive testing of welds - Penetrant testing of welds - Acceptance criteria

European Committee for Standardization (CEN)
- EN 571-1. Non-destructive testing - Penetrant testing - Part 1: General principles. May be replaced by EN ISO 3452-1
- EN 1371-1. Founding - Liquid penetrant inspection - Part 1: Sand, gravity die and low pressure die castings
- EN 1371-2. Founding - Liquid penetrant inspection - Part 2: Investment castings
- EN 2803-76. Aerospace series - NDT basic material test methods - Part 16: Non-destructive testing, penetrant testing
- EN 10226-2. Non-destructive testing of steel forgings - Part 2: Penetrant testing
- EN 10246-11. Non-destructive testing of steel tubes - Part 11: Liquid penetrant testing of seamless and welded steel tubes for the detection of surface imperfections

American Society of Mechanical Engineers (ASME)
- ASME Boiler and Pressure Vessel Code. Section V. Art. 6. Liquid penetrant examination

ACCEPTANCE
Performing Acceptance

Acknowledgement that the supplies and/or services conform with the contract quality and quantity requirements

- **Acceptance:**
  The act of an authorized representative of the Government by which the Government, for itself or as agent of another, assumes ownership of existing identified supplies tendered or approves specific services rendered as partial or complete performance of the contract.

- **Conditional acceptance:**
  Means acceptance of supplies or services that do not conform to contract quality requirements, or are otherwise incomplete, that the contractor is required to correct or otherwise complete by a specified date.

Additional Acceptance Terminology

- **Critical Nonconformance:** means a nonconformance that is likely to result in hazardous or unsafe conditions for individuals using, maintaining, or depending upon the supplies or services; or is likely to prevent performance of a vital agency mission.

- **Major Nonconformance:** means a nonconformance, other than critical, that is likely to result in failure of the supplies or services, or to materially reduce the usability of the supplies or services for their intended purpose.

- **Minor Nonconformance:** means a nonconformance that is not likely to materially reduce the usability of the supplies or services for their intended purpose, or is a departure from established standards having little bearing on the effective use or operation of the supplies or services.

- **Patent Defect:** means any defect which exists at the time of acceptance and is not a latent defect.

- **Latent defect:** is a defect that is hidden from the knowledge and sight of the Government and that could not be discovered before acceptance by ordinary and reasonable care or by reasonable inspection.
How to “Accept”

- Acceptance is the responsibility of the contracting officer (KO), COR may be delegated this authority
  - May take place before, after or at the time of delivery
  - Supplies or services shall ordinarily not be accepted before completion of Government contract quality assurance actions

Shall ordinarily be evidenced by execution of:
- An acceptance certificate on an inspection or receiving report form, or
- Commercial shipping document or packing list

Exceptions to Acceptance

The goal is to discover any nonconformance during the government quality assurance (Inspection) process, if that does not happen...

- Warranties
- Exceptions to final acceptance:
  - Commercial contracts
  - Latent defects
  - Fraud
  - Gross mistakes amounting to fraud
Acceptance of Commercial Items

Because of the assumption the Government will rely on contractor’s assurances that tendered items conform to contract requirements

- Final Acceptance is **not** conclusive
- Buyer can revoke if
  - Rejection was given within a reasonable time after defect was discovered
  - Before substantial changes occur in condition of the item

Warranties

A promise or affirmation given by the supplier (contractor, manufacturer etc.) to the Government (user, purchaser etc.) regarding the nature, usefulness, condition, or performance of the subject matter of the contract.

- Implied Warranties (UCC)
  - Warranty of Merchantability
  - Warranty of Fitness for a Particular Purpose
- Express Warranties
### Implied Warranties

<table>
<thead>
<tr>
<th>Warranty of Merchantability</th>
<th>Warranty of Fitness for a Particular Purpose</th>
</tr>
</thead>
<tbody>
<tr>
<td>- Goods must be fit for the ordinary purposes for which such goods are normally used</td>
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<tr>
<td>- Unless stated otherwise in Merchants contract for sale of goods, this warranty is incorporated</td>
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</tr>
<tr>
<td>- Special protection for a buyer who relies on the sellers expertise in selecting suitable goods</td>
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</tr>
<tr>
<td>- Properly written performance statement in the SOW help to better identify this warranty</td>
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</tr>
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</table>

#### Exclusion of Implied Warranties

- May be specifically excluded by calling buyer’s attention, in understandable language to exclusion of warranties
- Excluded when buyer has examined goods, sample, model as fully as he wanted to or when buyer refused to examine goods
- By agreement

---

### Express Warranties

- Provided in writing
  - The "small print"
  - Advertising
- Any promise or affirmation of facts that become part of the bargain
- Description of goods that is part of the basis for the bargain
- Any sample or model that is part of the basis for the bargain
Use of Warranties

Commercial items/contracts:
- Take advantage of commercial warranties, including extended warranties, when appropriate and in government’s best interest

Non Commercial items/contracts:
- Use approved by Chief of the Contracting Office, unless
  - Technical Data – practicable and cost effective
  - Supplies/Services fixed price contracts with higher level contract quality requirements
  - Supplies and services in Construction contracts
- Costs weighed against need for protection against risk

**Note:** when determining “cost/price” of the warranty, the government must include cost of **Administration** and **Enforcement**.

FYI: Difficulties with Warranties

Timing of Warranties Matter
- Warranty takes effect at time of delivery
  - If item delivered to storage for later use, consider warranty providing a starting time **after** delivery
- Length of warranty time must be specified

<table>
<thead>
<tr>
<th>Enforcing</th>
<th>Defenses</th>
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<tbody>
<tr>
<td>• Existence of a defect</td>
<td>• Improper maintenance</td>
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<tr>
<td>• Defect was within scope of warranty</td>
<td>• Improper operation</td>
</tr>
<tr>
<td>• Defect arose during warranted period</td>
<td>• Mishandling (Multiple receiving destinations)</td>
</tr>
<tr>
<td>• Damages were caused by defect</td>
<td>• Alteration</td>
</tr>
<tr>
<td>• Timely notice of defect was given</td>
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</tr>
</tbody>
</table>
Latent Defects

Definition: Not readily noticeable upon a reasonable inspection at the time of acceptance

- Burden of proof is on the Government to prove defective material and workmanship was probable cause of failure of product
- Latent defect responsibility prorated over life of product since contractor responsible for latent defect any time after final acceptance
- Also applies to design and manufacture contracts
  - Designed product might have to be replaced free of charge

Non-Conformance

Occurs when the contractor presents a deliverable or service to the Gov’t that does not conform to the contract requirements

Only the contracting officer (KO) may authorize acceptance of non-conforming (deficient) items/services
Gov’t Remedies for Non-Conformance

- The government has contractual authorities available to remedy non-conformance
  - Remedies cover a broad range of available options
  - KO will often rely on the COR when considering a specific remedy

<table>
<thead>
<tr>
<th>Types of Non-Conformance</th>
<th>Range of Remedies</th>
</tr>
</thead>
<tbody>
<tr>
<td>Late Delivery/Untimely Performance</td>
<td>Reject</td>
</tr>
<tr>
<td>Incorrect Quantity</td>
<td>Replace/Re-perform</td>
</tr>
<tr>
<td>Deficient Quality</td>
<td>Repair/Invoke Warranties</td>
</tr>
<tr>
<td>Improper Labor Practices</td>
<td>Withhold $-Payment(s)</td>
</tr>
<tr>
<td>Lack of QA process/procedures</td>
<td>Liquidated Damages</td>
</tr>
<tr>
<td>Inadequate Performance</td>
<td>Cure Notice/Show Cause</td>
</tr>
<tr>
<td></td>
<td>Terminate</td>
</tr>
<tr>
<td></td>
<td>* Past Performance Documentation</td>
</tr>
</tbody>
</table>

Payment

Important as any other aspect of contract monitoring

- Payment to the contractor for the supplies and services delivered is the Government's obligation under the contract
  - Ensure that payment is made only to contractors who perform according to contract terms and conditions
  - With few exceptions, contractors must submit invoices and supporting documentation electronically
  - Three things needed for finance office to pay contractor:
    1. Copy of the contract
    2. Receiving Report
    3. Proper Invoice

Contract Payment Policy

- Payment due based on receipt of a proper invoice and satisfactory performance
- Generally due within 30 days of invoice date or government acceptance
  - Otherwise interest accrues and is due to the contractor
- Government has seven (7) days from receipt to notify the contractor if invoice is improper
- Prompt Payment clause is in all contracts

One of your primary COR duties may be to review and approve contractor invoices for payment
DOCUMENTING PAST PERFORMANCE & CONTRACT CLOSEOUT


Past Performance Information

• Capturing contractor performance on each contract or order is an important part of the performance assessment process

This information goes into the Contractor Performance Assessment Reporting System (CPARS)

• CORs may be tasked to collect relevant performance information
  – Fairness
  – Narrative accompany rating
Past Performance Information Con’t

The Government relies on past performance data to assist in making contract award decisions

- The CPARS automated system feeds:
  - Past Performance Information Retrieval System (PPIRS)
  - Federal Awardee Performance Integrity Information System (FAPIIS)

Contract Closeout

A contract is not completed until it has been closed; formally closed

- Timely contract closeout allows for:
  - De-obligating excess funds
  - Identifies the need for additional funds
  - Allows all affected activities to concentrate on current and future requirements

- We must ensure:
  - All of the customers’ requirements have been met
  - Government property and Classified information dispositioned
  - Contractors have received all monies due
  - Past performance has been documented
  - All contractor AND Government tasks are complete
FYI: Government Property - Disposition

- Government Property May be Disposed of in Numerous Ways and Processes:
  - It may be *scrapped* through an approved scrap procedure.
  - It may be *purchased* at ACQUISITION COST (CAP Only!!)
  - It may be *transferred, donated or sold*
  - It may be directed to be *destroyed* or even *abandoned*

- MUST be Done in Accordance with Applicable Laws and Regulations
  - Federal Property Administrative Services Act of 1949
  - The Federal Management Regulations and the
  - FAR – SubPart 45.6

- MUST be Demilitarized before disposal, if applicable

Exercise: It’s All In The Wiring

1. What should Ms. Perfection, the COR, have done when she discovered the lower quality wiring?
2. Did the COR have the authority to waive the wiring changes?
3. When Ms. Perfection accepted the consoles, what responsibility did the contractor have for replacement of the consoles?
4. Does the Government have recourse for the replacement of the consoles?
Summary

Overview of Contract Administration
• It’s Definition and Importance
• Inspection
• Acceptance
• Payment
• Past Performance Documentation
• Contract Closeout
How Do I Monitor Performance?

COR Monitoring Overview

- The Post Award Conference
- Contract Performance Monitoring
  - Progress Reports
  - Performance Assessment
  - Security
  - Safety & Compliance
  - Property
- Additional Tools, Tips, Techniques for
  - Invoice Evaluation (contract payment)
  - Contract Closeout
Monitoring or Surveillance

The process of checking, either by direct evaluation, observation or other information, contractor performance

Why Monitor Performance

- Confirm item/services have been delivered
- Time (Schedule) and Location
- Inspection & Acceptance

- Determine if item/services meet contract requirements
- Conform or Non-Conform to contract standards and specifications
- Inspection & Acceptance

- Authorize contractor payment of invoices or vouchers
- Contract Payment

- Identify/document trends (positive and/or negative)
- Corrective Action & Continuous Improvement
- Periodic Performance Documentation

- Document and communicate to contractor and stakeholders - contractor’s performance
- Recurring (program reviews, status meetings, etc.)
- Formal Past Performance Documentation

Ensure Government Receives What it Contracted for
How Much Contract/Task Order Monitoring?

- Varies with complexity considering
  - Type of contract
  - Complexity of work
  - Scope of work
  - Contractor’s experience
  - Contractor performance
  - Contracting environment
  - Supplies vs. services

Monitoring and Surveillance Activities

- Monitoring may involve:
  - Review of progress reports
  - Inspection and acceptance
    - Random sampling/Trend Analysis/Deliverable review
  - Meetings with contractor personnel
    - Site visits
  - Coordinating Security and Safety reviews
  - Property administration
  - Invoice/Voucher review
    - Payroll, time card checks
FYI: Quality and Surveillance

- The contractor has primary responsibility for ensuring the quality and timeliness of their goods or services in meeting contract performance standards.
- Your job will be to assess the contractor’s performance to ensure it conforms to contract performance requirements.
  - Unsatisfactory performance may jeopardize a project or may directly impact an organization’s ability to perform its mission.
- Practice insight...not oversight.
  - Your role is to validate the contractor’s quality system, not duplicate it.

Where Should the COR Begin?

Start with Post Award Orientation Meeting

- Are “WE” on the same page..
  - “We” the government team
  - “We” the government and contractor
- Review contract requirements
- Decide how to resolve problems
- Identify and resolve oversights
Post Award Orientation

**Typical Topics/Agenda**
- Communication practices
  - Problem escalation
- Roles & responsibilities
- Processes and plans for contract administration and monitoring
- Delivery, acceptance, and payment process and procedures
  - Deliverable review process
- Process to mitigate risks

**COR Post-Award Orientation Strategy**
- Read and gain familiarity with your contract
  - Know milestones & deliverables
  - Understand any incentive features
- Research your contractor
  - Review their proposal
- Develop a plan for monitoring the contract
- Complete assigned action items from the meetings

Begin Monitoring

FYI: No Such Thing as a Free Meeting

Holding meetings with the contractor is not a bad idea, but remember that these meetings aren’t always “free”.

What Am I Monitoring?

- Progress
- Performance
- Security
- Safety & compliance
- Property
- Acceptance & Payment
Progress Reports

An excellent source for schedule, progress and cost status determination

- Provides the first early warning of potential changes, delays, or any other problems in contractor performance
- Does not relieve the contractor of a separate obligation to report anticipated or actual delays to the COR and KO

What is a Progress Report?

- Vary in form from a single page memo or letter to several hundred pages of detail by task with supporting graphs and tables
- Summarize progress since preceding report, so earlier reports are summarized, subsumed and superseded by the new report

Typical Progress Reports Focus On

<table>
<thead>
<tr>
<th>Focus On</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Project status</td>
</tr>
<tr>
<td>• Measurement of achievements against objectives</td>
</tr>
<tr>
<td>• Problems encountered</td>
</tr>
<tr>
<td>• Work completed</td>
</tr>
<tr>
<td>• Work remaining</td>
</tr>
<tr>
<td>• Evaluation</td>
</tr>
<tr>
<td>• Anticipated risks</td>
</tr>
</tbody>
</table>
FYI: Understanding CDRLs

DD Form 1423 – Contract Data Requirement List

• Documents and communicates data requirements and delivery information
• Provides a standardized method to clearly and unambiguously delineate the Government's minimum essential data needs in one spot
• Together, constitute the data requirements for a specific procurement (contract) to include all reports

How to Check a Progress Report

The progress report should be checked for the following:

• Will contractor meet delivery dates; do you foresee a problem?
  – Does the contractor foresee problems or risks?
• Are expenditures in line with the work performed; with the work planned?
• How does percentage of work completed compare to funds expended?

Additional Reviewing Techniques

• How does status of deliverables (reports, designs, texts, etc.) compare to the progress report?
• Review invoices and compare to the progress report
• Perform site visits & compare to progress reports
• Discuss with contractor any ambiguities or discrepancies

FYI: Progress Report vs. Invoice

Do not expect a one-to-one correlation between the Funds ($$) expended as documented in progress reports and total invoiced to date

• Coverage dates may be different
• Invoice may reflect lag-time in contractor’s accounting system:
  – May be as much as a two-week lag in labor time reporting
  – ODCs depend on when travel vouchers are filed and subcontractors and vendors invoice
Schedule/Delivery - Documentation

As a COR, it is critical to document:

• Is the contractor on schedule to meet contractual requirements?
• Did contractor meet contractual delivery requirements?
  – Is there a reward for early delivery?
  – Is there a penalty for late delivery?

Best Practice:

• As soon as information or status is known, or
• On a recurring/routine interval

Do not wait to document schedule concerns

What Am I Monitoring?

❖ Progress
❖ Performance
❖ Security
❖ Safety & compliance
❖ Property
❖ Acceptance & Payment
Performance Assessment

- The contractor’s performance should be assessed and documented on an ongoing basis throughout the life of the contract
  - Formal correspondence
  - Less formal correspondence
- It must also be done at contract completion i.e. documenting past performance.

Why and What to Assess?

**Purpose is to determine and document:**
- How well the contractor is doing
- If performance, quality, schedule and cost requirements are being met
- If the customers are satisfied
- If processes are working
- If and where improvements are necessary

**Assessment Factors:**
- Quality of performance and deliverables
- Business Relations
- Management of Key Personnel
- Customer satisfaction
- Timeliness
- Compliance (e.g. OSHA, EPA, DOL)
- Invoicing/cost control
Deliverable/Document Reviews

The contract may require delivery/submittal of numerous reports from the contractor

• Examples could include:
  – Special Studies
  – Technical reports
  – Test plans, etc.

• There is always a timeline for the government reviewers to provide comments and/or approval of any reports

• The COR must manage the review process

Review Process

• Receive and log deliverables
• Conduct a preliminary review
• Confirm the list of reviewers and distribute
• Set deadline for comments/edits
  – Based on specific area of expertise, reviewers provide comments
• Collect and consolidate comments/edits
  – COR may arrange a review meeting with reviewers to consolidate comments
• KO and COR discuss comments and determine if deliverable should be accepted or rejected
• COR prepares Letter Acceptance or Rejection indicating required corrections and next steps
  – Copies of letter placed in the COR file
  – Acceptance may be authority for contractor to submit invoice
Service Quality

• Does service meet requirements?
• Conforms/Adheres to:
  o Specifications and Standards
  o PWS/SOW/SOO
  o Quality Control Plan – Contractor
  o Quality Assurance Surveillance Plan - Government

Business Relations

• Tends to be a “subjective” analysis
• Encompasses matters such as the contractor’s:
  – Responsiveness
  – Professionalism
  – Cooperativeness

*Note: this is also required for Past Performance Ratings in CPARS*
Management of Key Personnel

Are technical experts highly qualified and effective in performing the required services?

- Do they meet the skill level stated in the contract?
- Are an appropriate number of personnel assigned to the project?
- Do delivered products reflect skill and standardization required by the customer?

Customer Satisfaction

- Satisfy your customer in terms of cost, quality and timeliness of the delivered product or service.
  - Percent of product that meets customer expectations
  - Time to answer customer complaints
  - Number of customer complaints
Trend Analysis
- Monitor contractors ongoing performance
- Joint Gov’t and contractor data base is very effective way to monitor

Customer Feedback
- Actual user feedback
- Can be very subjective
- Users don’t know the contract requirements
- Negative is plentiful, positive is limited
- How will you collect the information

Third Party Audits
- Independent reviews by a third party
- Other Government Agency or Contracted Inspection
What Am I Monitoring?

- Progress
- Performance
- Security
- Safety & compliance
- Property
- Acceptance & Payment

Security Monitoring

- Review contract security clauses and DD 254 Contract Security Classification Specification
- Be aware of any security requirements that apply
  - Facilities, storage containers, and personnel
- Process clearance and visit requests promptly
- Report any violations
The DD 254

What is addressed in the DD254:

- Security Requirements not addressed in the National Industrial Security Program Operating Manual (NISPOM)
- What level of information can be accessed for this effort
- Where the contractor can have access
- Distribution Statements required on technical documents created by the contractor


What Am I Monitoring?

- Progress
- Performance
- Security
- Safety & Compliance
- Property
- Acceptance & Payment

Safety & Compliance Monitoring

Standards, regulations and activity examples
- OSHA
- EPA
- Labor qualifications
- Licensing
- HAZMAT

What Am I Monitoring?

- Progress
- Performance
- Security
- Safety & Compliance
- Property
- Acceptance & Payment
We learned about Government Property in Lesson Three. The use of government property requires:

- Advance planning
- Adequate oversight
- Accountability

The COR may have a substantial role in the administration and oversight of government property use by the contractor.

The Government generally assumes the risk of loss for Government Property while in the contractor’s possession:

- Flood
- Storm
- Accident
- Fire
- Theft
FYI: Liability Examples

The Government generally assumes the risk of loss of Government Property while in the contractor’s possession on some contract types:


Government Property Administration

Property administration is usually delegated to DCMA, but the COR may be delegated to assist

- Ensure contractor receives Government property authorized under the contract
- Oversee the contractor’s management of Government property
- Provide disposition instructions to the contractor
- Help perform Governmental screening prior to directing disposition of GP
- Verify the preparation, shipment, transfer and/or disposal of excess and surplus GP

Where Does the COR Start?

- Read your delegation letter for specific property related duties
- Become familiar with provisions of the contract concerning property
  - FAR/DFARS Part 45/245 explain contractor and government responsibilities
  - The Government Property Clause(s) will detail contractor’s Responsibilities (FAR 52.245-1, -2 & -9)
- Document the files with anything related to property
- Notify the KO immediately if there are any problems

COR Property Administration – the Process

- Help ensure GFP inventory is accurate prior to providing to contractor
- Ensure contractor receives GFP in a timely manner, in accordance with the terms and conditions of the contract
  - Coordinate property book receipt when applicable
- Oversee the contractor’s management of Government property, including reviewing the processes called out in the Government property clause.
- Help perform the necessary Governmental screening prior to directing disposition of GP
- Verify instructions to the contractor for disposition have been communicated
- Verify preparation, shipment, transfer and/or disposal of excess and surplus GP paperwork.
FYI: Property and Contractor Responsibility

The Contractor shall have a **System** of internal controls to manage:
- Control, use, preserve, protect, repair and maintain government property in its possession
- Maintain processes systems, records; etc.
- **Basic Stewardship Requirement:**
  "Contractor's responsibility extends from initial acquisition and receipt of property, through stewardship, custody, and use until formally relieved of responsibility by authorized means, including delivery, consumption, expending, sale (as surplus property), or other disposition, or via a completed investigation, evaluation, and final determination for lost, damaged, destroyed, or stolen property."

What makes a good system?
- **"Auditability"**
  - Up-to-date
  - Strong internal controls
  - Clear lines of authority
  - Outlines organizational accountability
  - Describes methods for performing tasks
  - Addresses (additional) contract terms and conditions

FAR 52.245-1

FYI: Contractor Property System Compliance

The Contracting Officer, in consultation with the property administrator, shall:
- **Determine** the acceptability of the contractor’s property management system;
- **Approve** or disapprove the system; and
- **Pursue** correction of any deficiencies

- **Initial determination**
  - Within **10 days**, if KO determines a significant deficiency, KO requires contractor to submit written response
  - Within **30 days** of contractor’s response, KO in consultation with auditor or functional specialist, evaluate contractor’s response and make a determination

- **Final Determination (with assistance from the PA) the CO shall:**
  - Monitor the contractor’s progress
  - Request the auditor review corrective actions
  - Determine if contractor has taken corrective actions

DFARS 245-1105
Government Property - Disposition

Government Property may be disposed of through numerous processes:

- It may be scrapped through an approved scrap procedure.
- It may be purchased at ACQUISITION COST (CAP Only!!)
- It may be transferred or donated or sold or directed to be destroyed or even abandoned

But it MUST be done in accordance with the applicable Laws and Regulations

- Federal Property Administrative Services Act of 110410
- Federal Property Management Regulations
- FAR – SubPart 45.6

What Am I Monitoring?

- Progress
- Performance
- Security
- Safety & Compliance
- Property
- Acceptance & Payment
Documenting Acceptance

CORs are often the designated official authorized to accept supplies/services for the Govt. This means signing a DD 250 or completing acceptance in wide area workflow (WAWF).

Material Inspection Receiving Report

“The DD250”

- The DD Form 250 is a Government multipurpose report used as:
  - Acceptance of equipment/data by the Government
  - The Contractor's invoice for payment
  - A packing list for shipping and receiving
  - Evidence of Government Quality inspection
- DD 250 acceptance authority (signature) is designated in Section E - Inspection and Acceptance
WAWF – Receipt and Acceptance

DoD developed system for Contractors and authorized DoD users to **generate**, **capture**, and **process** receipt and payment documentation
- Interactive web-based application
- Eliminates paper from contracting life cycle
- Electronic receipt/acceptance process
- Electronic invoice/payments process
- Provides complete transaction visibility
- Reduces interest penalties

Contractors must submit invoices electronically
- Mandated by Public Law: NDAA FY 2001
- DFAS is Compliant
- DFARS Clause 252.232-7003
  - Requires electronic invoicing.
  - Requires electronic supporting documentation.
  - Identifies three acceptable electronic forms for transmission of invoices (WInS, WAWF and EDI).
  - Identifies situations where EC is not required.

How Does It Work? - WAWF Process

1. **Vendor** INPUT
   - Creates and submits shipping notices and invoices by web entry or computer to computer. Includes RFID and IUID.

2. **Inspecting Activity**
   - Receives email notification of awaiting actions. Inspects / rejects online in WAWF.

3. **Accepting / Receiving Activity**
   - Receives email notification of awaiting actions. Accepts / rejects online in WAWF or in local system (DSS or ERP).

4. **Local Processing Office**
   - Receives email notification of awaiting actions. Views invoices online to prepare for payment in WAWF.

5. **Payment Office**
   - Receives email notification of awaiting actions. Certifies invoices ready for payment in WAWF.

6. **DoD Pay Systems**
   - Authorizes transfer of funds via EFT to Vendor’s bank.

**Sign/Reject Process**

View Only:
- Contracting Officers
- Property Mgt Systems
- Transportation
- IUID Registry

Information provided to:
- Property Mgt Systems
- Transportation
- IUID Registry

WAWF “Training” Site – Online Demo

- **iRAPT** – Invoicing, Receipt, Acceptance, and Property Transfer (formerly “WAWF”)
- **CORT Tool** – COR Tracking Tool
- **myInvoice** – Contractor Tool

Invoice Review & Approval

- Compare progress reports with invoices
- Review timecards, when applicable
- Use inspection reports to verify actual usage (e.g. equipment on the site)
- Maintaining an Invoice Log
- Notifying KO of discrepancies ASAP

- CORs can approve invoices on Fixed Price contracts
- CORs can review, but cannot approve vouchers (invoices) on CR, T&M and Labor Hour contracts
  - DCAA has sole authority for verifying claimed costs and approving interim payment requests
  - Only KO can approve final payment requests
Typical Invoice Problems

- Math errors
- Wrong contract/task order number
- Wrong price (proposed vs negotiated)
- Wrong CLIN or SubCLIN
- No POC for defective invoices
- No date
- Incorrect/missing shipment info
- No remittance address
- Negotiated prompt pay discounts not offered

Additional Invoice Problems

- Inflated/unrealistic labor hours
- Unsupported ODCs (poor description, can’t tie to specific task) e.g. unsupported travel costs
- Unauthorized overtime charges
- Incorrect/unrealistic labor category
- “Management” hours disproportionate to “worker bee” hours
- Duplicate invoice, or wrong invoice
- Other “pitfalls” – e.g., competing workload demands, contractor UNDER charges for something
Travel as an ODC

- The proposed travel is essential to the effective performance of the contract
- The contractor has:
  - Screened reimbursement travel to avoid nonessential participation in conferences, meetings, or conventions
  - Limited the mode of travel to the most economical method and are relating travel to production time
  - Used any Government contracted carrier, or is making reservations for air travel sufficiently in advance to obtain business class or coach rates
  - Limited the cost of travel to federal per diem rates

What About Overtime?

- Overtime (OT) must be specifically allowed on the contract
- Only the KO can authorize the use of OT
- COR review of Contractor overtime may include:
  - Is the OT necessary?
  - If the OT is necessary, can additional funds be obtained to fund the OT?
  - Was the OT accomplished?
What Am I Monitoring?

- Progress
- Performance
- Security
- Safety & Compliance
- Property
- Acceptance & Payment

Are we finished being a COR?

Coming to the End of Monitoring

- Documenting Past Performance
- Contract Closeout

DONE!
Documenting Past Performance

- Capturing how well a contractor performs on each contract is a very important part of performance the assessment process.
- This information goes into an automated system called the Contractor Performance Assessment Reporting System (CPARS).
- The Government uses this information as one of the factors when selecting future contractors during the source selection process.

CPARS

- The CPAR is done at completion of the contract or at intervals specified by the FAR.
- They should document the contractor’s record of:
  - Conforming to contracting requirements and standards of good workmanship;
  - Forecasting and controlling costs;
  - Adherence to contract schedules;
  - History of reasonable and cooperative behavior and commitment to customer satisfaction;
  - Business-like concern for the interest of the customer.
- Your CPAR assessment should mirror the contractor’s performance results documented during the monitoring process.
Closeout Actions

The KO with the help of the COR ensures the following actions have been accomplished:

- Services have been rendered
- Articles have been delivered and accepted
- Payments and collections have been made
- Disposition of property and classified information
- Releases from liabilities, obligations, claims have been obtained from the contractor
- Assignments of refunds, credits, etc., have been executed by the contractor
- Administrative actions have been accomplished
- Excess funds de-obligated
- Contract file is properly documented

Exercise: The Grass Isn’t Greener

1. List the assumptions that you have about the case.
3. Why did the contracting officer send a copy of this letter to the COR?
4. What is the COR’s responsibility in this situation?
5. Are the number and length of breaks taken by the contractor’s employees of concern to the COR?
6. Should the COR or contracting officer respond to Mr. Herb Layoff?
Summary

• Contract Monitoring
  – Progress Reports
  – Performance Assessment
  – Security
  – Safety & Compliance
  – Property
  – Acceptance & Payment
How Do I Handle “Issues” With the Contractor?

Contractual “Issues” - Topics

- Contractual Remedies
  - Options for dealing with non-compliance:
    - Poor performance
    - Delays in performance
- Claims and Disputes
- Contract Terminations
Dealing with Non-Compliance

1st
- Most Preferable
- Require Contractor to correct/replace/re-perform defective or non-compliant items or services

2nd
- Accept defective items
- Only if deficiencies are minor
- COR CANNOT accept any deficient/non-compliant items or services – ONLY the KO is authorized

3rd
- Least Preferred
- Reject non compliant items – terminate contract

Remedies Specifically in Contract

- **Inspection** clauses
  - Reject work or allow re-work
- Invoke other specific contract clauses
  - Stop/Suspend Work, Liquidated Damages, Warranty
  - Termination (Cure Notice, Show Cause)
- Withhold or reduce award or incentive fees
- Suspend progress payments
- Decline to extend/exercise contract Options
Additional Remedies

- Other available remedies:
  - Modify the contract
  - Claims or consideration
  - Legal recourse
  - Document in COR File
  - Use Alternative Disputes Resolution (ADR)
  - Document in past performance database

COR Role in Remedies

- **Observe**
  - “Monitoring” - Heavy reliance is placed on the COR’s observation and documentation

- **Document**
  - Maintain/keep good records
  - If it isn’t documented, it didn’t happen

- **Communicate**
  - Notify KO promptly so that remedial steps can be taken

- **Action**
  - The COR must be prepared to take the necessary actions e.g. suggest remedies to KO
FYI: Silence is NOT Golden

Silence on the part of the Government could be interpreted by the contractor as acceptance by the Government of substandard products or services.

Claims and Disputes

**Dispute:** disagreement between contractor and contracting officer regarding the rights of the parties under a contract.

**Claim:** is a *Written* Demand Seeking:
- Sum Certain
- Adjustment / Interpretation of a contract Term
- “Other” Relief

Routine requests (i.e., request for equitable adjustment submitted in response to a change order, invoice for progress payments, etc.) **not** a Dispute or Claim when submitted.
FYI: Potential Warning Signs

- Complaints from subcontractors
- Complaints from site workers
- Repeated safety violations
- Failure to meet performance deadlines
- Persistent complaints about government employees or inspectors
- Repeat incidents of poor quality work


Alternative Dispute Resolution

Any procedure or combination of procedures voluntarily used to resolve issues in controversy without the need to resort to litigation

<table>
<thead>
<tr>
<th>Advantages</th>
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</thead>
<tbody>
<tr>
<td>• Utilizes expertise and independence of a neutral advisors</td>
</tr>
<tr>
<td>• Privacy</td>
</tr>
<tr>
<td>• Reduced costs!</td>
</tr>
</tbody>
</table>

COR’s Role in ADR

Provide surveillance documentation and reports supporting the Government’s position

Disputes, Claims and Terminations

Attempt to resolve issues and disputes before …

• They become formal claims, or
• Resorting to contract termination

Don't let problems grow

Meet with contractor

Document, document, document

Develop recovery schedule or plan

Work through issues as soon as they occur

Terminations

<table>
<thead>
<tr>
<th></th>
<th>UCF</th>
<th>COM</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Termination for Convenience (T4C)</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>• Termination for Default (T4D)</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>• Termination for Cause (Similar to Default)</td>
<td></td>
<td>✓</td>
</tr>
</tbody>
</table>

Uniform Contract Format = UCF
Commercial Contract Format = COM
Terminations for Convenience

When to T4C
- Requirement no longer exist
- Insufficient funding
- Major requirement change beyond scope or contractor expertise

COR Role in T4C
- Keeping the KO informed
- Provide recommendations to KO and customer
- Provide review and analysis of any settlement proposals
- Document the file

Important T4C Concepts
- Unique to the government
- Unilateral right of the government
- May only terminate when it is in the “government’s best interest”

FYI: Partial Terminations

Partial Terminations for Convenience
- Still a need for part of the contract
- Sometimes known as “de-scope”
- Terminated work must be severable

Contractor Proposal
- Termination settlement expenses
- Equitable adjustment on remaining effort
  - Lost volume discounts
  - Increased O/H to non terminated work
  - Unabsorbed start-up costs, etc.

COR Support
- Support technical evaluation
- Support negotiations
- Monitor contract as modified

No anticipatory profits or O/H that could have been absorbed allowed
Termination for Default (T4D)

Government, by written notice, may terminate the contract for the contractor’s failure to perform the following:

- Deliver supplies or perform services within a specified time
- Make progress that endangers contract performance
- Perform any other provisions of the contract
  - Supplies or services do not conform to contract requirements
  - Safety or security incidents, etc.

Delinquency Notices

<table>
<thead>
<tr>
<th>CURE NOTICE</th>
<th>SHOW CAUSE NOTICE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contractor on notice government considers performance to be endangered</td>
<td>Contractor on notice government considers situation not to be fixed/&quot;cured&quot;</td>
</tr>
<tr>
<td>Identifies specific requirements not being met</td>
<td>Affirms government intends to T4D/Cause</td>
</tr>
<tr>
<td>Requires contractor to communicate how they will fix or “cure” the situation</td>
<td>Contractor put on notice to provide any/all “excuses” for their failure to perform</td>
</tr>
<tr>
<td>Asserts government may T4D/Cause</td>
<td>Reaffirms government does not accept/condone failure to perform</td>
</tr>
<tr>
<td>Must provide for a 10 day cure period</td>
<td>Can be issued without cure notice if less than 10 days remaining for delivery</td>
</tr>
</tbody>
</table>

T4D/Cause is improper if the required notice and opportunity to correct ("cure") is not given to the contractor

- Unless commercial contract and reason is late delivery
Excusable Delays

- Examples of excusable “failure to perform” include:
  - Acts of God
  - Acts of a public enemy
  - Acts of government
  - Fires
  - Floods
  - Epidemics
  - Quarantine restrictions
  - Strikes
  - Freight embargoes
  - Unusually severe weather

On the Road to Termination

- Filing for bankruptcy
- Job abandonment or holding the project hostage
- Unauthorized major subcontractor
- When time is really of the essence
- Ongoing failure to pay subcontractors
- Insurmountable design or technical problems
- Repeated and substantive safety violations
- Violations of law

**COR Role in T4D/Cause**
- Keep the KO informed of all contract discrepancies that may cause a termination
- Provide the KO with recommendations based on all the facts and documentation related to the termination
- Including impact on customer
FYI: Termination and Cost Liability

<table>
<thead>
<tr>
<th>T4D/Cause</th>
<th>Fixed-Price Contracts</th>
<th>Cost Contracts</th>
</tr>
</thead>
<tbody>
<tr>
<td>$0*</td>
<td>Cost (plus fee on work delivered &amp; accepted)</td>
<td></td>
</tr>
<tr>
<td>T4C</td>
<td>Cost (plus profit on work done)</td>
<td>Cost (plus fee on work done)</td>
</tr>
<tr>
<td>Breach of contract by Government</td>
<td>Cost (plus profit on work done and potentially anticipatory profits)</td>
<td>Cost (plus fee on work done and potentially anticipatory profits)</td>
</tr>
</tbody>
</table>

Because the Government is not liable for work not accepted, the termination for default has a greater adverse consequence on supply contracts than service and construction contracts.

Summary

- Termination is an extreme remedy
- Both Government and contractor will be detrimentally impacted
- Entire project placed at risk
- When to think twice about terminating
  - Substantial performance has been achieved
  - “Unclean hands” of the government
  - Logistical problems
  - Unique services
Knowledge Check - 1

A commercial contract was awarded eight months ago for seven (7) scheduled deliveries of textbooks.

- Three (3) deliveries have been made; although these deliveries have been timely, 10 to 15% of the books have been rejected due to missing pages, loose bindings, and damaged covers.

What should the **COR** do?

- If that doesn’t work, then what should the **KO** do?

---

Knowledge Check - 2

The **COR** has been bombarded with complaints about the performance of the current custodial contractor.

- There are 17 buildings receiving custodial services under the contract.
- The majority of the complaints are relative to poor service in two (2) of the buildings.

What should the **COR** do?

- If that doesn’t work, the **KO** could consider:
Are There Special Considerations for Construction Contracts?

Construction Contracting - Topics

- Construction Wage Rate Requirement Statute
  - Previously *Davis Bacon Act*
- Bonds
- Liquidated Damages
- Differing Site Conditions
- Suspension of Work
- Inspection - Construction
- Exercise
### Labor Law – Construction Wage Rate

- Employees paid at least once per week
- Wage determination made by DOL
  - Posted on job site in a prominent location
  - Basic hourly rates and fringe benefits
- COR interviews employees
  - SF Form 1445

### Labor Compliance Checking

1. Review contractors certified payrolls
2. Check work sites for required postings
3. Conduct Labor Standard Interviews
4. Compare payrolls to onsite interviews
5. Resolve discrepancies/violations

*Note: Poster and Wage Determination must be posted in prominent place at work site*
Bonds - Performance and Payment

Contractors required to furnish performance and payment bonds for construction contracts over $150,000 – Miller Act

• **Bond**: Written instrument between offeror (contractor) and second party (surety) to assure fulfillment of obligation to a third party (the Government and suppliers of labor and material) for a given project
  - Required in the amount of **100 %** of original contract price for construction contracts

Construction – Liquidated Damages

• Compensation for harm to the government
  - It is **not** a penalty!! Used for:
    - Reimburse government for actual or partial costs incurred for **untimely** performance
  - LDs are assessed
    - Daily rates:
      - Cost to administer the contract - perform additional inspections
      - Cost to lease/rent substitute property/equipment, etc.
    **Only used if impact of delay is significant**
Construction – Differing Site Conditions

• **Subsurface or latent physical conditions**
  – Differ materially from those indicated in the contract
• **Unknown physical conditions at the site**
  – Differ materially from those:
    • Ordinarily encountered
    • Generally recognized inherent to work of the character provided in the contract
• **Contractor must provide written notice to KO**

Differing Site Conditions

• **Policy**
  – Requires contractor to notify government of any differing site conditions
    • Promptly and **before** conditions are disturbed
  – **Purpose**: Shift risk to gov’t and eliminate bid contingencies
• **Highlights**:
  – Contractor may receive additional time and/or money
  – Two categories (Type I and Type II)
    • Type I – Conditions differ from what is shown in the contract
    • Type II – Conditions differ from what would normally be encountered in work of the same nature

FAR 52.236-2
Construction – Suspension of Work

• Allows KO to suspend performance for a "reasonable" period of time
• If unreasonable
  – May be entitled to certain costs attributed to delay
• COR shall maintain adequate records
  – May reveal contractor contributed to the suspension
  – Or, contractor not damaged by the suspension
  – Or, suspension was reasonable

COR records are vital to determine amount of costs if found to be unreasonable

FYI: Determining Progress

<table>
<thead>
<tr>
<th>Ways to Measure Progress</th>
<th>What Type of Schedule, depends on:</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Formal Schedules (timing &amp; progress)</td>
<td>• Complexity of project</td>
</tr>
<tr>
<td>• Bar Chart</td>
<td>• Criticality of completion</td>
</tr>
<tr>
<td>• Critical Path Method (CPM)</td>
<td>• Coordination with other contracts</td>
</tr>
<tr>
<td>• Daily records – COR QC/QA reports</td>
<td>• Contractor’s expertise</td>
</tr>
<tr>
<td>• Progress meetings</td>
<td>• Cost benefit of detailed schedule</td>
</tr>
</tbody>
</table>

- **Advantages**
  - Good for complex projects
  - Accepted as evidence in court
  - Show high degree of task interdependencies
  - Show causes & effect, impact, and delay

- **Advantages**
  - More expensive
  - Easy to understand (less complex projects)
  - Shows limited task interdependency

Material and Workmanship

Material and Workmanship Clause Overview

• Requires
  – **New** materials, equipment & articles
  – **Government approval** of appliances, machinery, equipment etc., to be incorporated
  – All work be performed in **skillful** and **workmanlike** manner
  – KO may have incompetent, careless, or otherwise objectionable employees **removed** from the project/contract

• Submittal Process
  – Contractor submits information (Log) or **samples** for approval
  – Reasonable time period for review

 FAR 52.236-5

Construction - Inspection and Acceptance

• Policy
  – Requires contractor to inspect (Quality Control) & allows gov’t to inspect and test before acceptance of work
  – Requires contractor to correct defective work
  – **Purpose**: ensures gov’t receives what it paid for

• Highlights
  – Risk of conformance completely on contractor, Gov’t remedies available
  – Acceptance final **except** for:
    • Latent defects
    • Mistakes amounting to fraud
    • Rights under Warranty/Guarantee
    • Fraud

 FAR 52.246-12

Gov’t Inspector NOT to Change Contract Terms
Galley Job Exercise

- Read the Exercise in Lesson 13 of the Student Guide

Are There Special Considerations for Research and Development and Major Systems Contracts?

R&D and Systems Contracting - Topics

- Organizational Conflict of Interest
- Earned Value Management
- Data Rights
- Export Control
- Non-Disclosure Agreements
- Defense Acquisition Management System
Organizational Conflict of Interest

- Contractor has unfair competitive advantage, if
  - They prepared the SOW
    - May not be able to compete for the follow-on effort
- May compete for follow-on effort, if
  - Sole source
  - Developed and designed the system
  - More than one contractor involved in SOW preparation
- Other limitations involve testing of systems

Consult with your KO and legal advisor!!

Earned Value Management (EVM)

EVM requires an integrated management system (IMS) that coordinates work scope, schedule, and cost goals; and objectively measures progress toward these goals

- Required on cost or incentive contracts, subcontracts, and intra-government agreements valued ≥ $20M
- DoD acquisition regulations requires:
  - ANSI-EIA 748 compliance for contracts > $20M, and
  - EVMS validation for contracts > $100M

EVM provides the PM and COR with the tools to effectively measure and monitor technical, cost, and schedule performance
Data Rights

• Why does the Government need data?
  – To compete contracts among suppliers
  – Ensure logistic support
  – Document the results of research

• Must protect from unauthorized disclosure or use
  – To avoid jeopardizing contractor’s commercial position
  – Especially for privately financed data

Data Rights (Cont)

• Unlimited Rights – DFARS 252.227-7013(a)(15)
  – May make data freely available to anyone who wants it

• Government Purpose Rights – DFARS…(a)(12)
  – Use, modify, reproduce, release, perform, display, or disclose within Government without restrictions
  – Can disclose outside Government for Government use
  – Cannot be used for commercial purposes

• Limited Rights – DFARS…(a)(13)
  – Cannot be disclosed outside the Government
  – Cannot be used to manufacture
  – Cannot be used by anyone other than the Government
    • Unless used to perform emergency repair or overhaul
FYI: Export Control & Data Rights

Certain technologies and technical data require protection under:

- International Traffic in Arms Regulation (ITAR)
- Arms Export Control Act (AECA).

If Contractors (or Universities) employ foreign nationals, the potential for a breach exists

**Defense Technologies**
- International Trafficking in Arms Regulation (ITAR)
- Arms Export Control Act (AECA)

**Dept of State (DoS) has Oversight**
Guidance: United States Munitions List (USML)
DoD provides input and helps monitor

**Dual Use Technologies**
- Export Administration Regulations (AER)

**Dept of Commerce (DoC) has Oversight**
Guidance: Commerce Control List (CCL)

Export Control

**Sample ITAR Statement for reports**
Technical data contained herein may be controlled for export by the U.S. Department of State under the International Traffic in Arms Regulation (ITAR) (22 CFR 120-130) or by the Department of Commerce under the Export Administration Regulations (EAR) (Export Administration Act of 1979, as amended). It may not be exported or transferred to any foreign person either in the United States or abroad, or disclosed to a national of another country without the prior written approval of the U.S. Department of State or Department of Commerce.

For additional information, see:
- [www.export.gov](http://www.export.gov)
- [www.exportcontrol.org](http://www.exportcontrol.org)
- [www.pmddtc.state.gov](http://www.pmddtc.state.gov)
- DAU CLC 048 – Export Controls

- CORs should be aware of protection requirements
- Export control requirements should be addressed in the SOW/PWS and researched during acquisition planning
- Penalties can be up to 10 years in prison and a $1 million fine.
Non-Disclosure Agreements

Government provides data to a contractor

- Depending on the data rights and government needs, the contractor may have to sign a non-disclosure agreement to protect the rights of all parties
  - Contractor put on notice data must be protected
  - Goal: reduce possibility of data getting out and compromising another contractor's trade secret and damaging their well earned competitive advantage

FYI: Acquisition Categories (ACATs)

DoD follows a structured approach when procuring Weapons, C4I and Automated Information Systems = Defense Acquisition Management System (DAMS)

Acquisition Categories (ACATs) for:
1) Weapon Systems and Command, Control, Communications, Computers, and Intelligence (C4I) Systems
2) Automated Information Systems (AIS)

Categories defined (DoDD 5000.2) by estimated:
- Amount of RDT&E
- Total Procurement Cost
- Lifecycle Cost
- Annual/Total Program Costs, etc.

Categories determine:
- Level of management review
- Milestone decision authority (MDA)
- Reporting requirements