

Department of Defense

COR HANDBOOK

March 22, 2012



**Director, Defense Procurement
and Acquisition Policy**

OUSD(AT&L)

Foreword

The Department of Defense (DoD) relies heavily on the private sector to carry out aspects of the Department's mission. Because of the critical reliance on contractor support and the large expenditures involved, contract surveillance is vital to ensure contractors are providing quality services and supplies in a timely manner; to mitigate contractor performance problems; and to ensure the Federal Government (Government) receives best value for the Warfighter.

Contract quality performance is the responsibility of both the contractor and the Government. The contractor is responsible for carrying out its obligations under the contract in terms of quality, timeliness and cost. The Government is responsible for ensuring that services and supplies acquired conform to the quality and performance requirements of the contract.

Contract quality surveillance is an essential activity. In most cases, contract quality surveillance is the responsibility of the requiring organization — the organization most familiar with the technical complexities and nuances of the requirement — with assistance from the contracting office. The requiring organization prescribes contract quality requirements that the contracting office includes in contracts. Members of the requiring organization are designated specific authority by the Contracting Officer to conduct contract surveillance as a Contracting Officer's Representative (COR) in order to verify that the contractor is fulfilling contract requirements and to document performance for the contract record. These CORs function as the eyes and ears of the Contracting Officer and are a liaison between the Government and contractor when executing surveillance responsibilities.


DoD¹ policy requires that the requiring activity/COR management participate in nominating CORs and assess their performance of COR responsibilities. COR management affirms that the COR will be afforded necessary resources (time, equipment, opportunity) to perform designated COR responsibilities.

This COR handbook addresses key aspects of contract quality surveillance and the roles and responsibilities of the Contracting Officer, the COR and the requiring activity/COR management. It is a comprehensive resource for the Contracting Officer, COR

¹ Deputy Secretary of Defense Memorandum, "Monitoring Contract Performance in Contracts for Services," 22 August 2008, <http://www.acq.osd.mil/dpap/policy/policyvault/2008-0468-DPAP.pdf>.

management, and the first-time, as well as the experienced, COR. A primary principle throughout this handbook is the importance of open communication between, and due diligence of, the Contracting Officer, the COR, COR management, the requiring activity, and the contractor in contract surveillance. This handbook is intended to supplement, not replace, training and performance of surveillance. When in doubt, CORs should refer to the contract, the COR letter of appointment/designation, and the Contracting Officer.

We envision this DoD COR Handbook to be a living document accessible at (<http://www.acq.osd.mil/dpap/>). Please provide your comments and recommendations to improve the Handbook, as well as lessons learned on contract quality surveillance, to Peggy Ayanian at Peggy.Ayanian@osd.mil



Richard Ginman
Director, Defense Procurement
and Acquisition Policy

Contents

Introduction

Chapter 1: The Importance of Contract Surveillance

Related Duties

Chapter 1. Key Points

Chapter 2: Roles and Responsibilities for Contract Surveillance

Nomination, Designation, and Appointment of the COR

Performance of COR Functions

Termination of COR Appointment

DoD COR Tracking (CORT) Tool

Chapter 2. Key Points

Chapter 3: Ethics and Integrity

Review of Standards

Working with Contractor Employees

Transportation and Travel

Awards and Certificates

Procurement Integrity

Compensation after Leaving Federal Employment

Penalties

Personal Conflicts of Interest for Contractor Employees

Organizational and Consultant Conflicts of Interest

Organizational Conflicts of Interest

Bribery

Anti-Kickback Act

Gratuities

Gifts

Reporting Gifts

Protecting the Integrity of the Acquisition Process

Chapter 3. Key Points

Chapter 4: The Acquisition Team and Process

The Acquisition Team

The Acquisition Process

Chapter 4. Key Points

Chapter 5: COR Responsibilities

Post-Award Duties

Understanding the Contract

Keeping Files Current and Complete

Correspondence and Responses

Correspondence with the Contractor

Notifications to the Contracting Officer

Monitoring Contract Performance

Inspect and Accept/Reject Deliverables

Proprietary and Classified Information

Managing Problems

Handling Unsatisfactory Performance

Tracking Modifications

Conclude Appointment/Designation Appropriately

Technical Expertise

Limitations

Protecting Sensitive or Government Information

Related Duties

Pre-Award Duties

Chapter 5. Key Points

Chapter 6: Contract Structure

Categories and Types of Contracts

Categories of Contracts

Types of Contracts

Fixed-Price Contracts

Cost-Reimbursement Contracts

Contracts for Commercial Items

Contract Structure

UCF Part I — The Schedule

UCF Part II — Contract Clauses

UCF Part III — List of Documents, Exhibits, and Other Attachments

UCF Part IV — Representations and Instructions

Order of Precedence

Contract Structure – Solicitations/Contracts for Commercial Items

Structure – Task or Delivery Orders

Contract Language Rules

Contract Numbers (For Example: N00062-90-C-0001)

Chapter 6. Key Points

Chapter 7: Contract Administration

Post-Award Orientation (Kick-Off)

[Conducting the Post-Award Orientation](#)
[Topics for Discussion at the Post-Award Meeting](#)
[Contractor/System Compliance](#)
[Contractor Accountability through SPOT](#)
[Performance Monitoring](#)
[Contract Modifications](#)
[Reasons for Contract Modifications](#)
[Types of Contract Modifications](#)
[Contract Options](#)
[Contract Changes](#)
[Constructive Changes](#)
[Unauthorized Commitments](#)
[Ratification of Unauthorized Commitments](#)
[Ratification Process](#)
[Technical Evaluation](#)
[Cost/Price Evaluation](#)
[Completion/Payment](#)
[Acceptance](#)
[Documenting Acceptance](#)
[Wide Area Workflow](#)
[Nonconformance](#)
[Remedies for Nonconformance](#)
[Acceptance of Nonconforming Supplies or Services](#)
[Invoice and Payment](#)
[Contents of a Valid Invoice](#)
[Voucher and Invoice Review](#)
[Overtime](#)
[Interest Penalties](#)
[Warranties](#)
[Implied Warranties](#)
[Express Warranties](#)
[Past Performance](#)
[Contract Closeout](#)
[DOs and DON'Ts: Contract Administration](#)
[Chapter 7. Key Points](#)

Chapter 8: Monitoring the Contractor

[Contractor Progress Reports](#)
[Assessing Performance](#)
[Acceptable Inspection Methods](#)
[Random or Stratified Sampling](#)
[100 Percent Inspection](#)

[Periodic Inspection or Planned Sampling](#)
[User Feedback](#)
[Documenting Performance](#)
[Remedies for Poor Contract Performance](#)
[DOs and DON'Ts: Remedies](#)
[Delays](#)
[Identifying and Verifying a Delay](#)
[Notifying the Contracting Officer of the Technical Impact of a Delay](#)
[Assisting the Contracting Officer with Evaluating the Contractor's Response](#)
[Fraud](#)
[Combating Trafficking in Persons](#)
[Government Property](#)
[Property Responsibilities](#)
[Reporting, Reutilization, and Disposition of Government Property](#)
[Contract Termination](#)
[Termination for Convenience of the Government](#)
[Termination for Cause/Default](#)
[Disputes](#)
[COR Working File](#)
[DOs and DON'Ts: Contract Monitoring](#)
[Chapter 8. Key Points](#)

Chapter 9: Monitoring Service Contracts

[Personal and Non personal Services](#)
[Contractor Inspection Clauses for Service Contracts](#)
[Performance Work Statements for Service Contracts](#)
[Quality Assurance Surveillance Plans for Service Contracts](#)
[QASP Composition and Method](#)
[Contract Surveillance Checklist](#)
[Incident Reporting](#)
[Contract Work Hours and Safety Standards Act](#)
[Chapter 9. Key Points](#)

Chapter 10: Monitoring Construction Contracts

[Performance and Payment Bonds](#)
[Contractor Inspection Clauses](#)
[COR Labor Compliance Checking](#)
[Correction of Deficiencies](#)
[Liquidated Damages](#)
[Differing Site Conditions](#)
[Contractual Rights of the Government](#)
[Progress Payments](#)

[Suspension of Work](#)
[Chapter 10. Key Points](#)

[Chapter 11: Foreign Acquisition and International Relationships](#)

[Domestic Trade](#)
[International Trade](#)
[Prohibited Sources](#)
[U.S. Domestic Preference Legislation](#)
[The Buy American Act](#)
[Coverage of the Buy American Act](#)
[Exceptions to the Buy American Act](#)
[The Berry Amendment](#)
[Trade Agreements](#)
[International Relationships](#)
[Business Culture](#)
[Additional Guidance](#)
[Chapter 11. Key Points](#)

Appendices

[Appendix A. Forms](#)
[Appendix B. Contract Planning and Source Selection](#)
[Appendix C. COR Qualifications and Training](#)
[Appendix D. Acronyms and Terms](#)
[Appendix E. COR Resources and References](#)
[Appendix F. COR Checklists](#)
[Appendix G. Metric Conversion Table](#)

Figures

[Figure 4-1. Acquisition Team Functions](#)
[Figure 4-2. Acquisition Process by Activity](#)
[Figure 6-1. Risks of Firm-Fixed-Price versus Cost-Reimbursable Contracts](#)
[Figure 6-2. Contract Structure](#)
[Figure 7-1. The Contracting Process](#)
[Figure 11-1. A Comparison of the Berry Amendment and the Buy American Act](#)

Tables

[Table 5-1. General COR/Requiring Activity and Contracting Office Responsibilities](#)
[Table 6-1. Contract Types](#)

Introduction

This edition of the *DoD Contracting Officer's Representative Handbook* provides basic knowledge and tools for Contracting Officer's Representatives (CORs) to perform effective contract quality surveillance. The information in this handbook is extracted from numerous sources including the Federal Acquisition Regulation (FAR); the Defense Federal Acquisition Regulation Supplement (DFARS); the Joint Ethics Regulation; and various other DoD directives, instructions, publications, and policies.

The handbook is comprehensive in nature to provide as much information as possible for the COR. It is organized to aid the COR in finding exactly what is needed for the situation at hand. This handbook provides relevant and comprehensive guidance on performance of COR functions and the appendices offer supplemental data for instances where additional or more specific information is needed.

Chapters 1 and 2 focus on the importance of contract surveillance and the roles and responsibilities of the COR, the Contracting Officer and COR management. Chapter 3 addresses the importance of ethics and integrity in the acquisition process. Those discussions serve as the backdrop to discussion of the acquisition team and acquisition process (Chapter 4), COR responsibilities (Chapter 5) and an overview of contracts, including their categories, types and structure (Chapter 6).

The next four chapters describe various aspects of the COR's role in monitoring contract performance. Chapter 7 provides general information on contract administration. Chapter 8 contains information on monitoring contractor performance, in general, while Chapters 9 and 10 address monitoring services contracts and construction contracts, respectively. Appendices define common terms and abbreviations and contain resources and references that CORs may find useful, including information on COR qualifications and training, independent government cost estimates (IGCEs), contract planning, and source selection.

This handbook is a guide intended to supplement, not replace, formal COR training. CORs should refer to their letter of appointment/designation for their specific duties and responsibilities assigned by the Contracting Officer. For information on COR training refer to Defense Acquisition University (DAU)².

² The COR Community of Practice website is located at <https://acc.dau.mil/cor>.

Chapter 1:

The Importance of Contract Surveillance

DoD relies on the private sector to carry out many aspects of the Department's mission. The critical nature of contractor support and the large expenditures involved require that the Government conduct contract surveillance to ensure that contractors are providing quality services and supplies in a timely manner, within cost; to mitigate contractor performance problems; and to ensure that the Government receives best value for the Warfighter.

The Federal Acquisition Regulation (FAR) states that the Contracting Officer is responsible for ensuring performance of all necessary actions for effective contracting, ensuring compliance with the terms of the contract, and safeguarding the interests of the United States in its contractual relationships. To perform these responsibilities, Contracting Officers are afforded wide latitude to exercise sound business judgment. Contracting Officers must ensure that no contract is entered into unless all requirements of law, executive orders, regulations, and all other applicable procedures, including clearances and approvals, have been met and that contractors receive impartial, fair, and equitable treatment. The FAR recognizes that the Contracting Officer may need advice and assistance in areas of audit, law, engineering, information security, transportation, and other fields, as appropriate.

The requiring organization prescribes contract quality requirements that the contracting office includes in contracts. As experts on the contract requirement, members of the requiring organization are often delegated specific authority from the Contracting Officer to conduct contract surveillance to verify that the contractor is fulfilling contract delivery and quality requirements and to document performance for the contract record. The requiring activity, coordinating with the contracting office, is responsible in developing contract quality assurance, surveillance and performance assessment plans. These individuals —Contracting Officer's Representatives (CORs³) — function as the eyes and ears of the Contracting Officer and liaison between the Government and contractor when executing surveillance responsibilities. Note, however, contract surveillance is not solely the responsibility of the Contracting Officer and the COR. Others may have designated surveillance responsibilities under Parts 42, 45, or 46 of the FAR.

The Defense Federal Acquisition Regulation Supplement (DFARS) 252.201-7000 defines a COR as “an individual designated in accordance with subsection 201.602-2 of

³ The term “Contracting Officer's Representative” is used primarily by the Army, DoD, DLA and DCMA. The Air Force uses the term “Quality Assurance Personnel” for an equivalent position. Other terms commonly used include Contracting Officer's Technical Representative, Task Order Manager. “COR” is used throughout this handbook for simplicity.

the DFARS and authorized in writing by the Contracting Officer to perform specific technical and administrative functions.” Designation shall be pursuant to the procedures at DFARS Procedures, Guidance and Information (PGI) 201.602-2. CORs monitor contract performance and provide the Contracting Officer with documentation that identifies the contractor’s compliance or noncompliance with the terms and conditions of the contract. This documentation becomes part of the official contract file. It is important that the COR documents everything, including conversations and meetings with the contractor, contractor performance or any other issues.

To ensure that the COR performs contract surveillance, it is DoD policy that COR management participate in nominating CORs and assessing their performance of COR responsibilities. COR management must also affirm that the COR will be afforded necessary resources (time, equipment, opportunity) to perform designated COR responsibilities.

The DoD COR standard⁴ stipulates that the training and qualifications for, and surveillance duties assigned to CORs must be commensurate with the complexity of the contract requirement (detail on the DoD COR Standard is in Appendix C). Requirement types are:

- Type A: Fixed-price requirements without incentives, low performance risk;
- Type B: Other than fixed-price requirements without incentives, low performance risk; and,
- Type C: Unique contract requirements that necessitate a professional license, higher education, or specialized training beyond the Type B requirements.

Related Duties

During the pre-award phase (Chapter 4 discusses the Acquisition Process), the COR candidate works with the contracting team in requirements development, preparing the Independent Government Cost Estimate (IGCE), developing the Performance Work Statement/Statement of Work/Statement of Objectives, developing quality assurance surveillance plans (QASPs), etc. During the post-award phase, the COR may monitor and assess contractor performance and perform other responsibilities as assigned by the Contracting Officer. Again, the COR functions as the eyes and ears of the Contracting Officer.

⁴ Under Secretary of Defense (Acquisition, Technology & Logistics) Memorandum, “DoD Standard for Certification of Contracting Officer’s Representatives (COR) for Services Acquisitions,” 29 March 2010, <http://www.acq.osd.mil/dpap/policy/policyvault/USA005569-09-DPAP.pdf>.

Chapter 1. Key Points

1. The Contracting Officer is the primary Government official responsible for ensuring compliance with contractual agreements.
2. Contract surveillance is key to ensuring contractors perform in accordance with the terms and conditions of the contract.
3. The COR is a critical individual in supporting the Contracting Officer, ensuring successful contractor performance and the fulfillment of the requiring activities mission needs.
4. COR training and qualifications are tied to three requirement types:
 - a. Type A: Fixed-price requirements without incentives, low performance risk;
 - b. Type B: Other than fixed-price requirements without incentives, low performance risk; and,
 - c. Type C: Unique contract requirements that necessitate a professional license, higher education, or specialized training beyond the Type B requirements.

Chapter 2:

Roles and Responsibilities for Contract Surveillance

The three major phases in the COR process are 1) nomination, designation and appointment of the COR based on competencies, experience and training; 2) performance of COR functions; and 3) termination of COR appointment. The Contracting Officer, the COR, and COR management have specific roles and responsibilities in each of these phases.

Nomination, Designation, and Appointment of the COR

The **Contracting Officer** shall:

- Upon receipt of a procurement request,
 - Review the requirement to determine if it requires assistance in technical monitoring or administration of the anticipated contract;
 - Identify, by the complexity of the work/requirement (Type A, B, or C), the duties/responsibilities to be performed by a COR, the qualification requirements mandated by the DoD COR Standard; and
 - Advise the requiring activity for the need of COR(s) support.
- Note: Considerations for multiple CORs include: multiple locations of performance, need for constant surveillance, size of requirement, and subject technical matter skill sets.
- Upon receipt of COR nomination package(s) from requiring activity/COR management,
 - Review to determine if the COR nominee is trained and qualified;
 - Notify the requiring activity that the COR nominee is acceptable or identify deficiencies and request additional nominations as applicable (Nomination/appointment shall be completed through the COR Tracking Tool (CORT Tool) unless a specific waiver is granted by OUSD(AT&L) Defense Procurement and Acquisition Policy, Program Development and Implementation (PDI) Directorate);
 - Provide an orientation to the COR nominee to address duties/responsibilities to be delegated; unique terms and conditions of the contract; importance of performance; personal conflicts of interest (COI) and potential COI; informal commitments/ unauthorized commitments; and ethics/integrity in relationships with Contracting Officer/COR management/contractor; and,
 - Designate specific duties/responsibilities to the COR prior to award and ensure that the letter of appointment/designation is included in the contract

file. The COR letter of appointment/designation must be signed by the Contracting Officer, acknowledged by the COR, and copies furnished to the contractor and Administrative Contracting Officer (ACO).

The **Requiring Activity/COR Management** shall, concurrent with requirements development or upon receipt of a request from the Contracting Officer for COR support:

- Identify a prospective COR;
- Discuss with the COR nominee the COR duties/responsibilities to be designated and the importance of performance of COR duties/responsibilities;
- Ensure that the COR nominee has no personal conflicts of interest with performing the duties/responsibilities to be delegated by completing the Office of Government Ethics () Form 450, Confidential Financial Disclosure Report, upon appointment and prior to contract award;
- Ensure COR nominee receives required training prior to contract award;
- Incorporate performance of COR responsibilities into COR nominee/COR's performance objectives for performance evaluation; and,
- Develop and forward COR nomination package to the Contracting Officer using the CORT Tool.

The **COR Nominee** shall:

- Initiate request for required COR training/COR refresher training to ensure required training is completed prior to contract award;
- Provide information necessary to document required training and to determine absence of personal conflicts of interest. COR nominees and CORs, once designated, must notify the Contracting Officer and appropriate COR management if a potential or actual conflict of interest subsequently arises;
- Participate, as appropriate, in requirements definition/acquisition planning and contract formation processes; and,
- Ensure that participation in the pre-award process and performance of COR duties/responsibilities are properly addressed in individual performance appraisals.

Performance of COR Functions

The **COR** shall:

- Establish and maintain individual COR files for each contract in accordance with DFARS PGI 201.602-2(ii), Chapter 5 of this handbook, and the CORT Tool (if necessary). COR files shall be available for review by the Contracting Officer,

Inspector General, the U.S. Government Accountability Office, internal review officials or other officials as authorized by the Contracting Officer;

- Review and understand terms and conditions of the contract;
- Perform COR duties/responsibilities as designated by the Contracting Officer;
- Not appoint, designate, re-designate or sub-designate COR duties/responsibilities to other persons;
- Provide reports on contract performance to the Contracting Officer. If advised by the Contracting Officer that reports are inadequate, ensure that follow-on reports address issues expected by the Contracting Officer to meet the adequate standard in the QASP;
- When advised by Contracting Officer/COR management that COR designation will be terminated, ensure all reports/records/communications are made available to management, the successor COR and the Contracting Officer; and,
- If circumstances change and there is a reasonable expectation that the COR cannot perform effectively, (i.e., personal COI, change in assignment, etc.), notify COR management and the Contracting Officer to request that a successor COR be designated.

The **COR Management** shall:

- Nominate COR(s) and provide COR resources requested by the Contracting Officer (e.g., time, supplies, equipment, opportunity) for performance of COR duties/responsibilities;
- Evaluate the performance of COR duties as part of the COR's performance assessment throughout the period of the contract. COR management is encouraged to solicit input on performance of COR duties from the Contracting Officer;
- If notified by the Contracting Officer that COR performance is inadequate, address issues with COR, reemphasizing need for performance of COR function. Notify Contracting Officer of actions completed;
- If notified by the Contracting Officer that COR performance remains inadequate and that the letter of appointment/designation will be terminated, take action to identify/nominate replacement COR and address deficient performance in the terminated COR's performance assessment; and,
- Ensure that the terminated COR provides all reports/records and the COR files to COR management or successor COR, as appropriate.

The **Contracting Officer** shall:

- Review COR reports for completeness/accomplishment;
- Provide feedback on COR performance to the COR supervisor;

- If COR reports/performance is inadequate, discuss performance with the COR. If reports/performance continues to be inadequate, discuss COR performance with COR management. If reports/performance continue to be inadequate, notify both the COR and COR management that the COR designation will be terminated and request nomination of the replacement COR; and,
- Terminate COR designation and review nomination of successor COR.

Termination of COR Appointment

The **Contracting Officer** shall:

- When performance of COR functions is unsatisfactory, address concerns with the COR. If performance remains unsatisfactory, notify COR management of performance issues. Request COR management to address performance with the COR or to nominate a successor COR. Only the Contracting Officer has the authority to terminate the COR designation;
- When the requiring activity requests termination of COR designation due to transfer, retirement or other causes, the Contracting Officer must terminate COR designation. The Requiring Activity/COR Management may not terminate a COR designation; and,
- Execute the Notice of Termination in writing, ensure it is acknowledged by the COR and COR management and posted in the CORT Tool.

The **COR Management** shall:

- Request termination of a COR designation to the Contracting Officer and nominate a qualified successor COR, if the COR is unable to perform for any reason, including unsatisfactory performance, transfer or retirement;
- Elect to address performance issues with the COR or elect to nominate a successor COR, if the Contracting Officer notifies COR management of COR performance issues. Issues in performance of COR duties/responsibilities shall be addressed in the COR performance assessment; and,
- Not designate a successor COR or delegate, or re-delegate to a successor COR any duties/responsibilities that were delegated to the terminated COR.

The **COR** shall:

- Request relief from COR designation through COR management in advance of reassignment or separation from the Government to permit the requiring activity to have adequate time to select, train and nominate a successor, per nomination procedures defined herein; and,

- Ensure proper turnover of COR files to successor COR or Contracting Officer, as required.

DoD COR Tracking (CORT) Tool

The DoD CORT Tool is a web based capability for the appointment and management of CORs. It provides for the collection of COR training certificates and the posting of monthly status reports. It provides built in workflows for the nomination process to include email alerts/status reminders for monthly status report due-ins and delinquencies. The CORT Tool⁵ provides contracting personnel and requiring activities/COR management the means to track and manage COR assignments across multiple contracts DoD-wide. This tool allows a prospective COR, COR management and Contracting Officer to electronically process the nomination and appointment of CORs for one or multiple contracts.

The CORT Tool is Common Access Card (CAC) enabled and is available to all DoD personnel with an Army or Defense Knowledge Online (AKO/DKO) account. Note: Your CAC must be registered with AKO/DKO before access to the DoD CORT Tool can be obtained.

Chapter 2. Key Points

1. Three COR process phases:
 - a. nomination and designation of the COR based on competencies, experience and training;
 - b. performance of COR functions; and
 - c. termination of COR appointment.
2. The requiring activity is critical to identifying and nominating individuals who have the right skill set and experience, in addition to requisite COR certification requirements.
3. It is mandatory for the COR to maintain individual COR files for each contract or order.
4. If a COR knows in advance that he/she will be reassigned or separated from the COR duties it's critical that he/she notify the Contracting Officer in advance in order to ensure continued COR support.
5. The DoD CORT Tool is a web based management capability for the appointment and management of CORs.

⁵ More details on the CORT Tool are available at <http://www.acg.osd.mil/dpap/pdi/eb/cor.html>.

Chapter 3:

Ethics and Integrity

Review of Standards

U.S. Government personnel engaged in contracting and related activities must be above reproach in their business dealings with industry. At the same time, they must protect the Government's interests and maintain its reputation for dealing fairly with contractors. DoD Directive (DoDD) 5500.07-R, Joint Ethics Regulation, specifies standards for contracting and related activities.⁶ All COR letters of appointment/designation require CORs to certify that they have read and understand the Joint Ethics Regulation. CORs also should be familiar with the Procurement Integrity Act, § 41 U.S.C. 2101-2107, which is implemented by regulation at FAR 3.104. To maintain public confidence in the U.S. Government's conduct of business with the private sector, CORs must avoid even the appearance of a COI.⁷ CORs who may have direct or indirect financial interest in an organization that they are monitoring must advise their supervisor of the conflict so that appropriate action may be taken. An organizational or personal COI is one in which the COR, because of other activities or relationships with other people,⁸ is unable or potentially unable to render impartial assistance or advice to the Government, or may have impaired objectivity in performing the contract work, or a contractor may have an unfair competitive advantage due to action or relationships with the COR.

Every COR and his/her supervisor must certify to the Contracting Officer that the COR has officially filed an OGE Form 450, Confidential Financial Disclosure Report. The purpose of this report is to assist personnel and their agencies in avoiding conflicts between official duties and private financial interests or affiliations.

Working with Contractor Employees

Contractors are an important component of the total DoD force, but they are not Government employees. COI rules do not apply to contractor employees, even when they are performing the same or similar work as, or working side-by-side with, Government employees. In contrast, Government employees — public servants — are accountable for the public trust. The COR's duties are to the Government. Although professional relationships with contractor employees are not prohibited, favoritism and preferential treatment are. It is the COR's duty to always avoid conflicts of interest and even the appearance of conflicts of interest. Personal services contracts (contracts under which contractor employees appear to be working as Government employees) are

⁶ The Joint Ethics Regulation is available at http://www.dod.mil/dodgc/defense_ethics/ethics_regulation.

⁷ A conflict of interest is a conflict between an individual's personal and professional responsibilities.

⁸ See the full definition at FAR 2.101.

prohibited unless specifically authorized by statute.⁹ Contractor personnel cannot perform inherently governmental functions. In monitoring contractor performance, the COR should avoid interfering with contractor employee relations. Further, the COR must not tell contractors to do any of the following:

- Hire or fire a particular employee;
- Reassign or discipline an employee;
- Grant or deny leave; and
- Change employee duty hours.

Transportation and Travel

As a general rule, official travel of a Government employee must be funded by the Government. Therefore, sharing a vehicle with a contractor can pose a problem. Transportation is acceptable if it is included in a contract between the Government and a contractor. Contracts for onsite inspections may contain a provision requiring the contractor to make available to the Government employee reasonable assistance in carrying out those official duties.

Awards and Certificates

Awards programs are based on statute. Sections 1124–1125 of Title 10 of the United States Code (U.S.C.) address military programs, and 5 U.S.C. 4511–4513 address civilian. There is no statutory authority for giving commander's coins or similar non-monetary incentive tokens to contractors; therefore, appropriated funds cannot be used to purchase coins that will be given to individuals other than Government employees. Further, the Government cannot use certificates to recognize a contractor or individual contractor employees, because this could complicate the source selection process on future contracts. Contractors may be recognized through a letter of commendation from the Government to the contractor organization, which may choose to in turn recognize an individual contractor employee. In no event shall a letter of commendation or any other recognition be given to a contractor or contractor employee without first coordinating such commendation or recognition with the Contracting Officer.

Procurement Integrity

- The Procurement Integrity Act prohibits the Government (e.g., COR) from disclosing contractor bid or proposal information (see FAR 3.104-3). This includes the following types of information:
 - Cost or pricing data;

⁹ See FAR 37.104, “Personal Services Contracts.”

- Indirect costs, direct labor rates, and overhead rates; and,
- Proprietary information about manufacturing processes, operations, or techniques marked as such by the contractor.
- Contractor bid or proposal information not restricted or prohibited from disclosure includes the following:
 - Information already disclosed or made available to public;
 - Information disclosed by contractors¹⁰; and,
 - Information disclosed pursuant to a proper request from Congress, Comptroller General, or Inspector General (if certain conditions are met) (see FAR 3.104-4(f) and 5.403).
- Disclosure restrictions extend past contract award.

Compensation after Leaving Federal Employment

The Procurement Integrity Act places a 1-year ban on accepting compensation from certain contractors after leaving federal employment (see 41 U.S.C. § 2104 and FAR 3.104-3(b)). Procurement officials are required to report any employment contacts with contractors. If a member of the acquisition team (e.g., COR) is participating personally and substantially in a competitive procurement valued in excess of the simplified acquisition threshold, and he or she contacts or is contacted by a bidder or offeror in the procurement about employment, it is imperative that the federal employee:

- Promptly report the contact in writing to his or her supervisor and ethics counselor and either;
- Reject the offer; or
- Disqualify himself or herself from further involvement in the procurement.

Penalties

Individuals who violate the Procurement Integrity Act¹¹ may be subject to criminal and civil penalties: imprisonment of up to 5 years and/or up to a \$50,000 fine per violation plus twice the amount of compensation an individual or organization received or was offered for the prohibited conduct.

Under FAR 3.104-7, contractor penalties may include the following:

- Cancellation of the procurement; or
- Disqualification of an offeror; or
- Void/rescission of the contract; or

¹⁰ FAR 3.104 does not restrict or prohibit a contractor from disclosing its own bid or proposal information, nor does it restrict or prohibit the recipient from receiving that information.

¹¹ See 41 U.S.C. § 2105(a) and FAR 3.104-3.

- Suspension or debarment of either the official or offeror; or
- Apply an administrative or contractual remedy commensurate with the severity and effect of the violation; or
- Any other appropriate actions in the interests of the Government.

Personal Conflicts of Interest for Contractor Employees

The Government's increased reliance on contracted technical, business, and procurement expertise has increased the potential for personal COIs. Unlike Government employees, contractor employees are not required to disclose financial or other personal interests to the Government that may conflict with the responsibilities they are performing on behalf of the Government. The risk associated with personal COIs is directly related to the supply or service being acquired and the type of contract used to secure the supply or service. The risk increases when contractor employees are involved with subjective judgmental work.

Section 841 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 directed the Office of Federal Procurement Policy (OFPP) to issue policy to prevent personal COIs by contractor employees performing acquisition functions closely associated with inherently governmental functions. DoD is following the policies and procedures of FAR Subpart 9.5.

Organizational and Consultant Conflicts of Interest¹²

Government decisions in the procurement process must be objective in fact and appearance. Favoritism or other improper motives have no place in the award or administration of public contracts. Thus, the Government has, by statute and regulation, prohibited activity that would improperly influence decision making or would appear to do so. Key areas of concern include organizational conflicts of interest (OCI), bribery, gratuities, and gifts.

Organizational Conflicts of Interest

OCIs are a circumstance in which a contractor may have unequal access to Government information, or the existence of conflicting roles that might bias a contractor's judgment—either of which could lead to an unfair competitive advantage. OCIs may occur when a contractor is providing engineering and technical direction or advisory, analysis, assistance, and evaluation services; preparing specifications and work

¹² USD (AT&L) Memorandum, "Personal Conflicts of Interest of Contractors' Employees," 24 November 2009, <https://acc.dau.mil/CommunityBrowser.aspx?id=336117>.

statement; or acting in a capacity that gives them access to proprietary data. It is the Government professional's duty and legal obligation to ensure that this is not permitted to occur. The potential for OCI is a growing concern as the Government outsources more technical work to private companies and the defense industry continues to consolidate. As the Government partners more with industry, the opportunities for OCI increase.

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. Bribery is a criminal offense¹³.

Anti-Kickback Act

The Anti-Kickback Act of 1986 modernized and closed the loopholes of previous statutes applying to Government contracts. The act does the following:

- Prohibits attempted as well as contemplated kickbacks, which include any money, fees, commission, credit, gift, gratuity, thing of value, or compensation of any kind. The inclusion of kickback amounts in contract prices is prohibited conduct in itself.
- Makes illegal the acceptance of a kickback "for improperly obtaining or rewarding favorable treatment."
- Prohibits kickbacks to prime contractors, prime contractor employees, subcontractors, and subcontractor employees.

Congress intended the act to embrace the full range of Government contracting.

Note: "Any person who knowingly and willfully engages in conduct prohibited by the Anti- Kickback Act shall be imprisoned for not more than 10 years or shall be subject to a fine ... or both."¹⁴

Never solicit gifts of any type, regardless of their nature or dollar value. A small number of contractors and potential contractors are willing to offer favors in exchange for business. CORs must understand that a bribe occurs when someone "directly or indirectly gives, offers, or promises anything of value to any public official, former public official, or person selected to be a public official, for or because of any official act performed or to be performed by such public official." (Note that the value need not be

¹³ See 18 U.S.C. § 201.

¹⁴ See 41 U.S.C 54 and Articles 92 and 134 of the Uniform Code of Military Justice.

monetary.) Giving or accepting a bribe is a crime punishable by a fine, imprisonment, or both.¹⁵

Gratuities

Gratuities constitute a crime when offered or given to a Government official or when a Government official solicits or receives a gratuity (see 18 U.S.C. § 201 and FAR Subpart 3.2). To be categorized as a gratuity, the item being offered must be a thing of value and be presented with the intent of corruption. As a participant in the acquisition process, the COR must constantly keep himself or herself on guard to improper actions or those that can be construed as such.

Gifts

The term “gift” includes any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value. It includes services as well as gifts of training, transportation, local travel, lodgings and meals, whether provided in-kind by purchase of a ticket, payment in advance, or reimbursement after the expense has been incurred.

Contractor personnel may offer CORs welcome gifts upon arrival or souvenirs to take home in a possible attempt to gain favor provided the gift value is \$20 or less per source per occasion, not to exceed \$50 in the aggregate in a calendar year from the same source¹⁶. FAR 3.101-2 provides the overarching rule about accepting gifts from contractor personnel: do not accept any gratuity, gift, favor, entertainment, loan, or anything of value from a prospective or current contractor. In Government-contractor relationships, the COR must strictly avoid any conflict of interest or even the appearance of a conflict of interest.

Remember, a COR should not accept a gift in return for being influenced to perform an official act. Also he or she should not accept gifts so frequently that a reasonable person would think the COR is using the position for private gain.

When in doubt, the COR should call an ethics official about accepting a gift.

¹⁵ See 18 U.S.C. 201 and Articles 92 and 134 of the Uniform Code of Military Justice.

¹⁶ See 5 C.F.R. § 2635.204.

Reporting Gifts

If a gratuity¹⁷ is delivered to a COR (e.g., left on the COR's desk or car), the COR must return it. If a contractor insists on giving the COR a gratuity, the COR must take one of the following steps:

- Attempt to persuade the contractor to take back the gratuity. Explain to the contractor your inability to accept gratuities as a COR and the repercussions you could face if you accept the gratuity.
- Pay the fair market value of the item, call contracting, and/or consult the legal office.
- As a last resort, if the contractor appears to be offended, do the following:
 - Accept the gratuity.
 - Contact legal counsel immediately.
 - Safeguard the gratuity. If necessary, have the finance officer put the gratuity in a safe and obtain a receipt from the finance officer.
 - Turn the gratuity over to counsel.
 - Write a memorandum for the record (MFR) that describes the circumstances and indicates the approximate value of the gratuity. Mention in the MFR that legal advice was obtained.
 - If the gratuity is perishable (e.g., food or flowers), share the gratuity within the office or dispose of it. Be cautious when consuming food from unknown sources.

If there is any doubt about whether a gift should or should not be accepted, the COR should consult either the ethics advisor or the legal office. If neither is available, contact the Contracting Officer.

Note: Whenever a contractor delivers a gratuity (leaves the gratuity on the COR's desk, slides it under the door, etc.), the COR must return it. If that is not possible, the COR must document the incident and turn over the gratuity to the ethics advisor or legal office along with his suspicions. The COR must play it safe and be safe. Whenever in doubt, consult your ethics advisor or legal office.

Protecting the Integrity of the Acquisition Process

Private firms must be able to compete for the Government's business on a scrupulously fair basis. Fairness is a prerequisite of Government acquisition due to the Government's unique position as representatives of the citizens of the United States. Fairness also helps ensure that the Government will obtain its supplies and services at the best price available. Government personnel who are associated with the acquisition process have a

¹⁷ See FAR 3.203, "Reporting Suspected Violations of the Gratuities Clause", for reporting procedures.

responsibility to protect its integrity by maintaining fairness in the Government's treatment of all firms.

There are numerous points within the acquisition process where the potential to lose this fairness is elevated. For example:

- Pre-solicitation: Allowing a vendor or vendors access to information on a particular acquisition (especially the specification or work statement), before such information is available to the business community at large, may give the vendor receiving the information an unfair advantage over others.
- Specifications: Intentionally writing an unnecessarily restrictive specification or work statement that would effectively exclude the products or services of a vendor and/or increase the prospects for award to another vendor is an obviously unfair practice. Not only does this give advantage to one or more vendors over others, it also restricts competition and makes it more likely that the Government will ultimately pay a higher price.

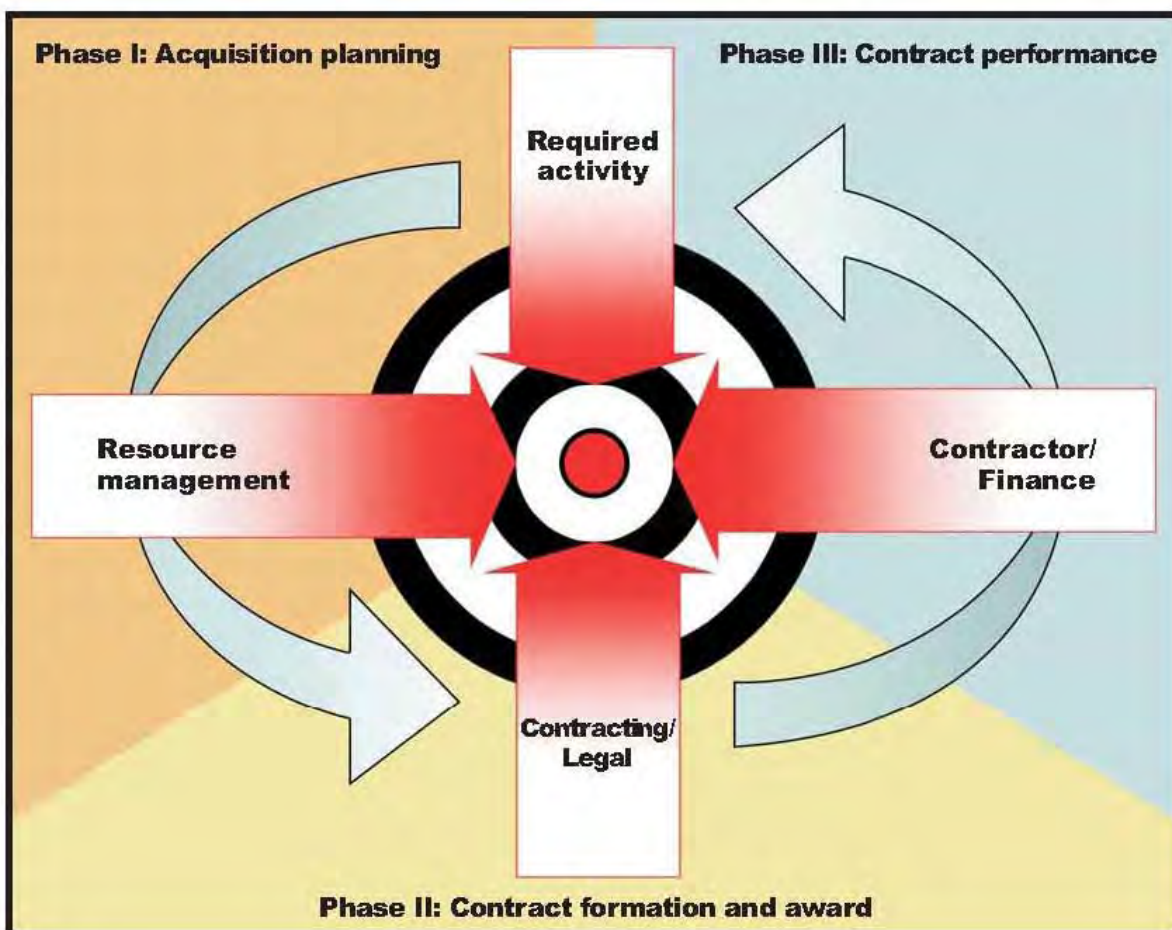
Chapter 3. Key Points

1. When performing COR functions an individual must adhere to the highest ethical standards.
2. Contact your Ethics attorney when you have any questions or concerns regarding any dealings with contractors.
3. There are post-employment restrictions that a COR needs to understand when performing as a COR.
4. Key ethics and integrity areas include:
 - a. Procurement Integrity Act;
 - b. Personal Conflicts of Interest; and,
 - c. Gratuities, Gifts, Anti-Kickback Act.

Chapter 4: The Acquisition Team and Process

The acquisition team consists of all participants in the acquisition process: requiring activity, contractor, finance, Contracting Officer, legal counsel, COR, resource manager, quality assurance representative, and others, as applicable. No one person has all the necessary skills for successful contract management. It requires a team with each member having specialized expertise and responsibilities. This chapter identifies and defines the roles of the acquisition team members and the importance of team cohesion and cooperation to ensure the successful delivery of required supplies and services. Successful acquisition teams typically assign specific duties, develop performance measures and milestones, and hold team members individually and collectively accountable. Everyone ensures the team has the target in sight — it is a team effort. Figure 4-1 illustrates the acquisition team functions involved in the successful completion of the acquisition process.

Figure 4-1. Acquisition Team Functions



The Acquisition Team

Contracting Officer

The Contracting Officer is the only individual authorized to enter into, administer, change, and terminate contracts. Contracting Officers are responsible for ensuring that all contract actions comply with appropriate laws, executive orders, regulations and other applicable procedures, and approvals. Appointed/designated through a warrant with dollar limitations, Contracting Officers may bind the Government only to the extent of the authority delegated to them. The Contracting Officer is the only person authorized to designate CORs.

Depending on the nature of the effort and agency procedures, a contract may require different types of Contracting Officers:

- Procuring Contracting Officer (PCO), who handles all planning and contract actions up to and including award of a contract;
- Administrative Contracting Officer (ACO), who assumes responsibility for administering the day-to-day contractual activities after award has been made; and,
- Termination Contracting Officer (TCO), who assumes responsibility for negotiating any termination settlements with the contractor.

Sometimes all three responsibilities reside in one person.

A contract specialist may also be assigned to assist with contract issuance and administration; however, he or she does not hold the same authority as a Contracting Officer.

Requiring Activity

The requiring activity is the entity that has a requirement for supplies or services and requests the initiation of the acquisition. The requiring activity has personnel who are responsible for developing command resource requirements, identifying sources of funding, determining costs, acquiring funds, distributing and controlling funds, and tracking costs and obligations. CORs routinely interface between the requiring activity (which is most likely the COR's organization), the contractor, and the Contracting Officer.

Legal Counsel

The legal counsel provides legal advice to the acquisition team and reviews acquisition documents for legal sufficiency.

COR

The COR is nominated by the requiring activity and is designated, in writing, by the Contracting Officer. The COR appointment shall be acknowledged by both the COR and COR management. The Contracting Officer shall provide the contractor notification of COR assignment. The COR, who will have technical expertise related to the requirement, shall monitor the technical or performance aspects of the contract and perform other duties specified by the appointment/designation letter. Ideally, the COR participates in pre-award activities (such as defining the requirement) so he or she is familiar with all aspects of the contract. The COR acts as the eyes and ears of the Contracting Officer. Appendix C provides additional information on COR qualifications and training.

Quality Assurance Representative

If a Quality Assurance Representative (QAR) from DCMA is assigned, the COR may work closely with the QAR. The QAR ensures the contractor is in compliance with contractual requirements, evaluates and documents contractor performance, follows up with the contractor on documented deficiencies, and provides input for the Performance Evaluation Board through the ACO.

Contractor

Once the contract is awarded, the contractor becomes a member of the Acquisition Team. FAR 46.105, "Contractor Responsibilities", directs that the contractor be responsible, under the contract, for the following:

- Controlling the quality of supplies or services;
- Tendering to the Government for acceptance only those supplies or services that conform to contract requirements;
- Maintaining evidence that the supplies or services conform to required quality requirements, are within the expected cost, and are delivered on time; and,
- Furnishing such information to the Government.

Property Administrator

In accordance with FAR 45.201, Government Furnished Property (GFP) must be identified and appropriately listed in the contract. The Contracting Officer may designate management of GFP to the COR or a Property Administrator. The Property Administrator should be a member of the Acquisition Team.

Framework for Team Success

A successful contract often depends on a successful acquisition team. The key framework for a successful acquisition team is as follows:

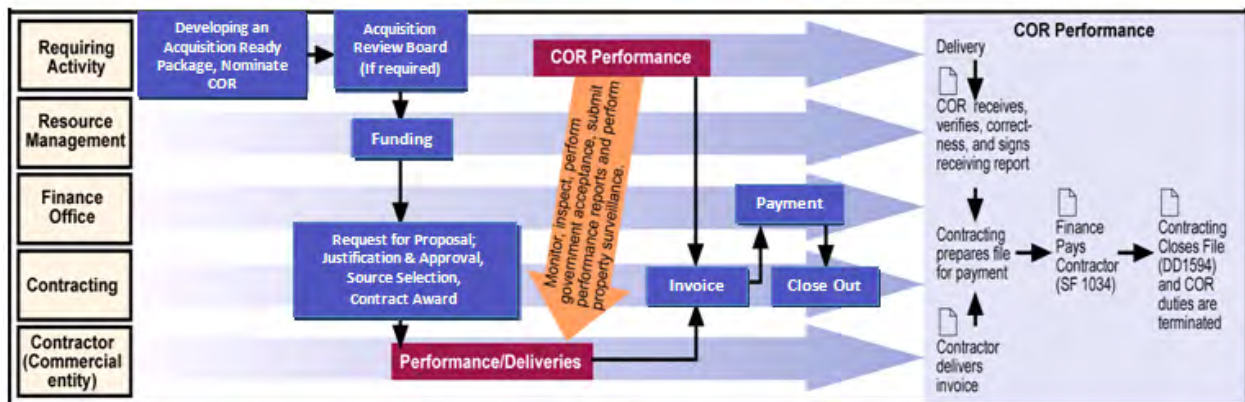
- Partnership
- Informed decisions
- Sound planning
- Efficient execution.

Note: The COR is responsible for bringing any issues or performance problems to the attention of the Contracting Officer.

The Acquisition Process

Figure 4-2 depicts a generalized acquisition process as it relates to the responsibility of each member on the acquisition team.

Figure 4-2. Acquisition Process by Activity¹⁸



¹⁸The Acquisition Review Board (ARB) normally occurs at or above the requiring activity.

The acquisition process begins with acquisition planning (requirements definition and funding); proceeds to solicitation, source selection, and award; and then proceeds to contract administration, which results in performance/deliveries. Upon COR acceptance of the supply or service (if the duty has been authorized by the Contracting Officer in the COR's appointment/designation letter), the acquisition process concludes with invoicing, payment, and closeout.

The COR's primary roles occur during the contract administration segment of the acquisition process. It is here that the COR monitors the contractor's performance, ensures quality, documents performance, supports the Contracting Officer with any options or modifications, and assists the Contracting Officer with contract closeout.

Chapter 4. Key Points

1. The acquisition team consists of all participants in the acquisition process:
 - a. Contracting Officer;
 - b. Requiring activity;
 - c. Legal counsel;
 - d. COR;
 - e. Quality assurance representative;
 - f. Property administrator;
 - g. Others, as applicable; and
 - h. Contractor.
2. The Acquisition Process includes the full spectrum of a procurement to include pre-award (e.g., developing the requirement), and post-award (e.g., dispositioning equipment, final payment, close-out) activities.

Chapter 5:

COR Responsibilities

General information about COR responsibilities is provided in FAR 1.602 and DFARS 201.602, “Contracting Authority and Responsibilities,” and in a companion resource, DFARS PGI 201.602-2, “Responsibilities.” The Contracting Officer specifies the COR’s responsibilities in the letter of COR appointment/designation. All duties delegated to the COR by the Contracting Officer must be in the appointment/designation letter. If the duty is not in the letter, then the COR is NOT authorized to perform that duty. The COR’s actions or inactions can subject the Government to disputes or claims and, in some cases, can result in the COR being personally liable for his or her actions. Therefore, the COR must carefully observe the scope and limitations of the delegated authorities and should contact the Contracting Officer about any doubts as to the correct course of action to be taken.

Post-Award Duties

A COR’s specific duties and responsibilities are detailed in the letter of COR appointment/designation. The COR’s responsibilities begin with understanding the contract and establishing the COR file. Monitoring the contract includes such activities as evaluating and maintaining data, documenting performance, and review/verification of invoices. The COR responsibilities end at contract close-out or when the Contracting Officer terminates the COR delegation.

Typical COR post-award responsibilities include:

- Understanding the contract;
- Keeping files current and complete;
- Correspondence and responses;
 - Correspondence with the contractor;
 - Notifications to the Contracting Officer;
- Monitoring contract performance;
 - Training;
 - Travel;
 - GFP
 - Personnel and labor;
- Inspection and acceptance or rejection of deliverables;
- Treatment of proprietary and classified information;
- Managing problems;
- Handling unsatisfactory performance;

- Tracking modifications;
- Conclude appointment/designation appropriately;
- Technical expertise;
- Understanding COR limitations;
- Protecting sensitive or Government information; and
- Related duties.

Understanding the Contract

The COR must:

- Understand the requirements of the contract — know the Government’s responsibility as well as the contractor’s. Questions about content or interpretation must be directed to the Contracting Officer.
- Attend, with the consent of the Contracting Officer, the post-award conference to ensure that all parties have a clear understanding of the scope of the contract, the technical requirements, and the rights and obligations of the parties.
- Develop quality assurance surveillance records, including surveillance checklists and schedules, and related files.
- Have ready access to all technical publications and regulations referenced in the contract.

Keeping Files Current and Complete

The COR shall maintain good records not only for the next COR, but also to document contractor performance under the contract. To maintain good files, the COR must:

- Maintain a separate and current file for each contract/order.
- If designated, endorse “visit request” and “need-to-know” documents prior to Contracting Officer approval. This also includes verification of classification status (e.g., “Secret”).
- If designated, confirm or initiate all significant technical instructions to the contractor in writing, and provide a copy to the Contracting Officer.
- Coordinate with the Contracting Officer and the legal office on the content of any contractually significant correspondence addressed to the contractor to prevent possible misunderstanding or the creation of a condition that may be the basis of a later claim against the Government.
- Furnish the Contracting Officer copies of COR Government/contractor conference reports, trip reports, telephone conversation records, memoranda for the record, and correspondence.

- Sign all reports, trip reports, memoranda for the record, appropriate correspondence, and other related documents using your name and title, followed by “Contracting Officer’s Representative.”

Correspondence and Responses

The COR must sign all correspondence, reports, findings, recommendations, and other documents using name and title, followed by “Contracting Officer’s Representative.” The COR should communicate with the contractor, Contracting Officer, disbursing officer, and others directly concerned with contract performance. All correspondence must reference the contract number.

Correspondence with the Contractor

The COR must forward to the Contracting Officer a copy of any correspondence to the contractor along with an explanation if not apparent from the text. The COR must also forward to the Contracting Officer the original of the correspondence received from the contractor. In addition, the COR should coordinate with the Contracting Officer on the content of any contractually significant correspondence to the contractor in order to prevent possible misunderstandings or the creation of a condition that may be the basis of a later claim. The Contracting Officer will advise the COR of the appropriate mail system to be used.

Notifications to the Contracting Officer

The COR must promptly inform the Contracting Officer of the following:

- The exact date the contractor began performance.
- Incidents of unsatisfactory performance by the contractor. The COR should specify the applicable paragraph of the contract that has been violated by the contractor and the circumstances surrounding the violation, including names, dates and places, and estimated damages that have been incurred by the Government.
- Delays in the contractor’s progress due to the fault of the Government. The COR should include recommendations regarding any extension of the contract completion date.
- Any discrepancy between actual conditions and those represented in the contract provisions, specifications, or drawings.
-

The COR must advise the Contracting Officer of the contractor’s failure to complete performance or delivery in accordance with the contract schedule. Reporting of contractor failures should not be held for the monthly report. Only the Contracting

Officer may issue Suspension of or Stop Work orders (FAR 52.242-14 and 52.242-15, respectively).

Monitoring Contract Performance

The COR must:

- Ensure that technical guidance given to the contractor addresses or clarifies only the Government's "intent".
- Document deficiencies in performance.
- Periodically, inspect and carefully monitor and keep the Contracting Officer informed of contractor performance of the technical requirements of the contract.
- Ensure that contract performance is timely and within the scope of the work.
- Inform the Contracting Officer if the contractor is behind schedule, document the reasons, and coordinate with the Contracting Officer on actions necessary to restore the contract schedule.
- Ensure that, in no event, the contractor furnishes materials or services in addition to, less than, or different from those required by the contract.
- Ensure that inefficient or wasteful methods are not being used through surveillance of technical performance.
- Provide the Contracting Officer reports on contractor performance as specified in the letter of appointment/designation or more frequently if appropriate.
- If designated, review the contractor's Synchronized Pre-deployment Operational Tracker (SPOT) data to ensure the contractor correctly enters SPOT data.
- As required by the contract and appointment, use both quantitative and qualitative methods to evaluate monthly cost and performance data, including trends and projections.
- Track contract costs, depending on type of contract.
- Report suspected procurement fraud, bribery, conflicts of interest or other improper conduct on the part of the contractor, contractor employees, or Government personnel to the appropriate authorities.

Factors to consider while monitoring contractor performance:

- *Training:* Any training for contractor personnel must be within the scope of the contract. Contractor training not required by the contract shall not be paid for by the Government. The Contracting Officer may designate to the COR the approval of contractor training requests. If so, the COR shall ensure that Government-financed training for contractor personnel is within the scope of the contract.
- *Travel:* Travel for contractor personnel must be within the scope of the contract. The Contracting Officer may designate to the COR the approval of contractor

travel requests. If so, the COR shall evaluate travel requests to determine if within scope and the reasonableness of estimated costs.

- *Government Property*: Ensure the contractor properly accounts for and dispositions Government property if authorized under the contract.
- *Personnel and Labor*: CORs must not direct contractor personnel in performance of a contract. If designated, the COR shall review contractor invoices to ensure that labor hours and materials charged to the contract are accurate. The hours worked should equal the hours charged and invoiced to the contract. This may be done by reviewing time cards or in/out signing cards, and, for materials, by obtaining copies of invoices. Typical COR tasks include:
 - Verifying work completed and materials purchased are required under the contract.
 - Ensure the contractor is paid for acceptable performance and not paid for unacceptable performance (supplies or services).
 - Reporting performance deficiencies to the contractor's manager and Contracting Officer.
 - Reporting labor disputes or problems that could impair contractor performance to the Contracting Officer.
 - Validating the need for contractor overtime when requested by the contractor and inform the Contracting Officer.
 - Report actual overtime if required under the contract.
 - Ensure satisfactory subcontractor performance by observing contractor's surveillance.
 - Report inadequate or no contractor surveillance to the Contracting Officer.
 - Validate that contractor personnel have the licenses, certifications, security clearances, theater business clearance, and letter of authorization (if applicable) required by contract (e.g., electrical, plumbing, food service, security licenses).

Inspect and Accept/Reject Deliverables

If designated, the COR must:

- Promptly inspect the supplies and services delivered to determine acceptability. In other words, ensure that the Government receives the supplies or services for which it is paying. Reject those that do not meet the contract requirements and standards.
- Exercise caution in executing receipt and acceptance documents.
- Furnish the Contracting Officer a notice of satisfactory or unsatisfactory delivery.

- Complete the required performance reports thoroughly and accurately so that the Contracting Officer can properly evaluate the contractor.
- Manage the review process for contractor documents and deliverables. Verify the timeliness and accuracy of contractor reports and data to be delivered to the Government. Ensure prompt review of draft reports and provide approval/disapproval/comments to the contractor through the Contracting Officer.
- Validate that the contractor's reimbursable purchases are actually received before being billed to the Government.
- Upon acceptance of the contractor's final technical report (if required), prepare a memorandum for the PCO's signature, addressed to the contractor, "Subject: Notice of Acceptance of Final Technical Report." Upon receipt of the PCO's signature, forward the original memorandum to the contractor; place a copy in the contract work file and forward one copy to the ACO and one to the PCO for inclusion in the official contract file and upload to the CORT Tool.
- After verifying receipt of a deliverable, promptly sign all DD Form 250s or, if available, use Wide Area Workflow (discussed later in the handbook). Keep the originals in the contract work file and distribute copies to the Contracting Officer, the payment office, and any other entities as required.

Proprietary and Classified Information

The COR must:

- Protect contractor proprietary information.
- Ensure that the contractor maintains a current facility security clearance if required under the contract.
- Ensure that contractor personnel actively working under the contract and need access to classified information have the proper security clearances. Classified information must not be released to anyone who does not have a security clearance and a need to know.
- Report any restriction on deliverable technical data to the Contracting Officer and consider the response prior to accepting or rejecting the technical data.
- Recommend to the Contracting Officer the disposition of any contractor requests to publicly release information about work being performed under the contract.

Managing Problems

The COR must:

- Attempt to resolve technical and administrative issues that arise. Refer disputes between the COR and contractor to the Contracting Officer.
- Be firm but fair in all actions.

- Anticipate and resolve difficulties, and ensure satisfactory completion of the contract, foster full and complete coordination, cooperation, and communication among the contractor, Contracting Officer, and all Government personnel assigned to monitor contract performance.
- Validate the accuracy of all contractor responses.

Handling Unsatisfactory Performance

The COR must:

- Inform the Contracting Officer immediately if contract performance is unsatisfactory. Differences of opinion between the COR and the contractor that cannot be resolved by the COR should be referred to the Contracting Officer.
- Work with the Contracting Officer to identify corrective actions, if necessary.
- Make sure the contractor understands that the Contracting Officer's decisions are final. Take care not to take any action that may be construed as an actual or constructive change.
- Enforce correction of deficient work. However, do not personally supervise, or direct the work of, any contractor employee.

Tracking Modifications

The COR must:

- Ensure that changes in the work, services, and resulting effects on delivery schedule are formalized in a written supplemental agreement or change order issued by the Contracting Officer. The contractor must not proceed with the changes until formally approved and documented.
- Monitor financial management controls. Coordinate with Government resource managers on all actions relating to funding and changes in the contract.

Conclude Appointment/Designation Appropriately

The COR must do the following:

- Furnish the Contracting Officer with a formal request for termination of the COR appointment/designation signed by the COR supervisor, when it is required.
- Ensure that your replacement is thoroughly briefed, both verbally and in writing, on all important issues.

Note: Report suspected violations of ethics policies, incidents of fraud or bribery, conflicts of interest, and any other improper conduct to the Contracting Officer, legal counsel, chain of command, or DoD Inspector General.

Table 5-1 highlights the relationship between COR and Contracting Officer responsibilities.

Table 5-1. General COR/Requiring Activity and Contracting Office Responsibilities

Action	COR/Functional Office	Contracting Office
Conduct market research	Responsible	Assist
Prepare SOW/PWS	Responsible	Assist
Prepare QASP	Responsible	Assist
Prepare IGCE	Responsible	Assist
Prepare GFP list	Responsible	Assist
Develop sources	Assist	Responsible
Prepare solicitation	Assist	Responsible
Conduct pre-bid conference	Assist	Responsible
Evaluate proposals	Assist	Responsible
Award contract	N/A	Responsible
Conduct contract surveillance	Responsible	Assist
Request modifications	Responsible	Assist
Make modifications	Assist	Responsible
Conduct progress meetings	Assist	Responsible
Conduct inspection/acceptance	Responsible	Assist
Evaluate contractor's performance	Responsible	Assist
CPARS	Responsible/Assist	Responsible

Technical Expertise

To monitor a contractor providing services, the COR should have technical expertise in the services being performed and outcomes required. For some services requirements, a single COR may not be adequately versed in all technical issues that may arise.

Therefore, the COR may need to consult additional personnel, such as the Defense Contract Management Agency (DCMA) as the technical subject matter expert on FAR Part 42 delegation. If the COR consults additional personnel, he or she should inform the Contracting Officer. The COR may involve additional personnel in communications with the contractor, but the COR remains the official liaison for any technical communications with the contractor, including technical interpretations. (Chapter 9 provides additional details on monitoring service contracts.)

Limitations

The COR must understand the limits of his or her authority. Although the Contracting Officer delegates certain responsibilities to the COR, authority to legally bind the Government remains with the Contracting Officer. Remember, CORs do not have the authority to:

- Make any agreement with the contractor that obligates public funds.
- Make commitments that affect the price, quality, quantity, delivery, or any other term or condition of the contract.
- Encourage or permit the contractor to perform any work beyond or outside the scope of the contract.
- Interfere with contractor's management of its employees, including "supervising" or directing the work of the employees.
- Order or accept supplies or services not expressly required by the contract.
- Allow GFP accountable under one contract to be used under another contract.
- Discuss any information that may give one contractor an advantage in future procurements.
- Direct the contractor to begin work prior to contract award date.
- Issue oral or written instructions to the contractor to start or stop work.

The COR must be mindful of the limitations to his or her authority and avoid the following:

- Getting into situations that may place the COR in a conflict of interest (financial or otherwise) between private and public interests.
- Accepting appointment/designation as a COR if a potential conflict of interest exists. Report the matter immediately to your supervisor and the Contracting Officer for determination.
- Accepting a COR appointment/designation if he or she does not have the time to perform a thorough and complete job of the duties in the letter of appointment/designation and this handbook. On some types of contracts, performance as COR may be a full-time effort. The COR is responsible for his or her own work/time management.
- Using an official position title to coerce or in any manner influence anyone for personal gain.
- Taking any action that will obligate, or give the appearance of obligating, the Government financially or otherwise. Only the Contracting Officer has this authority.
- Making or implying promises related to future business.

- Soliciting unsolicited proposals.¹⁹
- Contacting contractors and giving them information about upcoming procurements.
- Contacting prospective contractors when procurement is being solicited or offers are being evaluated.
- Assisting prospective contractors with their preparation of offers or quotations.
- Attesting to having read and understood DoDD 5500.7-R, Joint Ethics Regulation, without understanding the contents.
- Accepting any gratuities. To be safe, do not accept any gifts, loans, or favors from a contractor or from its employees.
- Report any offers immediately to the Contracting Officer and legal counsel. This applies both to the COR and to his or her family members.
- Splitting quantities to circumvent procedures/regulations and approvals required for higher dollar-value procurements.
- Telling the contractor how to run its operation. This includes telling the contractor to fire an individual. Terminations of employment are actions for the contractor.
- Letting personalities enter into discussions with the contractor.
- Permitting the contractor to proceed on work outside the scope of the contract. It may be in the contractor's interests to exceed the contractual limitation with the intent of claiming additional consideration for additional effort.
- Committing the equipment, supplies, or personnel of the contractor for use by others. The contractor and the Contracting Officer control all such matters.
- Permitting the contract to take on the appearance of a personal services contract, for example, when contractor personnel appear, in effect, to be Government employees.
- Engaging in any employee-employer relationship where contractor personnel are subject to relatively continuous supervision and control by a Government employee. The contract determines what, how and when the contractor does particular tasks, and the contractor is responsible for managing his work force.
- Re-delegating COR authority to any other person, such as a technical point of contact.

Additionally, while the COR limitations could simply be stated in a letter, in the real world ensuring that the COR does not exceed the authority granted is much more complex. In the course of performing COR responsibilities, situations might result in an implied change to the contract which, in turn, may impact the delivery, schedule, funds, or other areas outside the authority of the COR. CORs might exceed the scope of their authority by inaction or improper action. For example, a COR on an equipment installation contract fails to ensure the Government installs electrical outlets and a raised

¹⁹ Refer to FAR Subpart 15.6, "Unsolicited Proposals."

floor in preparation for the equipment installation. When the contractor arrives to install the equipment, they are unable to do so as the site had not been properly prepared. By inaction, the COR allowed a potential claim to be made for Government-caused delay.

Protecting Sensitive or Government Information

Government employees may not divulge information received in the course of their employment or official duties [See 18 U.S.C. 1905, implemented at 3.104-2(b) (4), 3.104-3, 3.104-4, and others]. The penalty is a fine, a prison sentence of up to 1 year, or both. The COR should take care not to discuss acquisition or sensitive information in areas that are not secure (e.g., hallways) or in meetings that are not Government only. Additionally, the COR should take care to discuss acquisition or sensitive information only with Government personnel with a specific need-to-know.

Related Duties

DoD policy²⁰ encourages the COR's participation throughout the acquisition process. Here are some functions that the COR may be expected to complete but as an agent of his activity, not as the representative of the Contracting Officer.

Pre-Award Duties

One of the key pre-award duties in which the COR may be involved is documenting requirements. The requirements package is critical to the success of an acquisition, because it commits the funds and establishes the basis for a contractual action. The package documents both the requirement and its approvals. In other words, it is through the requirements package that the contracting office is told what the user wants, when the user wants it, and whom to contact for more information.

A key element of the requirements package is the purchase request document. This document:

- is an 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; and,
- provides funding and financial officer certification as to the availability of funds.

²⁰ See DSD Memorandum, "Monitoring Contract Performance in Contracts for Services," 22 August 2008, <http://www.acq.osd.mil/dpap/policy/policyvault/2008-0468-DPAP.pdf>.

The requirements package also may include:

- Statement of Objectives (SOO), Statement of Work (SOW), or Performance Work Statement (PWS);
- Quality Assurance Surveillance Plan (QASP);
- Contract Data Requirements List (CDRL), DD Form 1423;
- DoD Contract Security Classification Specification, DD Form 254;
- List of Government-furnished property (GFP);
- Sole-source justification, including justification review document and justification and approval (J&A) coordination;
- IGCE;
- Patents list;
- Deliverable list;
- Award fee plan/incentive fee plan;
- Synopsis text;
- Source selection plan/evaluation factors;
- Source list;
- Funding form, e.g., Department of the Army (DA) Form 3953, Air Force Form 9, or Navy Comptroller Form 2276;
- Legal review memorandum; and,
- Market research results.

The time it takes to assemble the contents of the requirements package varies based on the dollar value of the requirement and the command. The following considerations apply when assembling the package:

- Do not combine accountable items with non-accountable items²¹.
- Do not split requirements in order to fall under dollar thresholds.

The COR also may be involved in pre-award activities such as the following:

- Conducting market research.
- Assisting with preparing the procurement package, including the SOO/SOW/PWS. The package should use clear, accurate, performance-oriented language and express only the Government's actual minimum needs in the work statement.
- Preparing IGCEs, rather than obtaining them from a prospective contractor. (Appendix B provides more information on preparing IGCEs.)
- Advising the Contracting Officer if the item required is foreign made.
- Preparing and submitting purchase requests.

²¹ Reference DoDI 5000.64.

- Drafting a QASP and checklist.
- Verifying the availability of funding and submitting the packet to request funds.
- Reading DoDD 5500.7-R, “Joint Ethics Regulation for Department of Defense Personnel,” and its implementations.
- Becoming familiar with the Procurement Integrity Act (FAR 3.104).
- Evaluating proposals from vendors/contractors.

Chapter 5. Key Points

1. CORs need to understand the contract they are overseeing.
2. CORs must establish current and complete files associated with overseeing contractor performance. These files will eventually become part of the Contracting Officer’s contract file.
3. Monitoring contractor performance is key to successful contract execution.
4. CORs may be called upon to review contractor training requests, travel, contractor time cards, and requests for using Government-furnished property.
5. CORs are often the primary person to accept or reject supplies/services.
6. CORs need to be careful in performing their duties in order to ensure contract claims are not filed by the contractor, or that there is not the appearance of preference for one contractor that may result in harming another contractor.
7. The Contracting Officer will rely upon the COR for their technical expertise relating to contract performance over and above performing the traditional COR functions for such areas as developing performance work statements, developing independent government estimates, or involvement in source selections.

Chapter 6:

Contract Structure

Categories and Types of Contracts

As stated in FAR 16.103(a), the objective in federal contracting is to negotiate a contract type and price (or estimated cost and fee) that will result in a reasonable contractor risk and provide the contractor with the greatest incentive to perform efficiently and economically.

Categories of Contracts

CORs deal with contracts for supplies, services, and construction. In addition to the general duties discussed in Chapter 5, each type of contract adds specifically related duties. The COR's duties vary with the category of contract, as explained below:

- **Supplies.** DoD contracts for supplies acquire an identifiable end item. The item may be an individual component (e.g., paint or lumber) or an entire system (e.g., a computer).
- **Services.** DoD contracts for services directly engage a contractor's time and effort to perform an identifiable task (e.g., transportation or latrine cleaning).
- **Construction.** DoD construction contracts acquire the construction, alteration, improvement, or repair of real property (e.g., buildings, airfields, and roads). COR duties tend to be the most complex for construction contracts.

Chapters 9 and 10 address COR duties specific to service and construction contracts, respectively.

Types of Contracts

The Government uses different types of contracts to acquire the supplies and services needed to support mission objectives. The contract type used depends on the requirement to be met. Contract types vary according to:

- The degree and timing of the responsibility assumed by the contractor for the costs of performance; and,
- The amount and nature of the profit incentive offered to the contractor for achieving or exceeding specified standards or goals.

The Contracting Officer considers these factors along with the SOO/SOW/PWS and specifications when deciding which contract type is best suited to a specific procurement.

The Contracting Officer also considers the amount of risk involved in performing the contract work, as well as, how much risk the contractor will assume (and the impact of risk on price) and whether it is in the Government’s best interest to assume part of the risk.

Table 6-1 highlights the two main types of contracts: fixed-price and cost-reimbursement.

Table 6-1. Contract Types

Fixed Price	Cost Reimbursement
Firm fixed price	Cost
Firm fixed price with economic price adjustments	Cost plus incentive fee
Fixed price incentive	Cost plus award fee
Firm fixed price level of effort	Cost plus fixed fee
	Time and material
	Labor hour

Fixed-Price Contracts

When the Government has a specific, well-defined requirement (such as a requirement for certain office supplies), it uses a fixed-price contract. The price remains fixed throughout the contract life unless the Government makes a change. The Government’s only obligation is to pay the price agreed to at the time of award, regardless of whether the costs to the contractor increase or decrease during performance. When a product has a history of large price increases (such as petroleum), the Government may use a fixed-price contract with an economic price adjustment (EPA). The fixed price with EPA is still a fixed-price contract because the limits and conditions are stated in the contract.

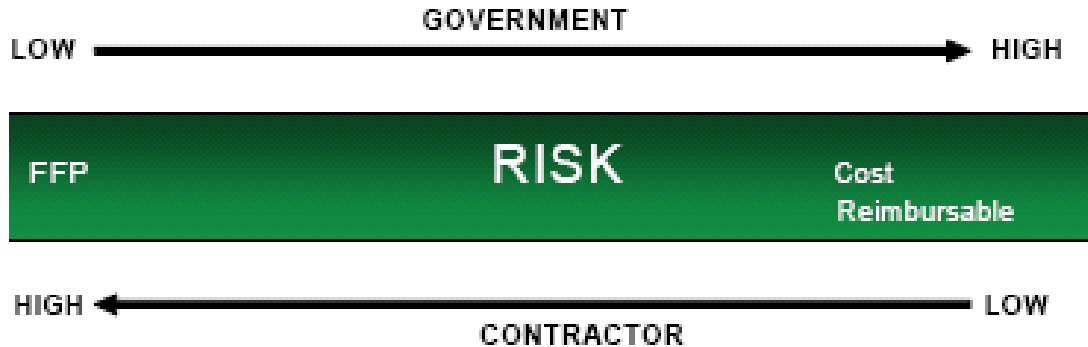
Cost-Reimbursement Contracts

When the Government cannot provide sufficient, detailed information about a requirement, it must assume some of the cost risk and use a cost-reimbursement contract. Instead of paying a predefined price, the Government reimburses the contractor for all allowable, allocable, and reasonable costs, defined as follows:

- Allowable costs — costs that are not prohibited by statute or regulation.
- Allocable costs — costs that add value and are directly related to a particular contract.
- Reasonable costs — costs that a prudent business person would pay.

Figure 6-1 compares the risks of FFP versus cost-reimbursement contracts.

Figure 6-1. Risks of Firm-Fixed-Price versus Cost-Reimbursable Contracts



Contracts for Commercial Items

There is a Federal preference for acquisition of commercial items. FAR Part 12 establishes acquisition procedures closely resembling those of the commercial marketplace to facilitate the acquisition of commercial items. Commercial items are any item or service customarily used by the general public or non-governmental entities for purposes other than governmental purposes, and:

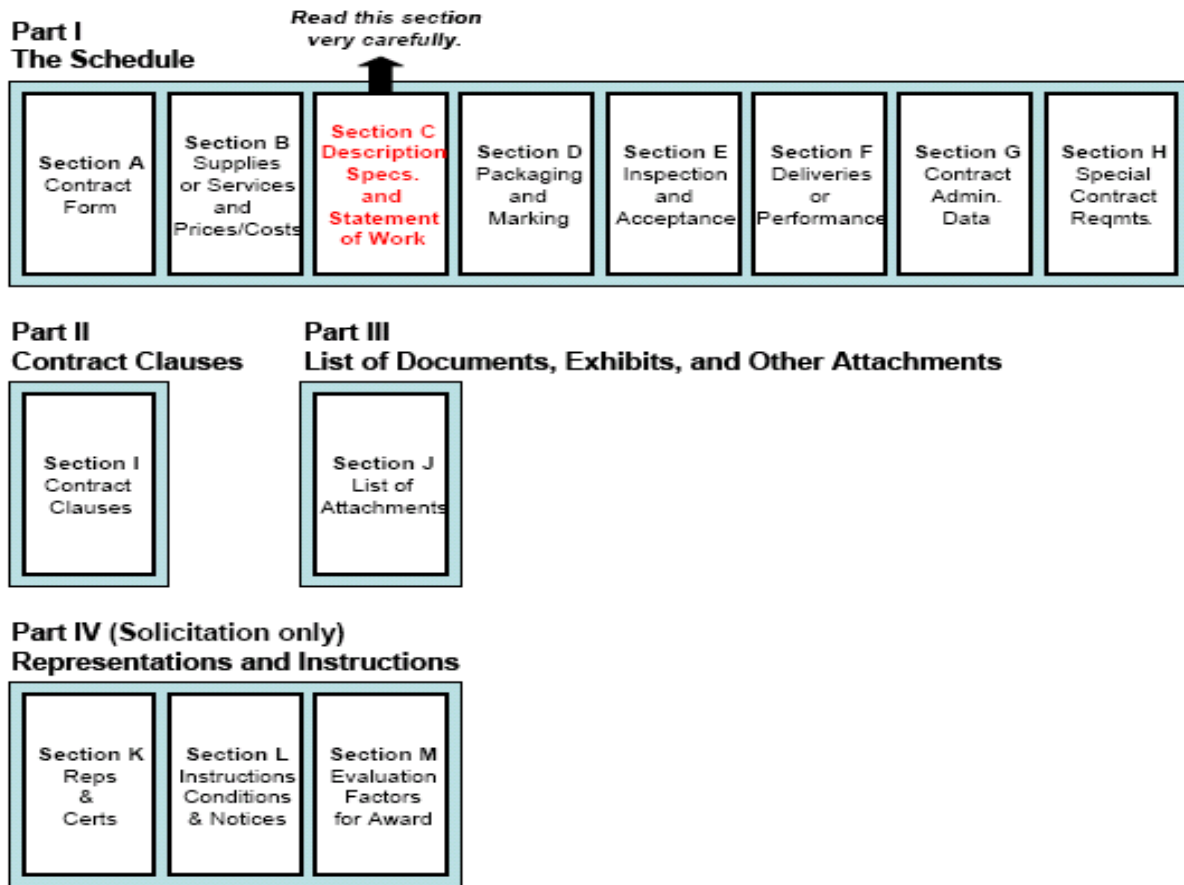
- Has been sold, leased or licensed to the general public; or
- Has been offered for sale, lease or license to the general public.

Contract Structure

Government solicitations and contracts, other than solicitations/contracts for commercial items, are usually organized in accordance with the Uniform Contract Format (UCF) which specifies the distinct sections of a contract and the sequence in which they must be arranged²².

²²See DFARS 204.70, "Uniform Procurement Instrument Identification Numbers" and 204.71, "Uniform Contract Line Item Numbering System."

Figure 6-2. Contract Structure



UCF Part I—The Schedule

Section A, Solicitation/Contract Form, contains basic information such as the issuing office, address, and contract number. Normally, a Standard Form (SF) 33 is used as the solicitation, offer, and award page for sealed bids. An Optional Form (OF) 308 or SF 33 may be used for Requests for Proposals. SF 33 can also be used as the face page of the contract.

Section B, Supplies or Services and Prices/Costs, contains a brief description of the supplies or services, quantity required, and their prices. CORs should read this section very carefully.

Section C, Description/Specifications/Statement of Work, contains a detailed description of the required supplies or services. In contracts for services, Section C will contain the SOO/SOW/PWS.

Note: Section C (SOW) defines the technical/performance requirements of the contract. CORs should read this section very carefully.

Section D, Packaging and Marking, provides packaging, packing, preservation, and marking requirements.

Section E, Inspection and Acceptance, contains inspection, acceptance, quality assurance, and reliability requirements.

Note: If inspection/receiving is part of the COR designated functions, the COR must inspect deliverables in accordance with the inspection plan to determine satisfactory compliance with the contract. Remember, it is too late to reject deliverables after signing the receiving report.

Section F, Deliveries or Performance, specifies the time, place, and method of delivery or performance.

Section G, Contract Administration Data, contains any required accounting and appropriation data and required contract administration information, or instructions other than those on the solicitation form.

Section H, Special Contract Requirements, contains a clear statement of any special contract requirements that are not included in Part I, Part II, or any other part of the contract (e.g., ordering details for task or delivery orders). This section requires very close reading by the COR.

UCF Part II—Contract Clauses

Although it is commonly viewed as standard information, Part II, **Section I**, of the contract cannot be overlooked, because it contains clauses defining the rights and responsibilities of the contracting parties. Part II also contains clauses required by procurement regulations or laws that pertain to the procurement. Some of the more prominent clauses in Part II include:

- Changes clause (FAR 52.243-1 through - 4), which enables the Government to make changes to the contract during performance, as long as those changes fall within the contract's scope in any one or more of the following: (1) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the Government in accordance with the drawings, designs, or specifications; (2) Method of shipment or packing; or (3) Place of delivery. The contractor is entitled to an "equitable adjustment" to the contract if the change

results in increased contract costs or performance time. This clause is probably the most powerful clause in the Government’s arsenal of standard terms and conditions.

- Termination for Convenience clause (FAR 52.249-1 through -7), which permits the Government to terminate the contract without cause (in part or total) at any time when doing so is in “the Government’s best interest.” When this clause is exercised, the contractor is entitled to recover certain costs associated with performance to date and the timely and orderly ending of the terminated portion of the contract.
- Default clause (FAR 52.249-8 and -9), which permits the Government to terminate a contract if the contractor breaches the contract by failing to (1) deliver the supplies or perform the services within the time specified in the contract; (2) make progress, thereby endangering performance of the contract; or (3) perform any other material provision in the contract. If the Government intends to exercise its right to terminate the contract under the second or third circumstances, the Government must first notify the contractor in writing and allow the contractor to “cure” its deficient performance if there are at least 10 days left in the contract delivery schedule. If the performance deficiencies are not corrected, the Contracting Officer may terminate the contract for default. Under fixed-price contracts, the default clause entitles the Government to re-procure the supplies or services required under the terminated contract and charge the excess costs to the terminated contractor.
- Contract Terms and Conditions — Commercial Items clause (FAR 52.212-4), which incorporates all the major contract administration topics: changes, disputes, invoicing, payment, and termination.

UCF Part III—List of Documents, Exhibits, and Other Attachments

In Part III, which consists of **Section J**, List of Documents, Exhibits, and Other Attachments, the Contracting Officer lists the titles of each exhibit or attachment in Part III. The following are the most common attachments:

- SOO/SOW/PWS, if not under Section C;
- GFP inventory;
- Contract Data Requirements List (CDRL);
- Security requirements; and,
- Award/incentive fee plan.

UCF Part IV—Representations and Instructions

Part IV, which appears only in the solicitation and is not transferred to the contract, comprises Sections K, L, and M:

- **Section K**, Representations, Certifications, and Other Statements of Bidders, includes solicitation provisions that require representations, certifications, or submission of other information by bidders, offerors, or quoters.
- **Section L**, Instructions, Conditions, and Notices to Bidders, Offerors, or Quoters, contains information to guide bidders, offerors, or quoters in the preparation of bids, offers, and quotations, respectively.
- **Section M**, Evaluation Factors for Award, contains the evaluation factors and significant sub-factors by which offers will be evaluated. It also specifies the relative importance that the Government places on these evaluation factors and sub-factors.

Order of Precedence

In the event of an inconsistency in the contract, FAR 52.215-8 (Order of Precedence — Uniform Contract Format (UCF)) gives precedence in the following order:

- Schedule (excluding the specifications) — Sections A through H;
- Representations and Other Instructions — Sections K through M;
- Contract Clauses — Section I;
- Other Documents, Exhibits, and Attachments — Section J; and,
- Specifications.

Contract Structure – Solicitations/Contracts for Commercial Items

Solicitations/contracts for commercial items are significantly simpler than those for non-commercial items. The solicitation/contract format consists of these sections:

- a. SF 1449 – Solicitation/Contract/Order for Commercial Items (a separate continuation sheet may be included as needed).
- b. Contract Clauses:
 - 52.212-4, Contract Terms and Conditions — Commercial Items, by reference (see SF 1449 block 27a);
 - Any addendum to 52.212-4; and,
 - 52.212-5, Contract Terms and Conditions Required to Implement Statutes and Executive Orders.
- c. Any contract documents, exhibits or attachments; and,
- d. Solicitation provisions:
 - 52.212-1, Instructions to Offerors — Commercial Items;

- Any addendum to 52.212-1;
- 52.212-2, Evaluation — Commercial Items, or other description of evaluation factor for award, if used; and,
- 52.212-3, Offeror Representations and Certifications — Commercial Items.

Structure – Task or Delivery Orders

Task or delivery orders may be placed using any indefinite-delivery type contract and must contain the following information:

- Date of order; Contract number and Order number;
- For supplies and services, contract item number and description, quantity, and unit price or estimated cost or fee;
- Delivery or performance schedule;
- Place of delivery or performance (including consignee);
- Packaging, packing, and shipping instructions;
- Accounting and appropriation data; and,
- Payment and payment office information, if not specified in the contract.

Contract Language Rules

Some terms used in contracts have specific meanings:

- “Includes” means including but not limited to.
- “May” means is permitted to or is authorized to.
- “May not” means is not permitted to or is not authorized to.
- “Shall,” used in the mandatory and imperative sense, means the contractor must perform the specified action.

Contract Numbers (For Example: N00062-90-C-0001)

Because the COR will be referencing the contract, it is important to be familiar with the structure of a contract number (also called a Procurement Instrument Identification (PII) Number). A contract number consists of 13 alphanumeric characters grouped to convey certain information:

- *Positions 1 through 6.* The first six positions constitute the DoD Activity Address Code (DoDAAC) that identifies the department/agency and office issuing the contract.²³

²³ DoDAACs can be found at <https://www.daas.dla.mil/daasing/>.

- *Positions 7 through 8.* The seventh and eighth positions are the last two digits of the fiscal year in which the procurement instrument identification (PII) number was assigned.
- *Position 9.* Position 9 is a letter indicating the type of instrument: “A”— blanket purchase agreement, “C”— contracts of all types, “D”— indefinite-delivery contract, “F”— purchase from UNICOR, and “P”— purchase order.²⁴
- *Positions 10 through 13.* Four digit serial number assigned by the contracting activity. Numbers are assigned sequentially.
- *Supplementary Numbers.* Numbers that follow the basic PII number to identify (1) Amendments to solicitations; (2) Modifications to contracts and agreements, including provisioned item orders; and (3) Calls or orders under contracts, basic ordering agreements, or blanket purchase agreements, issued by the contracting office or by a DoD activity other than the contracting office, including DoD orders against Federal supply schedules.²⁵

Chapter 6. Key Points

1. The Government uses different contract types depending on:
 - a. The degree and timing of the responsibility assumed by the contractor for the costs of performance; and,
 - b. The amount and nature of the profit incentive offered to the contractor for achieving or exceeding specified standards or goals.
2. Performance risk is higher for the Government under a firm-fixed price contract, while cost reimbursable contracts place a higher cost risk to the Government. The inverse is true for contractors on these two broad contract types.
3. The Uniform Contract Format is used for contracts awarded under FAR Parts 14 and 15. The UCF provides a structured, logical, and standardized approach in developing the contract documentation and administering the subsequent contract.
 - a. DFARS 204.7003 and 204.7004 discuss the numbering conventions for solicitations, contracts, amendments, modifications, task and delivery orders.
4. There are some contract principles relating to contract interpretation and the force-and-effect of certain words (i.e., may and shall).

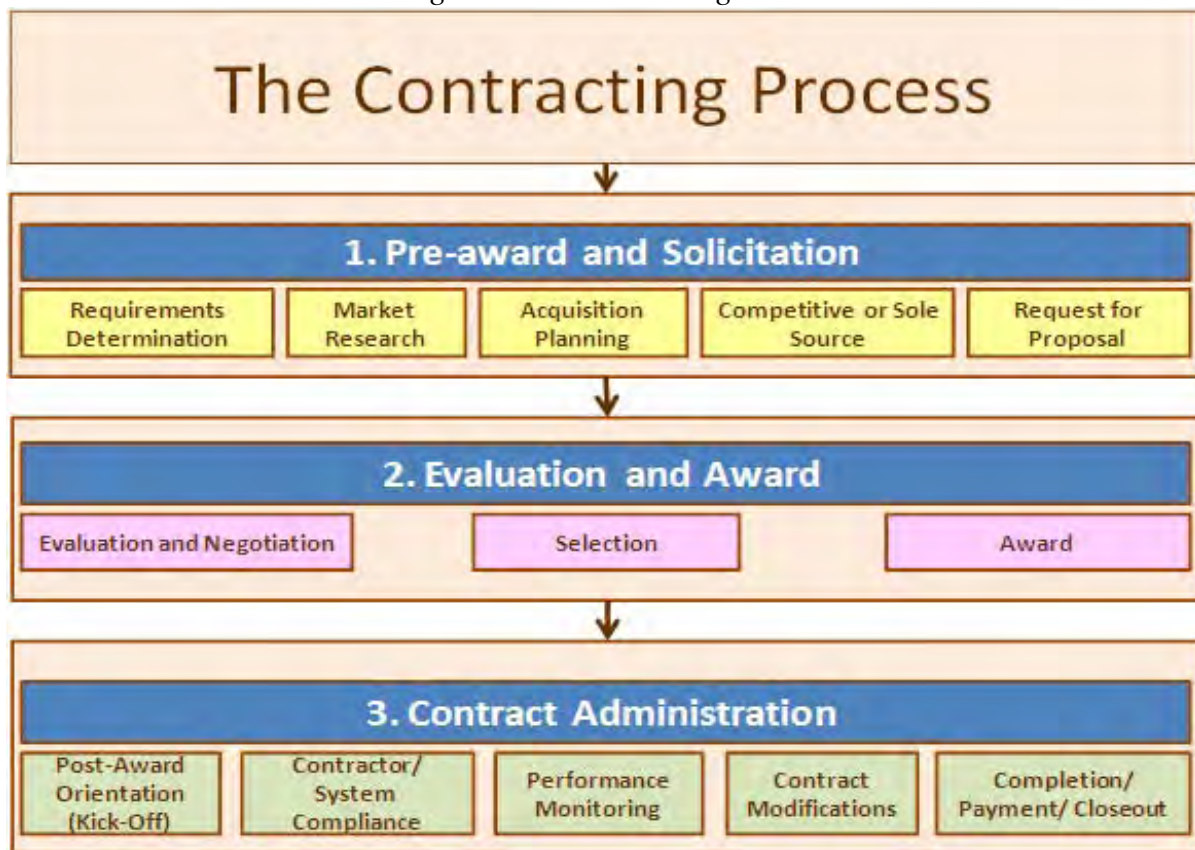
²⁴ See DFARS 204.7003, “Basic PII Number”, for additional codes, if needed.

²⁵ See DFARS 204.7003 for a more complete explanation of Supplementary Numbers.

Chapter 7: Contract Administration

Contracting is usually carried out in three stages—contract planning (Pre-Award and Solicitation), contract formation (Evaluation and Award), and contract management (Contract Administration). Figure 7-1 shows the major phases of the entire contracting process. The COR or the COR nominee may become involved in all stages of this process. For example, even before the Contracting Officer prepares the letter of COR appointment/designation, a nominee may be asked by their management to provide technical expertise to the pre-award/solicitation and the evaluation/award phases of the process. (Appendix B contains further discussion of a COR nominee’s involvement in these two phases.) The third phase, contract administration, begins the official duties of a COR and is the focus of this chapter.

Figure 7-1. Contracting Process



Contract administration comprises the activities performed by Government officials after a contract is awarded. It encompasses all dealings between the Government and the contractor, from the award of the contract until the work is completed and accepted by

the Government, payment is made, any disputes are resolved, and the contract is closed out.

The focus of contract administration is on obtaining supplies and services of the required quality, on time and within the expected cost. Although the contract's legal requirements take precedence, the skill and judgment of the Contracting Officer and COR often are required to protect the Government's interests during the contract administration process.

Post-Award Orientation (Kick-off)

Before a contractor begins working on the contract, the Contracting Officer must ensure that the contractor understands the following:

- Contract terms and conditions;
- Security requirements;
- Value engineering provisions;
- Inspection, acceptance, and invoicing procedures; and
- Authority, responsibilities, and limitations of the COR.

The best way to ensure that the contractor and the Government have a complete understanding of their roles is for the Contracting Officer to conduct a Post-Award Orientation. At this meeting, all interested parties, including the COR, discuss the contract and the SOO/SOW/PWS. The discussion helps both the contractor and the Government to (1) achieve a clear and mutual understanding of contract requirements, terms, and conditions and (2) identify and resolve potential or actual problems. However, the Post-Award Orientation is not a substitute for a contractor fully understanding the requirement, nor is it to be used to alter the final agreement arrived at in any negotiations leading to contract award.

The decision to conduct a Post-Award Orientation is up to the Contracting Officer in accordance with FAR Part 42. The Contracting Officer may want to convene a meeting of the multifunctional team to outline the individuals' roles and responsibilities as they may have changed slightly since contract award. In some circumstances, a letter or other form of written communication to the contractor may be adequate in lieu of a full Post-Award Orientation. Such a letter should identify the Government representative responsible for administering the contract and cite any unusual or significant contract requirements.

Conducting the Post-Award Orientation

The orientation should be held as soon as possible after contract award and always prior to commencement of work. Normally, the orientation should be scheduled at a date and

time acceptable to the contractor and then arranged with other attendees. Government attendees should include anyone who has a vested interest in the successful completion of the contract.

Topics for Discussion at the Post-Award Orientation Meeting

The Post-Award Orientation gives everyone the opportunity to clear the air about any questions concerning the contract. The meeting demonstrates to the contractor that the Government expects to get what it contracted for, that the contractor is responsible for delivering the supply or service, and that the Government will commit people and resources to ensure compliance with the contract. After the meeting, the Contracting Officer prepares a report summarizing, for the record, the issues discussed. A DD Form 1484, Post-award Conference Record, may be used for this record. This meeting can also be used to ensure that everyone clearly understands the role and authority of all Government participants during contract performance. For example, all personnel must understand that the Contracting Officer is the only individual authorized to make changes to the contract.

Finally, the Post-Award Orientation meeting is an ideal setting to discuss formal or informal partnering agreements, the use of contractor metrics, and the importance and use of past performance information. The contractor must understand that they are part of the multifunctional team and that they have roles and responsibilities just like any other member of the team.

Contractor/System Compliance

In preparation for the contract monitoring phase, the COR must be aware of the contract requirements and regulatory standards related to the supply or service being acquired.

Contractor Accountability through SPOT

The Synchronized Pre-deployment Operational Tracker (SPOT)²⁶ is a web-based joint database used for tracking contractor personnel who accompany the U.S. armed forces. SPOT is the current system mandated for use in tracking contractor personnel movements within the forward area and for validating individual contractor personnel, their authorization for access to specific DoD facilities, and their individual eligibility for specific DoD support services. SPOT is the authoritative source for near real-time reporting on globally deployed individuals, by name, by location, and by contract. SPOT also provides for tracking the use of and accountability for DoD equipment in the custody of contractors. Contractors are responsible for entering employee data. The database

²⁶ The SPOT database can be accessed at <https://spot.altess.army.mil>.

continues to evolve and, ultimately, will incorporate secure functionality and web services with additional authoritative data sources.

Currently, SPOT is used in Iraq and Afghanistan by DoD, Department of State, and the U.S. Agency for International Development. If SPOT reporting is required in the contract, CORs should work with the contractor to ensure timely and accurate reporting if the duty has been authorized by the Contracting Officer in the COR's appointment/designation letter.

All contractors in Iraq or Afghanistan must have a letter of authorization (LOA). SPOT generates the LOA which is digitally signed by the appropriate Government agency's Contracting Officer or COR (if authorized by the Contracting Officer). LOAs can be retrieved and printed in portable document format (PDF). LOAs are supplied to contingency contractor personnel to be carried and presented for obtaining Government-furnished services within the area of operations to which they are assigned. Official identification must be presented with the LOA. Appendix A provides a sample LOA.

Performance Monitoring

The COR must document contractor performance, review and evaluate progress reports, review invoices, and perform site visits. Chapter 8 contains a detailed discussion of this topic.

Contract Modifications

Many things can affect a contract once it has been awarded. The requiring activity may need to reduce or increase the supplies or services, performance levels could change, or any number of unanticipated events may occur. A contract modification is a written change in the terms of the contract. Only Contracting Officers acting within the scope of their authority can execute contract modifications on behalf of the Government.

Reasons for Contract Modifications

A contract may need to be modified to, for example, do the following:

- Add or remove funding;
- Correct a mistake;
- Exercise an option;
- Change a delivery or period of performance (POP) date;
- Change any of the terms and conditions in any part of the contract (including attachments);
- Add or delete in scope supplies or services;

- Change what is needed or where it is needed (incorporate new requirements); or
- Suspend the work or partially terminate it.

Types of Contract Modifications

There are two types of contract modifications:

- *Unilateral modification.* A unilateral contract modification is official upon signature by the Contracting Officer; it does not require the contractor's signature/assent. A unilateral modification may be used to do the following:
 - Issue change orders;
 - Execute incremental funding actions;
 - Implement terms or conditions previously authorized in the contract (exercise of options, stop work orders, termination); and
 - Make administrative changes. Administrative changes are simple changes to the contract that have no impact on the terms and conditions or price of the work, for example, changing the name of the Contracting Officer or COR, updating a payment office, or correcting a fund citation.
- *Bilateral modification.* A bilateral contract modification is signed first by the contractor and then by the Contracting Officer. It is used to make negotiated equitable adjustments resulting from the issuance of a change order and reflect other agreements of the parties modifying the terms and conditions of contracts. A bilateral modification may be used to do the following:
 - Change the terms and conditions of a contract;
 - Negotiate equitable adjustments;
 - Execute a supplemental agreement that reflects other agreements between; the parties modifying the terms²⁷; or
 - Definitize change orders.

Contract Options

Options provide the Government with the ability to order additional quantities of supplies or additional periods of service beyond those established in the initial contract.

Normally, contract options establish the quantity, price, and delivery schedule for these additional supplies or services. The Government uses options when (i) there is a defined quantity, quantity range, or additional requirement for the supplies or services beyond what is being purchased on the basic contract, and when (ii) such additional requirement

²⁷ A supplemental agreement is a contract modification based on the parties' prior agreement regarding a change. It incorporates an equitable adjustment to the contract cost, schedule, or both, as a result of the change. Supplemental agreements often involve the submission, by the contractor, of a proposal and detailed negotiations.

may be finalized and funded during the performance period of the basic contract. Options are executed by unilateral modification. Contract options may be exercised in the following circumstances:

- After the contractor is notified of the Government’s intent to exercise the option;
- Only by modification by Contracting Officer;
- When the option fulfills an existing need, already priced on the contract;
- When funds are available; and
- When exercising the option is the most advantageous method of fulfilling the Government’s need, price, and other factors considered.

The COR’s role with options is to make the need for them known prior to contract award. When exercising an option, the COR may assist the Contracting Officer by assessing the available options, determining the continuing need, determining whether the option is in the Government’s best interests, and conducting market research on current pricing.

Contract Changes

The Changes clauses — FAR 52.243-1 through 52.243-4 — distinguishes Government contracts from other contracts. These clauses allow the Contracting Officer to order a change within the general scope of the contract in the areas of (i) specifications (for supplies) or description of required services (for service contracts); (ii) place of delivery or performance; or (iii) method of shipment or packing (for supplies); or time of performance (for services). Legally, a change outside the scope of the contract is a new procurement that the Contracting Officer is not authorized to execute and that the contractor is not obligated to perform under the Changes clause.

Note: CORs who are “following the boss’s orders” are the primary source of unauthorized commitments or constructive changes. The Government is not liable for unauthorized acts of its employees. CORs making unauthorized commitments or constructive changes may be financially responsible for their actions.

Constructive Changes

Statements, acts, or inaction by employees who are not authorized to make contractual changes may be deemed constructive changes. These acts can contractually bind the Government if the result is that the contractor performs work beyond that which is required by the contract. A constructive change is an oral or written act or failure to act by the Government official (in position of authority) that is construed by the contractor as having the same effect as a written change order. Constructive changes may arise from situations such as the following:

- Inadequate or defective requirements documents;
- Disagreement over contract requirements;
- Failure of the Government to cooperate during contract performance (e.g., not responding in a timely manner to requests, or not being present to receive a service);
- Defective or improperly interpreted specifications and misleading information;
- Overly strict inspection;
- Failure to recognize Government-caused delays;
- Improper technical direction; or
- Acceleration of contract performance to finish sooner than what is stated in the contract schedule.

The COR may play a role in helping the Contracting Officer resolve a constructive change by doing the following:

- Providing all pertinent documentation to the Contracting Officer;
- Identifying the actual changes to the contract that have occurred;
- Preparing a technical analysis/evaluation, if the contractor submits a proposal based on the change;
- Assisting the Contracting Officer with negotiations; and
- Educating the contractor regarding the proper notification and handling of changes.

Unauthorized Commitments

Under contracts in the private sector, a company may be bound by the acts of agents with apparent authority, or authority based on the individual’s position or title. In federal procurement, the Government may be legally bound only by the actions of personnel with actual authority — the Contracting Officer. Disputes between the Government and the contractor often occur when the Government representative who ordered a change did not have the authority to do so. This places a burden on the contractor to ensure that the person ordering a change has actual authority.

Government employees who are not Contracting Officers do not have the authority to order or authorize changes. There is a lot of litigation based on Government personnel, who are not Contracting Officers, making contract changes. In some cases, personnel who are not Contracting Officers have limited authority to represent the Contracting Officer (e.g., to inspect the services being provided to the Government).

FAR 1.602-3(a) defines an “unauthorized commitment” as “an agreement that is not binding solely because the Government representative who made it lacked the authority to enter into that agreement on behalf of the Government.” Unauthorized commitments

violate federal law, federal regulations, and the Government-wide Standards of Conduct for Federal Employees, and the DFARS.

The following are examples of unauthorized commitments:

- A contractor is instructed to borrow a cherry picker from another contractor because the Government is supposed to supply the equipment but did not have it available.
- Someone from the command group asks to have the grass mowed before a big event, but the contractor has already mowed the grass to specification for the period.
- A contract on a copy machine has expired, and a new unit has been delivered. The contractor is told to leave the old copier in place, because it is important to the mission.

The COR should report any perceived unauthorized commitments immediately to the Contracting Officer. At the same time, CORs themselves must take great care not to instruct a contractor to perform a task that may be outside the scope of the contract. CORs are reminded that they, or any unwarranted Government official, may be financially obligated for any costs or damages incurred as a result of their directing contractor performance beyond the scope of their authority.

If a COR exceeds his or her authority, the circumstances of the action and the procedures in FAR 1.602-3 concerning ratification will dictate what action should be taken. The Contracting Officer may decide to revoke the COR's appointment. The revocation shall be in writing and provided to the contractor and other appropriate officials. The Contracting Officer will also take other actions required by law or regulation.

Ratification of Unauthorized Commitments

In some cases, an unauthorized commitment may be subsequently adopted, or "ratified" (see FAR 1.602-3). This long and time-consuming process involves, among other things, preparing statements and summaries of facts and investigating relevant documents, recommendations, and approvals, in accordance with individual agency procedures.

Only an action that would otherwise be proper can be ratified. The Anti-Deficiency Act prohibits authorizing or incurring obligations or expenditures in excess of amounts apportioned by the Office of Management and Budget or in excess of amounts permitted by agency regulations. An unauthorized commitment could potentially be a violation of the Anti-Deficiency Act subject to fines and other penalties. If the price is determined not to be fair and reasonable, then the price must be renegotiated.

Cases that cannot be ratified under FAR 1.602-3 may be subject to resolution as authorized by FAR Subpart 33.2, Disputes and Appeals. If the approval official does not elect to use his or her discretion to reimburse the contractor for acts exceeding the COR's authority, the COR may be held personally liable for any costs or damages incurred by the contractor or the Government. In fact, the consequences for all parties involved with an unauthorized commitment are severe. Regardless of dollar amounts involved, unauthorized commitments may result in disciplinary or administrative action against the individual making the unauthorized commitment, especially if the violations are flagrant or repetitive.

Ratification Process

As the first step in the ratification process, the individual responsible for making the unauthorized commitment must draft a statement detailing the circumstances and addressing, at a minimum, the following questions:

- Why were normal procedures not followed?
- What steps are being taken to preclude recurrence?
- Were funds available at the time of the action?

Next, the Contracting Officer, legal counsel, and requiring activity officials must review the statement of actions leading to the unauthorized commitment. Once satisfied, they must determine that:

- The Government received benefit;
- The Government has/had a bona fide need for the supply or service;
- Steps to be taken to prevent recurrence are adequate;
- Proper disciplinary action was taken or reasons why none was taken;
- The contract would otherwise be proper (e.g., funds are available, and the requirement is legitimate), and,
- The commitment should be ratified.

The Contracting Officer must then provide the ratifying authority a written determination and finding, addressing the facts and including a complete purchase description and funding for the ratification, and determining:

- The commitment was not made to evade normal statutes/regulations, but was the result of an urgent requirement or a mistake of fact by Government personnel;
- The contractor reasonably relied on apparent authority;
- The contractor has no other remedy to obtain relief;
- The contract would otherwise be proper (e.g., funds are available, and the requirement is legitimate);

- The contract price will be fair and reasonable.

The ratifying official shall review the file, and if ratification is proper, sign the determination and findings authorizing the Contracting Officer to ratify the unauthorized commitment.

Technical Evaluation

Upon receipt of a contractor's proposal for a modification (including ratification of an unauthorized commitment), the COR may be requested to prepare a documented analysis of the technical aspects of the proposal. This document will be used by the Contracting Officer to support negotiations and documentation of the change to the contract. When performing a technical evaluation, the COR should do the following:

- Determine the technical validity of the change;
- Determine that the proposed solution is necessary ;
- Consider the technical merit that will meet the Government's requirement;
- Assess cost and delivery implications versus technical merit (impact);
- Review the proposed basis of estimate;
- Review labor type, profile, and amount proposed;
- Analyze other direct costs (travel, materials etc.); and,
- Conduct a tradeoff analysis to evaluate technical merit versus proposed costs.

Cost/Price Evaluation

The Contracting Officer will analyze the cost/price proposal for accuracy and allowability. Then, with receipt of the technical evaluation, develop a pre-negotiation objective.

Completion/Payment

Acceptance

Acceptance is the responsibility of the Contracting Officer but this responsibility may be delegated to the COR. Acceptance can take place before, at the time of, or after delivery. However, supplies or services ordinarily should not be accepted before completion of Government contract quality assurance actions. Before services or supplies furnished by the contractor can be accepted, the COR must determine acceptability by review or inspection. Final acceptance by the Contracting Officer of supplies received or services rendered concludes performance by the contractor, except for administrative details relating to contract closeout. After final acceptance, the contractor can no longer be held

responsible for unsatisfactory effort unless otherwise specified in the contract. Therefore, the COR must ensure that the work performed under the contract is measured against the contract terms and quality requirements. If performance does not meet contract quality requirements, it is incumbent upon the COR to identify deficiencies and to advise the Contracting Officer. Acceptance is evidenced by execution of an acceptance certificate on an inspection or receiving report form or on a commercial shipping document/packing list.

Exceptions to final acceptance include:

- latent defects,
- fraud, and
- gross mistakes amounting to fraud.

A latent defect is one that is not readily noticeable upon reasonable inspection at the time of acceptance. The burden is on the Government to prove that defective material and workmanship was the probable cause of product failure. Latent defects can also apply to design and manufacture contracts; in those cases, the contractor may have to replace the designed product at no charge to the Government.

Documenting Acceptance

CORs are often the designated officials authorized to accept supplies or services for the Government (see COR appointment/designation letter for delegated duties and authorities). Acceptance prior to payment is accomplished in one of four ways:

- COR signature on DD250 (discussed, with other forms, in Chapter 10);
- COR signature on DD1155 (discussed, with other forms, in Chapter 10);
- COR signature on SF 1449 (discussed, with other forms, in Chapter 10); or
- COR electronic signature in the Wide Area Workflow (WAWF) system.

Wide Area Workflow

The 2001 Defense Authorization Act established the requirement that all contract invoicing must be done electronically. DoD implemented this requirement via Wide Area Workflow (WAWF). The WAWF system²⁸ is a secure, web-based system for Government contractors and authorized DoD users to generate, capture, and process receipt and payment documents. It enables electronic submission of contractor invoices and of Government inspection and acceptance documents.

²⁸ The WAWF system is found at <https://wawf.eb.mil>.

The WAWF system creates a virtual folder to combine the three documents required to pay a contractor: the contract, the invoice, and the receiving report. Authorized DoD users are notified of pending actions by e-mail and are presented with a collection of documents required to process the contracting or financial action.

WAWF is envisioned to ultimately be the single DoD system for all contractor invoicing and Government acceptance actions (where required). Processing invoices electronically will reduce the likelihood that the Government will have to pay an interest penalty; however, it is still important for the COR to understand his or her role in processing these invoices. WAWF training is required prior to appointment as a COR. A copy of the training certificate should be provided to the contracting office prior to appointment and saved in the CORT Tool.

Nonconformance

Nonconformance occurs when the contractor presents a deliverable to the Government that does not conform to the contract requirements.

Remedies for Nonconformance

Remedies for nonconformance include the following:

- Invoking the related contract clause (Stop Work, Cure Notice, Show Cause, Liquidated Damages, Warranty, or Termination);
- Withholding or reducing award and incentive fees;
- Invoking inspection clauses (reject the noncompliant work or allow rework);
- Suspending progress payments;
- Declining to extend the term of the contract (e.g., by not exercising an option or award term);
- Modifying the contract;
- Addressing claims or consideration;
- Taking legal recourse;
- Using Alternative Dispute Resolution (ADR); or
- Documenting the issue in the past performance database.

The COR's key role with regard to remedies is monitoring. Heavy reliance is placed on the COR's observations and documentation. The COR must keep good records and promptly notify the Contracting Officer of any noncompliance issues. In addition, the COR should be prepared to suggest remedies to the Contracting Officer.

Acceptance of Nonconforming Supplies or Services

Only the Contracting Officer can authorize acceptance of nonconforming supplies or services. The Government may deal with noncompliance in one of three ways:

- The first -and most preferable- action is to require the contractor to correct the nonconforming items or services.
- The second most preferable action is to accept the nonconforming supplies or services. This is useful only if the deficiencies are minor. Remember the COR cannot accept nonconforming supplies or services. Only the Contracting Officer can make this decision.

Although a contractual right of the Government cannot be waived, nor may a contract be modified for the convenience of a contractor, it may be in the best interest of the Government not to reject the supplies or services because of the following:

- The urgency of the need for the supplies or services and the period of time required to obtain them from other sources, as compared with the time delivery could be obtained from the contractor.
- The availability of the supplies or services from other sources.
- Any other pertinent facts and circumstances.

If it is desired to accept work that essentially meets the needs of the Government but does not conform to the requirements of the contract, the COR must furnish the Contracting Officer with a documented recommendation to accept the work, a description of all points in which the work fails to meet contract requirements, and an estimate of the time required for the contractor to complete performance. The Contracting Officer may extend the contract completion date by formal modification to allow the contractor to correct deficient work.

- The third potential action for the Contracting Officer is to reject the noncompliant supplies and services and terminate the contract. (Remember the COR cannot terminate a contract.)

Invoice and Payment

Cash flow is the lifeblood of any company. Contractors need to be paid for the supplies and services they have provided so that they can pay their own bills and employees. Timely payment of contractors also encourages them to continue to do business with the Government. Congress, recognizing the importance of timely payments, passed the Prompt Payment Act. The act specifies that, if the Government does not make payment on a valid contractor invoice within a specified period of time, the Government is liable to pay interest, computed at the federal funds rate.

Note: The COR should ensure that invoices receive prompt attention and are reviewed for accuracy and consistency with contract terms.

The following are important terms regarding invoice and payment procedures:

- Invoice. The invoice is the billing statement for supplies or services accepted by the Government.
- Invoice payment. The invoice payment is the Government disbursement of monies for supplies or services accepted by the Government.
- Prompt payment. All solicitations and contracts must specify payment procedures, payment due dates, and interest penalties for late invoice payment. Unless specifically prohibited by the contract, the contractor is entitled to payment for accepted partial deliveries of supplies or partial performance of services that comply with all applicable contract requirements and for which prices can be calculated from the contract terms.

The contractor may request payment via an invoice or via the SF 1449 or DD1155. Appendix A contains a sample SF 1449. In reviewing the payment request, the COR should be familiar with the following:

- Contract number/order number;
- Office locations and points of contact;
- Contract line item number (CLIN) structure (a CLIN identifies a separate supply or service to be required under contract);
- Inspection/acceptance;
- SOO/SOW/PWS; and,
- Period of performance/delivery dates.

Contents of a Valid Invoice

According to FAR 32.905, the following are the minimum requirements for a valid invoice:

- Complete contract number, including delivery/task order number (if applicable);
- Name and address of contractor;
- Invoice date;
- Invoice number;
- Description of services/supplies provided;
- Quantity of services/supplies provided;
- Unit of issue—as specified in the “Schedule of Supplies”;
- Manufacturer’s part number (as applicable), as specified in the contract;
- Unit price and extended total, for each line item;

- Invoice total;
- Shipment number (as applicable);
- Postage and transportation (as applicable), if authorized by the contract to ship “Prepay and Add” include the transportation cost (parcel post, UPS, etc.) as a separate line;
- Required certification—as required by the contract, e.g., certification of conformance, ACO approval, etc.;
- Taxpayer Identification Number (TIN), if not required to be registered in the Central Contractor Registration (CCR);
- Registration in the CCR, when applicable;
- Electronic funds transfer (EFT)/banking or remittance information for foreign contractors who are CCR exempt, when applicable; and,
- Any other contract-directed requirements.

Inaccurate/invalid invoices must be returned within seven days.

DFARS 252.232-7003 requires contractors to submit payment requests electronically, but the clause lists exceptions. For a contingency contracting situation, two exceptions are key:

- DoD is unable to receive a payment request or provide acceptance in electronic form.
- The Contracting Officer administering the contract has determined, and documented in writing, that electronic submission would be unduly burdensome to the contractor.

Voucher and Invoice Review

The Contracting Officer is responsible for monitoring invoice payments according to the terms and conditions of the contract and local policy/guidance.

CORs can approve invoices on fixed-price contracts. However, for cost-reimbursement, time and-materials, and labor-hour contracts, CORs can review — but not approve — invoices. For other than fixed-price contracts, DCAA has the sole authority for verifying claimed costs and approving interim payment requests. Only the Contracting Officer can approve final payment requests.

Note: CORs must understand local finance office procedures and requirements for proper invoicing. CORs should ask their Contracting Officers for additional details.

Note: Payment to a contractor implies work is progressing according to the contract. Therefore, CORs must ensure the Government is getting what it is paying for. CORs must monitor contractor performance through review of monthly reports, onsite visits, and surveillance reviews. It is vital that CORs review billing statements thoroughly and

on time.

Note: If problems are identified in performance of the contract or in the CORs review of invoices, the COR must communicate the issues to DCAA through the Contracting Officer so the issues can be appropriately considered during the auditor's voucher approval process.

COR approval of a voucher or invoice implies that, to the best of the COR's knowledge, the nature, type, and quality of effort or materials being expended are in accord with the progress of work under the contract. In other words, the COR supports the Contracting Officer by ensuring that payments are made for performance in accordance with the contract terms and conditions.

The following are examples of typical problems that may be found on invoices:

- Inflated/unrealistic labor hours;
- Unsupported other direct costs (ODCs), e.g., poor descriptions that cannot be tied to specific tasks;
- Unauthorized overtime charges;
- Incorrect/unrealistic labor category;
- Management hours disproportionate to worker hours;
- Duplicate invoice, or wrong invoice;
- Math errors;
- Wrong contract/task order number;
- Wrong price (proposed vs. negotiated);
- Wrong CLIN or SubCLIN;
- No point of contact for defective invoices;
- No date;
- Incorrect/missing shipment information;
- No remittance address; and,
- Prompt pay discounts not offered.

Overtime

Overtime (OT) cannot be paid unless specifically authorized by the contract. Only the Contracting Officer can authorize the use of OT. When reviewing a contractor's OT claims, the COR should consider whether or not OT was authorized.

Interest Penalties

The COR must process invoices promptly. If the Government fails to make payment by the due date, the designated payment office must automatically pay an interest penalty. The due date is the later of two events (1) the 30th day after the designated billing office receives a proper invoice from the contractor or (2) 30th day after Government acceptance of supplies delivered or services performed. Specific due dates are as stated in each individual contract.²⁹

Warranties

A warranty is a promise or affirmation given by a contractor to the purchaser regarding the nature, usefulness, condition, or performance of the supply or service to be delivered under of the contract.

Implied Warranties

There are two types of implied warranties: warranty of merchantability and warranty of fitness for a particular purpose. The warranty of merchantability implies that supplies must be fit for the ordinary purposes for which such supplies are normally used. This type of warranty is incorporated in the contract unless stated otherwise. The warranty of fitness for a particular purpose implies special protection for a buyer that relies on the seller's expertise in selecting suitable supplies.

Express Warranties

An express warranty may be purchased to cover the risk of a product defect. Express warranties are based on the following:

- Any promise or affirmation of facts that become part of the bargain;
- A description of supplies that is part of the basis for the bargain; and,
- Any sample or model that is part of the basis for the bargain.

Because expressed warranties must be purchased, the costs must be weighed against the need for protection against risk³⁰.

The warranty takes effect at time of delivery. If an item is delivered for storage or later use, the warranty provides a starting time after delivery. The length of the warranty period must be specified.

²⁹ Refer to FAR Subpart 32.9 and DFARS Subpart 232.9 for Prompt Payment discussions.

³⁰ For more information, reference DFARS 246.704, "Authority for Use of Warranties"

Warranties can be enforced when a defect within the warranty scope arises during the warranted period.

Past Performance

The Government relies on past performance data to assist with making award decisions. Therefore, in support of future acquisition efforts, the performance of contractors under current contracts should always be documented. The COR will be tasked with collecting and reporting contractor performance information. The COR should be fair in assigning a performance rating and should provide narrative explaining the reasons for the rating.

Contractor performance information is entered into the Contractor Performance Assessment Reporting System (CPARS), at intervals specified in the contract, when contractor performance warrants reporting, and at the end of the contract. CPARS documents the following aspects of the contractor's performance:

- Conformance to contracting requirements and standards of good workmanship;
- Forecasting and control of costs;
- Adherence to contract schedules;
- History of reasonable and cooperative behavior and commitment to customer satisfaction; and,
- Business-like concern for the interest of the customer.

The Government's CPARS assessment should reflect the contractor's performance as documented by the COR during the monitoring process.

Contract Closeout

Contract closeout actions are primarily the Contracting Officer's responsibility, but COR assistance may be required. COR assistance is indispensable when disputes or litigation is involved.

A contract is not completed until it has been closed. Timely contract closeout does the following:

- Allows all affected activities to concentrate on current and future requirements;
- Allows for deobligating excess funds; and,
- Identifies the need for additional funds.

The COR is to physically transfer their records to become part of the official contract file. The Contracting Officer, with the assistance of the COR, must ensure that the following actions are accomplished:

- Services have been rendered.
- Articles have been delivered and accepted.
- Payments and collections have been made.
- Property and classified information have been dispositioned.
- Releases from liabilities, obligations, and 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 have been deobligated.
- Contract file is properly documented.

DOs and DON'Ts: Contract Administration

CONTRACT ADMINISTRATION	
DO	DON'T
<ul style="list-style-type: none"> • Remember that the COR is an agent of the U.S. government, with only the authority delegated by the Contracting Officer. • Get the names of contractor personnel authorized to represent the contractor. • Find out the specific authority of contractor personnel. Does the person you are dealing with have the authority to obligate the contractor? • See that all Government approvals or consents are timely. 	<ul style="list-style-type: none"> • Accept less than what is required by the contract. • Assume an interpretation of ambiguous contract language, which would be favorable to the Government. Remember: if the contractor's interpretation is reasonable, it will prevail. • Hold up payment unless performance is deficient or defective. • Accept supplies or services without complete inspection. • Make any change, modification, deletions, or additions to the contract requirements. Work through the Contracting Officer. • Automatically consider all contractor claims unreasonable. Be fair and impartial.

Chapter 7. Key Points

1. Contract Administration is the primary focus area where a COR will generally spend most of their time
2. After contract award, a Post-Award Orientation (kick-off) meeting is critical to successful contract performance. This meeting will highlight the roles and responsibilities, along with expectations, of all the interested parties.
 - a. The Contracting Officer will prepare minutes of the meeting and provide copies to all interested parties, including the COR.
3. Contractor personnel deploying to a contingency arena must be registered in the SPOT database.
4. Monitoring contractor performance is the key to contract oversight and ensuring compliance with the contract.
5. Key contract administration concepts a COR must be familiar with:
 - a. The Changes Clause – This FAR clause allows the flexibility to make in scope changes to the contract without impacting contractor performance and allowing the contractor an equitable adjustment.
 - i. Unilateral change – The changes clause allows for three specific criteria where the Government can issue a modification without first requesting a proposal from the contractor.
 - ii. Bilateral changes – When a unilateral change is not possible then the Government will request a proposal from the contractor so a supplemental agreement can be negotiated and signed by the contractor and the Government.
 - b. The Options Clause – Many contracts for recurring requirements may contain option clauses which allow the Government the ability to order additional quantities of supplies or additional period of services beyond those in the initial contract.
 - c. Constructive Change Concept – When a contractor performs work that is not part of the contract scope but the contractor relied upon some degree of Government direction then a constructive change may have occurred, which will result in a contractor submitting a request for equitable adjustment.
 - d. Unauthorized Commitments – Where a Government representative who does not have the authority binds the Government to a commitment.
 - e. Ratification process – Each component or agency has established procedures for ratifying unauthorized commitments. Refer to local procedures for additional guidance.
 - f. Technical Evaluation – The COR may be requested by the Contracting Officer to assist in validating proposed contract changes, assist in developing an IGCE, and evaluating the contractor's proposed costs for reasonableness.

- g. Contract Closeout – The COR’s documentation is key to ensuring successful contract closeout. It is important that the COR understands the steps associated with closeout and his/her role in closeout. Contract closeout is the Contracting Officer’s responsibility, but COR assistance may be required.
 - h. Invoices and payment – CORs will often review invoices/vouchers to verify that charges for the supplies/services delivered are reasonable and in accordance with the terms and conditions of the contract. This section of the handbook provides a discussion of what should be contained in an invoice or voucher. In addition, this section also discusses some of the typical problems associated with an improper/incorrect invoice or voucher.
6. Good, clear communications with the contractor and the Contracting Officer is critical.
 7. A COR may be required to administer warranty terms and conditions. It’s important to understand warranty basics.
 8. The COR may report on contractor performance so it can be captured in the Contractor Performance Assessment Reporting System (CPARS).

Chapter 8:

Monitoring the Contractor

To properly monitor the contractor, the COR must know and understand the requirements of the contract, as specified in the SOO/SOW/PWS in Section C of, or an attachment to, the contract. The COR should have a copy of the SOO/SOW/PWS readily available to check that the contractor is verifying and enforcing contract requirements as stated in the SOO/SOW/PWS. Interpreting the contract requirements can be difficult if the SOO/SOW/PWS is poorly written, displaying a lack of technical knowledge, inadequate planning or research, lack of communication, differing interpretations, and carelessness. With the proper SOO/SOW/PWS and performance-based metrics (see Chapter 9), contract performance is more likely to be successful.

Note: The COR monitors the contractor based on the contract requirements specified in the SOO/SOW/PWS and according to the COR appointment/designation letter from the Contracting Officer.

The COR must notify the Contracting Officer in a timely manner, orally **and** in writing, if the contractor is not performing well, i.e., if contractor performance deviates from the SOO/SOW/PWS. It is the responsibility of the Contracting Officer — and only the Contracting Officer — to give verbal or written directions to the contractor. These directions should be made a part of the record in the official contract file. The requiring activity should not attempt to interpret the SOO/SOW/PWS for the contractor and may not direct changes or accept substitute performance. Many people have improperly cost the Government, or themselves, money by making seemingly nonchalant remarks asking the contractor to act outside the scope of the contract.

Contractor Progress Reports

The contract may require the contractor to provide progress reports. Contractor progress reports provide the first early warning of potential changes, delays, or other problems in contractor performance. Submitted by the contractor, these reports summarize progress since the preceding report, so earlier reports are summarized, subsumed, and superseded by the new report. They vary in form from a single-page memo or letter to several hundred pages of detail by task, with supporting graphs and tables. Progress reports normally address the following topics:

- Project status;
- Measurement of achievements against objectives;
- Problems encountered;

- Actions taken to correct deficiencies;
- Percentage of work completed;
- Acceptability of the work;
- Work remaining; and,
- Evaluation.

Progress reports do not relieve the contractor of a separate obligation to report anticipated or actual delays to the COR and Contracting Officer.

For indefinite-delivery type contracts, each delivery or task order must be covered by a separate progress report, except that one report per contract may be used to identify those orders on which no work was performed during the period being reported.

The contractor must forward the progress reports in accordance with the instructions of the Contracting Officer.

The COR must ensure that each progress report is factually accurate and complete and should check each progress report to determine the following:

- Will the contractor meet the delivery dates? Are any problems foreseen?
- Are the expenditures in line with the work performed and with the work planned?
- How does the percentage of work completed compare to the funds expended?
- How does the status of the deliverables (reports, designs, texts) compare to the progress report?

The COR should discuss and document any ambiguities or discrepancies with the contractor and Contracting Officer. The COR should document any discussions with the contractor and keep a copy of this document in the COR file. The COR should also inform the Contracting Officer of any ambiguities or discrepancies in the progress report.

The Government should not expect a one-to-one correlation between the expenditures identified in the progress report and those in the invoice. The coverage dates may be different, and the progress reports may not reflect lags in the accounting system.

Assessing Performance

The contractor has the primary responsibility for quality assurance and timeliness of its supplies or services. However, the COR must assess the contractor's performance to ensure that the supply or service delivered conforms to contract requirements. Unsatisfactory performance under a contract may jeopardize a project or may directly affect an activity's ability to perform its mission.

The COR must continually monitor the contractor's performance, both formally and informally, throughout the contract. The COR should consider the following:

- How well the contractor is doing.
- Whether performance, quality, schedule, and cost requirements are being met,
- Whether the requiring activity is satisfied,
- Whether the processes are working,
- If and where improvements are necessary.

The following are key assessment factors:

- *Cost Control.*
- *Timeliness (schedule/delivery).* Is the contractor on schedule to meet contractual requirements? Did the contractor meet the contractual delivery requirements? Does the contract include a reward for early delivery, or a penalty for late delivery?
- *Quality.* Do the supplies or services meet the requirements? Do they conform to the contract specifications, standards, SOO/SOW/PWS, and quality assurance plan?
- *Business relations.* Is the contractor responsive, professional, and courteous?
- *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 supplies reflect the skill and standardization required by the user?
- *User satisfaction.* Will the requiring activity be satisfied in terms of cost, quality, and timeliness of the delivered supplies or services? What percentage of the deliverable meets the user's expectations? How long has the contractor taken to address any user complaints? How many user complaints have there been?
- *Compliance.* Has the contractor complied with, for example, Occupational Safety and Health Administration, Environmental Protection Agency, and Department of Labor regulations or local standards?

Acceptable Inspection Methods

The assessment of quality is particularly important because if the quality of a supply or service does not meet contract requirements, the safety of the requiring activity could be jeopardized. The Government has the right to inspect all contract deliverables at any time prior to acceptance. Inspections may be announced or unannounced, but they must not unduly delay work, nor must they include directions that would change the contract. The Government also has the right to reject any deliverables that do not meet contract requirements.

For commercial item acquisitions, FAR 46.202-1 requires that the Government rely on contractors' quality assurance systems as a substitute for Government inspection and testing before tender for acceptance, unless customary practices for the supply being acquired include in-process inspection. Any in-process inspection by the Government must be consistent with commercial practice.

For services, the COR can monitor contractor performance using a variety of inspection methods. Before an inspection, the COR should check the contract for any specific inspection and testing requirements. The COR should use a systematic approach and should ensure that the inspection methods do not interfere with the contractor's progress, or at least only to the extent that disruption is absolutely necessary. The following subsections briefly describe the most common inspection method and their use.

Random or Stratified Sampling

With random sampling, deliverables are sampled to determine if the level of performance is acceptable. Random sampling works best when the number of instances in which the supplies or services is very large, allowing a statistically valid sample to be obtained. Stratified sampling focuses on selected parts of total contractor output for sampling. Computer programs may be available to assist with establishing sampling procedures. This is the preferred surveillance method, because it is an efficient way to obtain an unbiased, comprehensive evaluation of the contractor's performance. The COR need only make relatively few observations from which he or she can project the quality of the entire lot. The contractor does not know which service output will be observed. Consequently, all must be done correctly, and the COR is prevented from biasing the sample by his or her own judgment. The advantage is that the results can be projected to the lot, without inspecting the entire lot.

100 Percent Inspection

This inspection method is too expensive for most cases. As the name implies, all outputs in the designated lot would be observed by the inspector. For example, with a service requirement for required reports, all reports listed in the lot would be examined for acceptance. The Government uses 100-percent inspection for stringent performance requirements concerning health and safety.

Periodic Inspection or Planned Sampling

This method consists of the evaluation of tasks selected on other than a 100 percent inspection or random basis. This type of sampling is normally used to check the contractor's quality control system to ensure that it is capable of meeting the Government's quality requirements. Because defects found as the result of planned

sampling cannot be considered statistically valid for evaluating the entire work lot, monetary deductions for other than satisfactory performance are limited to only the work specifically found defective. For this reason, planned sampling should not be used as the only method of surveillance.

When planned sampling is used, work process outputs are selected in accordance with subjective criteria established in the QASP. These criteria should be documented and applied consistently throughout the observation period and from one period to the next. Surveillance consistency enables the inspector to detect trends in performance and requires less inspector retraining time and document/report revisions. The advantages to this method are that Government inspectors can focus their attention on known problem areas and the contractor or in-house work force has a greater incentive to improve those deficient areas that they know will be observed. The disadvantage is that because the observations are not selected randomly, comparisons of quality cannot be made between the sampled outputs and the lot.

User Feedback

This method requires documentation and is not usually a primary surveillance method. However, user feedback is a valuable supplement to more systematic surveillance methods. Performance to be observed is not selected by the COR, but is based on written or telephonic complaints made by users. Once the COR receives a complaint, he or she will investigate and, if valid, will document it as a contractor performance deficiency.

Further guidance on these surveillance tools is set forth in the Office of Federal Procurement Policy (OFPP) Pamphlet 4, “A Guide to Best Practices for Performance-Based Service Contracting” Chapter 5, “The Quality Assurance Surveillance Plan.”³¹

The COR should notify the Contracting Officer whenever supplies or services do not meet requirements and should provide the Contracting Officer with documentation on the number of observations made, the number and type of problems, actions taken to notify the contractor, and any corrective actions already taken by the contractor. A COR can use the receiving report or other method provided by the Contracting Officer to document the reasons for rejecting a deliverable.

Contractors will reply to a notice of rejection by one of the following methods:

- Submitting a proposal to repair or correct the deficiencies;
- Offering to provide an adjustment to cost or price as a basis for accepting nonconforming services; or

³¹ The OFPP Pamphlet can be found at http://georgewbush-whitehouse.archives.gov/omb/procurement/pbsa/guide_pbsc.html.

- Challenging the deficiency assessment.

If authorized to reject supplies or services, the COR may approve a contractor's proposed course of action to repair or correct deficiencies. However, only the Contracting Officer may approve courses of action that require a change in the contract (e.g., a price reduction) or result in a dispute (e.g., the contractor challenges the assessment). The COR must forward these cases to the Contracting Officer for resolution.

The Contracting Officer normally consults with the COR when considering the contractor's reply. The COR can provide advice on the appropriateness of the contractor's corrective action plan, the impact of accepting nonconforming services, and the validity of the contractor's rebuttal.

Documenting Performance

Documenting how well a contractor performs on a contract is an important part of the performance assessment process. When documenting a contractor's performance, the COR should follow the advice below:

Comments should be:

- submitted regularly;
- contractually based and professional;
- applicable to the monthly reporting period;
- performance based;
- specific, fully detailed, and stand alone;
- based on information gathered during audits, when possible, and
- supported by the checklist comments.

Comments should not be:

- beyond the scope of the contract;
- requesting information that is not applicable to the contract;
- requesting contractor personnel actions (e.g., hiring, firing, or disciplinary action);
- personal (all comments are seen by higher leaders); or
simply copied and pasted from one month to the next without verifying whether the condition still exists.

Following are some examples of poorly—and better—written comments.

Sample Comment 1

Poor: "Contractor met the Class I requirements this month."

Better: “During October, contractor exceeded the Class I requirement to have all incoming rations and bottled water placed into inventory within 24 hours. The daily average to place stock into inventory was only 4 hours!”

Sample Comment 2

Poor: “Contractor was late in meeting the link-up time.”

Better: “On 12 Oct 06 at 2130 hrs, the contractor team linked up with the military escorts at East ECP one hour after notification. This didn’t meet the contractual requirement of 40 minutes for link-up as provided under Section C.”

Sample Comment 3

Poor: “Contractor management was especially responsive this month.”

Better: “On 12 Oct 06, contractor responded within two hours to a DCMA request for DFAC statistics. This allowed a quick turnaround to the user for a high-visibility area.”

Sample Comment 4

Poor: “My audit for MHE showed that several of the guys weren’t certified for the forklifts.”

Better: “On 23 Oct 06, an audit revealed that three employees operating 9K forklifts did not have a forklift drivers license when prompted. Their badge numbers were XXX, YYY, and ZZZ.”

Note: The COR must always ensure that all comments relate to a specific contract requirement. Contractor performance is judged solely on the contract.

Note: When possible, it is helpful for a COR to use a digital camera to document deliveries of supplies and services.

Remedies for Poor Contract Performance³²

The Contracting Officer has several remedies available to address items or services that do not conform to contract requirements. The Contracting Officer will rely heavily on the COR’s observations and documentation on supplies or services that do not conform to contract requirements. When unsatisfactory contract performance is identified, the COR should notify the Contracting Officer promptly so remedial steps can be taken. Silence on the part of the Government could be interpreted by the contractor as the Government’s acceptance of substandard supplies or services. Such situations could adversely affect the Government’s right to withhold payments, terminate for cause or default, or otherwise exercise certain rights under the contract.

³² This section is on contract performance and not the business system rule. Refer to DFARS for the business system rule.

Depending on the Contracting Officer’s evaluation of the seriousness of the unsatisfactory performance, he or she may do the following:

- Bring the particular deficiency to the attention of the contractor by letter or through a meeting and obtain a commitment for appropriate corrective action.
- Extend the contract schedule if excusable delays in performance are involved (such as combat situations or extreme weather conditions).
- Withhold contract payments if the contractor fails to comply with delivery or reporting provisions of the contract.
- Terminate the contract for cause or default.

After a complete review of the situation, the Contracting Officer may send an official notice of failure of performance to the contractor. This notice requires the contractor to inform the Contracting Officer of the cause of the delinquency so a proper determination can be made concerning continuation or termination of the contract. In some cases, liquidated damages can be assessed against the contractor performing the service. Liquidated damages are amounts agreed to in advance that reflect the financial damage the Government may incur if the contract is not completed on time.

Note: COR records are vital for determining the amount of money the contractor may be entitled to if a suspension is determined to be unreasonable.

DOs and DON'Ts: Remedies

REMEDIES	
DO	DON'T
<ul style="list-style-type: none"> • Exercise Government rights, such as warranties. Make sure to deal with any problems before the warranty period runs out. • Work with contractor personnel to prevent problems before they arise. • Take actions to protect Government rights before delivery is due. • 	<ul style="list-style-type: none"> • Act without consulting the Contracting Officer. Work with the contract administration team and Contracting Officer. • Allow interim or final delivery dates to be waived.

Delays

The COR is required to notify the Contracting Officer about any delay in the delivery or performance schedule. Specifically, the COR must (1) identify and verify the delay, (2) notify the Contracting Officer of the technical impact of the delay, and (3) assist the

Contracting Officer with evaluating the contractor's response. The COR should be able to correctly identify the cause of a delay and work with the Contracting Officer for resolution. The technical analysis should be sufficient to support the action taken by the Contracting Officer to address the delay.

Identifying and Verifying a Delay

A delay has occurred if the contractor fails to meet the delivery or performance schedule in the contract, or if the Government caused the contractor to stop performing. The COR should review the contract for any applicable clauses and any modifications to ensure that the performance or delivery schedule was not previously extended by the Contracting Officer. The COR can confirm the delay by doing the following:

- Obtaining feedback from Government individuals responsible for monitoring the performance or delivery schedule.
- Reviewing the notice and supporting documents from the contractor regarding the delay.
- Reviewing the contractor's claim regarding the delay.

The contractor may not be liable for any excess costs if the failure to perform the contract arises from causes beyond the control and without the fault or negligence of the contractor. For instance, the delay may have been caused by the Government, hostile actions, or natural disasters.

Notifying the Contracting Officer of the Technical Impact of a Delay

Once a delay is confirmed, the COR should prepare documentation to assist the Contracting Officer with developing the Government's position on the delay. Documentation should include facts and relevant information about the delay, such as the following:

- List of people with factual knowledge of the delay;
- Description of the delay; and
- History of performance, indicating when work under the contract began, when work deviated from the performance, and when the work stopped.

Below are other issues that may be covered in a technical analysis:

- Information that would support whether the delay was excusable;
- The contractor's progress to date and the remaining obligations;
- Estimate of a reasonable period of additional time to perform;
- Potential alternatives and resolution; and,

- Pros and cons of each alternative (price, quantity, and quality).

Assisting the Contracting Officer with Evaluating the Contractor's Response

The COR may be asked to assist the Contracting Officer with evaluating the contractor's response. The Contracting Officer may ask the contractor to do the following:

- Substantiate the evidence of the delay;
- Substantiate the costs associated with the delay;
- Demonstrate that the delay was unreasonable; or
- Demonstrate that the delay was void of any concurrent or commingled delays.

Before allowing the contractor to recover costs as a result of the delay, the contractor's response must provide verifiable documentation of the expenses incurred. The Contracting Officer, with the assistance of the COR, must consider each expense and determine if the contractor should receive compensation. Compensation may be in the form of money or time extensions.

Fraud

Fraud is the intentional presentation of a falsehood as a truth with the intent of causing someone to part with something of value. Various types of improper contractor activities fall within the general heading of procurement fraud and can lead to criminal and civil punishment. Only the U.S. Department of Justice may prosecute and resolve fraud cases on behalf of the U.S. Government. However, that does not mean CORs should ignore suspicions of fraud or other dubious conduct. The Department of Defense has an obligation to administer its contracts effectively and efficiently for the U.S. taxpayer, and has the ability to, with appropriate coordination with the relevant criminal investigative organizations, take contractual and administrative remedies (e.g., suspension and debarment) as appropriate to address contractor misconduct while criminal investigators work to punish the misconduct. This requires a coordinated approach to assessing and dealing with procurement fraud indicators.

Primary procurement fraud indicators include:

- Gratuities (gifts/travel/entertainment);
- Duplicate documentation;
- Payments made to other than the firm's official address;
- Subcontractor/supplier complaints of non-payment;
- Errors in invoices or contractor data;
- Acting beyond normal scope of duties;

- Irregular typeface on invoices;
- Payment without receiving a receipt;
- Little progress, but significant charging;
- Multiple payments to the same supplier in similar amounts;
- Shifting costs between contracts;
- Failed tests or inspections;
- Bid information available before opening;
- Poor quality; and
- Price discrepancies.

COR's responsibilities:

CORs are not investigators and should not personally investigate suspected cases of fraud. CORs are responsible for alerting the following stakeholders of fraud indicators or suspected fraud:

- The Contracting Officer;
- COR management;
- The cognizant legal office; and
- The cognizant defense criminal investigative agency (e.g., the local DCIS, AFOSI, NCIS or Army CID agent).

Note: If local agents are not readily available, the COR may report suspicion of procurement fraud to the following hotline:

- Department of Defense Inspector General, Hotline (general hotline): 1-800-424-9098, DSN 664-8799, <http://www.dodig.mil/HOTLINE>

CORs must keep a record of ALL suspected fraud communication.

Combating Trafficking in Persons

According to the United Nations, human trafficking “involves the movement of people through violence, deception, or coercion for the purpose of forced labor, servitude, or slavery-like practices.” Human trafficking is the third largest criminal activity in the world. Traffickers use violence, threats, and other forms of coercion to force their victims to work against their will. For example, they control the victims’ freedom of movement; where and when they will work; and what pay, if any, they will receive. Traffickers treat their victims as nothing more than goods for sale to the highest bidder. Victims of human trafficking no longer control their lives. Their lives belong to the trafficker who is holding them against their will. Human trafficking is not new and is actively practiced globally, especially in third-world countries.

DoD has a particular duty to act, because human trafficking is a direct threat to our national security. FAR 52.222-50 – Combating Trafficking in Persons is a mandatory clause on all contracts. CORs must be aware of how contractors treat their employees. CORs are the first line of defense in the battle against human trafficking.

CORs must complete Combating Trafficking in Persons training annually. CORs must be diligent in ensuring that contractors and contractor personnel are not trafficking in persons.

The COR must inform the Contracting Officer if the contractor, contractor personnel, subcontractor, or subcontractor personnel have failed to comply with the requirements of the clause at FAR 52.222-50. After receiving this information, the Contracting Officer shall provide information for any investigation and enforcement to:

Program Manager
DoD CTIP Law Enforcement and Support
OUSD (P&R) DHRA
4800 Mark Center Dr Suite 06J25-01
Alexandria, VA 22350-4000

Reports may also be made:

- On-line at <http://ctip.defense.gov/>;
- On-line via the National CTIP Hotline website at <http://www.polarisproject.org/>;
- By e-mail to CTIPReports@OSD.Pentagon.mil; or
- By phone to the National CTIP Hotline at 1-888-373-7888.

Note: DoD has a zero tolerance policy for human trafficking. As the COR monitors the contractor and its employees, Combating Trafficking in Persons should rank among the COR's chief priorities.

Note: The COR must correct and report any suspected violations or activities to the Contracting Officer (See FAR Subpart 22.17 and DFARS Subpart 222.17).

Note: CORs should not personally investigate suspected incidents of Trafficking in Persons but should forward all reported or suspected violations to the Contracting Officer immediately.

Government Property

Government property means all property owned or leased by the Government and includes both Government-furnished property (GFP) and contractor-acquired property (CAP) to which the Government has title. Normally, contractors furnish all equipment and material necessary to perform Government contracts. However, sometimes it is in the best interest of the Government to provide the contractor with GFP for performance of a contract.

The COR may be asked to assist the Contracting Officer with administering the contractor's use of GFP. The property administrator acts on behalf of the Contracting Officer to oversee Government property in the possession of a contractor. If a property administrator is not assigned, the COR must be Level I certified in Contract Property Management in order to perform specific functions of property administration as specified by the Contracting Officer. Specific functions may include:

- Participating in the inventory of GFP as part of the transfer to the contractor;
- Alerting the Contracting Officer of any delay of GFP that may delay contractor performance;
- Reviewing the contractor property management procedures and advising the Contracting Officer of deficiencies and recommendations;
- Ensuring the contractor reports loss, theft, damage, or destruction (LTDD) of GFP during contract performance to the Contracting Officer³³; and,
- Ensuring the contractor complies with disposition instructions given by the Contracting Officer for the disposal of Government property.

Property Responsibilities

The contractor is required to follow the FAR and DFARS when it comes to Government property³⁴ along with the contract. The contractor has inherent responsibilities related to the control, use, preservation, repair and maintenance of Government Property (GFP and CAP).

Reporting, Reutilization, and Disposal of Government Property

Typically upon contract closeout, Government property is transferred, abandoned, destroyed, donated or sold to relieve the contractor of stewardship responsibility. Determining the correct disposition procedures for Government property that will not be transferred to a follow on contract takes a great amount of experience and training to correctly accomplish. The Contracting Officer and/or appointed Plant Clearance Officers have the inherent fiduciary responsibility of correctly determining what avenues and priorities will be utilized to dispose of excess Government property. With this in mind, it is imperative that only minimal duties are delegated to the COR unless the individual has the appropriate training and experience commensurate with the tasks stated in FAR Subpart 45.6

³³ Reference DFARS Clause 252.245-7002, "Reporting Loss of Government Property."

³⁴ Reference FAR Part 45 and DFARS Part 245.

Contract Termination

There are two types of contract termination, termination for convenience of the Government and termination for cause/default.

Termination for Convenience of the Government

Under the Termination for Convenience clause, the Government has the right to cancel a contract when doing so is in the best interest of the Government, notwithstanding the contractor's ability and readiness to perform. The Government may terminate a contract for convenience if the supply or service is no longer needed, the contract is no longer affordable, it is impossible for the contractor to perform as specified in the contract (through no fault of the contractor), or the requirement has changed radically.

A termination for convenience allows the contractor to submit a settlement proposal for the work that has been accomplished under the contract up to the effective date of the termination, including the cost associated with any work in progress. The Contracting Officer and the contractor then negotiate a settlement agreement. The contractor is entitled to be reimbursed for costs for work completed.

Termination for Cause/Default

The Government may, by written notice, terminate the contract for the contractor's failure to do the following:

- Deliver supplies or perform services within a specified time;
- Make progress, thereby endangering contract performance; or
- Perform any other provisions of the contract.

Because the Government is not liable for work not accepted, the termination for cause/default has a greater adverse consequence on contracts for supplies than on service contracts.

A termination for cause/default is improper if the required notice and opportunity to "cure" the situation is not given to the contractor. There must be at least 10 days remaining in the contract delivery schedule to use the "Cure Notice".

Another type of delinquency notice is called "Show Cause Notice." This is used as a means of discovering any excusable cause/default of the contractor's failure to perform. The "Show Cause Notice" is used when there are fewer than 10 days remaining on the contract delivery schedule.

The following are examples of excusable failure to perform:

- Acts of God;
- Acts of a public enemy;
- Acts of Government;
- Natural disasters such as fires, floods, and earthquakes;
- Epidemics;
- Quarantine restrictions;
- Strikes; or
- Freight embargoes.

Note: The COR's responsibilities are essentially the same in terminations for convenience, default, or cause – (1) Keep the Contracting Officer informed, (2) Provide recommendations to the Contracting Officer and requiring activity, (3) Review settlement proposals, and (4) Document the file.

Disputes

Disputes between a contractor and the Government may occur when a controversy develops as to the interpretation of the contract terms. Any differences with the contractor should not interfere with timely performance of the contract. All contracts contain a Disputes clause (FAR 52.233-1) that presents the procedures to be followed in case of any unresolved disagreements between contractors and the Contracting Officer. The COR will play a key role in advising the Contracting Officer as to the intent of specifications or provisions of the contract that may be the subject of dispute. Therefore, the COR should know the contract and create and keep the documentation required to state a position, in writing, to help the Contracting Officer. The Contracting Officer must respond promptly with a written decision, including the reasons for each dispute received. Unless appealed within certain time limits, the Contracting Officer's decision becomes final and is not subject to review. Because the Government must pay interest on claims that are in dispute, the COR must provide the Contracting Officer with the necessary documentation promptly. DFARS Subpart 233.2 provides specific instructions concerning disputes, Contracting Officer decisions, and appeals.

CORs should be prepared to submit various forms of documentation and correspondence developed during the course of a contract. CORs also should be prepared to give verbal testimony before the U.S. Government Accountability Office (GAO), the General Services Administration Board of Contract Appeals (GSBCA), the Armed Services Board of Contract Appeals (ASBCA), or a court of the judicial system in connection with disputes or other contractual matters. The completeness, accuracy, and currency of the COR's records may determine who prevails — the Government or the contractor.

The following are warning signs of potential disputes:

- Failure to meet performance deadlines;
- Repeated safety violations;
- Repeated incidents of poor quality work;
- Complaints from site workers;
- Prolonged delays;
- Persistent complaints regarding Government employees or inspectors; and,
- Complaints from subcontractors.

Disputes often can be resolved through an alternative disputes resolution (ADR) process. The ADR process offers the following advantages:

- Reduced settlement time;
- Expertise and objectivity of a neutral advisor;
- Privacy; and,
- Reduced costs.

The COR supports the ADR process by providing surveillance documentation and reports supporting the Government's position.

COR Working File

The COR is required to maintain a working file — in hard copy, electronically, or both — containing records relating to his or her COR duties during the life of the contract and to dispose of those records as directed by the Contracting Officer. In addition, the COR is charged with safeguarding all procurement sensitive, business sensitive, and proprietary information in the files. The contents of the COR working file will vary according to the size and complexity of the contract. At minimum, the file must contain (1) A copy of the Contracting Officer's letter of appointment/designation and other documentation describing the COR's duties and responsibilities; and (2) Documentation of actions taken in accordance with the delegation as well as any other documentation required by the Contracting Officer and referenced in the COR's appointment/designation letter. Appendix F contains a checklist of minimum COR file contents. However, good judgment and experience on the part of the COR will determine what is necessary for CORs to maintain in their files.

Note: The COR working file is business sensitive and must be safeguarded appropriately.

The COR working file is a part of the official contract file and must be maintained according to the Contracting Officer's instructions. The following are key procedures related to the COR file:

- Maintain a separate, current COR working file for each contract and each delivery or task order.
- As a matter of practice, prepare a memorandum for record no later than 1 business day after significant meetings or discussions with the contractor or the Contracting Officer, including telephone conversations and trip reports.
- Clearly index all documents and file them by category, in chronological order, in a suitable folder. Examples of document categories are memoranda for record, inspections, trip reports, minutes of meetings, and conferences. The goal is to organize the records in a way that allows for rapid access to information by the COR and inspection by the Contracting Officer and other authorized officials.
- Forward any correspondence received from the contractor to the Contracting Officer, and retain a copy in the COR working file.
- Send copies of all correspondence the COR prepares to the Contracting Officer.
- Mark the contract number clearly on all documents and file folders.
- Make the COR working file available for review by the Contracting Officer and other authorized officials. The Contracting Officer will schedule an appointment with the COR for review of the COR file. At a minimum, the Contracting Officer should review the COR file on a yearly basis and annotate the file with the results of the review to include finding and any recommended actions.
- Retain records that pertain to unsettled claims, open investigations, cases under litigation, or similar matters until final clearance or settlement.
- Upon completion or termination of the contract (or as otherwise directed by the Contracting Officer), forward the COR working file to the Contracting Officer for retention in the official contract file.
- Upon termination of a COR appointment/designation, promptly transfer the COR files to the successor COR, or forward them to the Contracting Officer, as instructed by the Contracting Officer.

DOs And DON'Ts: Contract Monitoring

CONTRACT MONITORING	
DO	DON'T
<ul style="list-style-type: none"> • Set a level of monitoring consistent with the type of contract, the complexity of the supply or service, and the importance of the contract to the overall program. • Read progress reports and immediately act on problems they reveal. • See that the contractor complies with every requirement of the contract. • Immediately contact the Contracting Officer when deficiencies or delinquencies are noted. • Use the contractor's invoices to help monitor technical progress. 	<ul style="list-style-type: none"> • Assume that "no news is good news." • Wait until delivery is due or overdue to check progress. • Take action against a delinquent contractor on your own. Work through the Contracting Officer. • Order, request, or even suggest that the contractor do work that is not called for by the contract. • Act as if you are the contractor's personnel manager. The COR reviews and approves or disapproves; the contractor supervises contractor personnel. • Assume the contractor billings are correct.

Chapter 8. Key Points

1. To properly monitor the contractor, the COR must know and understand the contract requirements, as specified in the SOO/SOW/PWS.
2. The COR monitors the contractor based on the contract requirements specified in the SOO/SOW/PWS and according to the COR appointment/designation letter from the Contracting Officer.
3. The COR must notify the Contracting Officer, orally and in writing, if the contractor is not performing well, i.e., if contractor performance deviates from the SOO/SOW/PWS.
4. The Contracting Officer — and only the Contracting Officer — has authority to give verbal or written directions to the contractor
5. Progress reports, when applicable to a contract, are critical in monitoring contractor performance, especially as a way to gauge early warning of potential changes, delays, or other problems in contractor performance.
6. The contractor has the primary responsibility for quality assurance and timeliness of its supplies or services. However, the COR must assess the contractor's

performance to ensure that the supply or service delivered conforms to contract requirements.

7. For services, the COR can monitor contractor performance using a variety of inspection methods:
 - a. Random sampling or stratified sampling.
 - b. Use 100-percent inspection for stringent performance requirements concerning health and safety.
 - c. Use periodic inspection or planned sampling to evaluate tasks selected on other than a 100 percent inspection or random basis.
 - d. User feedback is a valuable supplement to more systematic surveillance methods.
8. Documenting how well a contractor performs on a contract is an important part of the performance assessment process.
9. The Contracting Officer has several remedies available to address items or services that do not conform to contract requirements:
 - a. Bring the particular deficiency to the attention of the contractor by letter or through a meeting and obtain a commitment for appropriate corrective action.
 - b. Extend the contract schedule if excusable delays in performance are involved (such as combat situations or extreme weather conditions).
 - c. Withhold contract payments if the contractor fails to comply with delivery or reporting provisions of the contract.
 - d. Terminate the contract for cause or default.
10. The COR is required to notify the Contracting Officer about any delay in the delivery or performance schedule.
11. CORs are not investigators. CORs should not personally investigate suspected cases of fraud. Rather, CORs should determine the facts of the questionable circumstances and occurrences and advise the Contracting Officer, commander, supervisor, or cognizant defense criminal investigative agency.
12. According to the United Nations, human trafficking “involves the movement of people through violence, deception, or coercion for the purpose of forced labor, servitude, or slavery-like practices.” CORs must be diligent in ensuring that contractors and contractor personnel are not trafficking in persons.
13. When there is Government property on a contract, but a Government Property Specialist is not assigned, CORs should (1) inventory the property before signing it over to the contractor, (2) deliver Government property to the contractor on time (according to the contract schedule) so as not to delay contractor performance, and (3) ensure adequate property-control procedures (i.e. loss, damage or destruction). During contract performance, CORs should report loss, damage, or destruction of GFP to the Contracting Officer. In addition, CORs should supervise the disposition of GFP upon contract completion or when the contractor no longer requires the property.

14. When there is a dispute or request for equitable adjustment, CORs should be prepared to submit documentation developed during the course of contract performance in support of the Contracting Officer.
15. The COR is required to maintain a working file — in hard copy, electronically, or both — containing records relating to his or her COR duties during the life of the contract and to dispose of those records as directed by the Contracting Officer. The COR working file should be considered confidential and be safeguarded appropriately. If key documents are missing from the file, the COR should contact the Contracting Officer to obtain copies.

Chapter 9:

Monitoring Service Contracts

Personal and Non Personal Services

A service contract may be either for personal services or for nonpersonal services. It can also cover services performed by either a professional or nonprofessional entity, whether an individual or an organization. A personal services contract is a contract that, by its express terms or as administered, makes the contractor personnel appear to be, in effect, Government employees.

Personal services are characterized by the employer-employee relationship created between the Government and the contractor's personnel. Obtaining personal services by contract rather than by direct hire circumvents civil service laws unless Congress has specifically authorized acquisition of the services by contract. (Agencies may not award personal service contracts unless specifically authorized by statute.³⁵) An employer-employee relationship under a service contract occurs when, as a result of the contract's terms or the manner of its administration during performance, contractor personnel are subject to the relatively continuous supervision and control of a Government officer or employee. The following are typical of a personal services contract:

- Performance is on site.
- Principal tools and equipment are furnished by the Government.
- Services directly support the integral effort of an entity to accomplish its assigned function or mission.
- Comparable services, meeting comparable needs, are performed in the same or similar agencies using civil service personnel.
- Performance of inherently governmental functions. The inherent nature of the service, or the manner in which it is provided, reasonably requires, directly or indirectly, Government direction or supervision of contractor employees in order to:
 - adequately protect the Government's interest;
 - retain control of the function involved; or,
 - retain full personal responsibility for the function supported in a duly authorized Federal officer or employee.

The FAR defines a nonpersonal services contract as “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

³⁵ See 5 U.S.C. 3109.

relationships between the Government and its employees.” Stipulating the employees’ duty hours, requiring individuals to report to a Government person, requiring the contractor’s employees to complete certain Government forms, maintaining contractor personnel records such as time cards, and granting leave requests are examples of actions that are grounds for the nonpersonal services contractor to initiate a claim against the Government. The post-award administration of a non personal services contract is a critical time to use caution to prevent nonpersonal service contracts from becoming personal. The COR must be vigilant. This is a critical area and one that exposes the COR and the Government to liability. The solution is to write a SOO/SOW/PWS that specifies the duty hours and the contractor’s arrangement for supervising its employees.

When contracting for services, it is Government policy to use performance-based contracting methods and to contract for nonpersonal services rather than personal services to the maximum extent practicable.

Contractor Inspection Clauses for Service Contracts

FAR 52.246-1 addresses contractor inspection requirements as follows:

- The Contractor is responsible for performing or having performed all inspections and tests necessary to substantiate that the supplies or services furnished under this contract conform to contract requirements, including any applicable technical requirements for specified manufacturers’ parts.

The related clauses specific to services contracts include the following:

- FAR 52.246-4 (“Inspection of Services — Fixed-Price”), FAR 52.246-5 (“Inspection of Services — Cost-Reimbursement”), and FAR 52.246-6 (“Inspection — Time-and-Material and Labor-Hour”) require the contractor to provide and maintain an inspection system acceptable to the Government covering the services to be performed under the contract, to keep complete records of contractor performed inspections, and to make such records available to the Government during the term of the contract.
- FAR 52.246-14 (“Inspection of Transportation”) requires the contractor to furnish Government representatives with the free access and reasonable facilities and assistance required to accomplish their inspections and tests.

At a minimum, the contractor’s records must indicate the nature of the observations, the number of observations made, and the number and type of deficiencies found. The inspection records must also indicate the acceptability of the services and actions taken to correct deficiencies. The COR must ensure that the contractor complies with this contract requirement.

Performance Work Statements for Service Contracts

The PWS defines the contract's performance requirements, that is, the work to be accomplished. Defining the performance requirements includes identifying required outputs, key performance indicators or performance characteristics, and acceptance standards.

There is no standard template or outline for a PWS. The Contracting Officer will provide specific guidance on the development of a PWS. The DAU Service Acquisition Mall³⁶ provides tools and templates to assist with creating a PWS. FAR 37.602 requires that agencies, to the maximum extent practicable, do the following:

- Describe work in terms of required results rather than “how” the work is to be done or the number of hours to be provided.
- Enable assessment of work performance against measurable performance standards.
- Rely on measurable performance standards and financial incentives in a competitive environment to encourage innovation and cost-effective methods of performing the work.

Quality Assurance Surveillance Plans for Service Contracts

A QASP is an important tool that the COR can use as a guide for systematically and effectively monitoring the quality of the services received and in compliance with the terms of the contract. It also is used as a guide for determining if and when the Government needs to intercede and perhaps terminate a contract, as well as for determining if and when the Government needs to exercise contract options. (Options should be exercised after assessing the incumbent's performance under the current contract and testing the market to ensure a fair and reasonable price for conduct of services.) In FFP contracts, the purpose of surveillance is to identify any factors that may delay performance, particularly when it becomes necessary for the Government to accept performance shortfalls from contractually established standards.

Typically, the requiring activity that drafts the SOO/SOW/PWS also develops the QASP and surveillance methods, tailoring them to meet specific contract requirements and operating conditions. The QASP details how and when the Government will survey, observe, test, sample, evaluate, and document contractor performance. The QASP shall include procedures to monitor the contractor's performance regarding trafficking in

³⁶ The DAU Service Acquisition Mall website is located at <http://sam.dau.mil/>. DAU also provides Service Acquisition Mall training workshops.

persons such that non-compliance with FAR 52.222-50, “Combating Trafficking in Persons”, is brought to the immediate attention of the Contracting Officer. It also outlines the corrective procedures to be taken against the contractor for deficient performance, for example, issuing discrepancy reports that require corrective action responses, taking deductions from payments in FFP contracts (where such provisions have been made), and submitting recommendations to the Contracting Officer about the nature and significance of any performance shortfalls. The QASP may be adjusted to address contract risk not originally anticipated or no longer a risk to contract success. The Performance Requirements Summary (PRS) is releasable to the contractor but the QASP is an internal Government document.

Not every contract, delivery order, or task order requires a QASP. Such a plan is mandatory, though, for any contract, task order, or delivery order for services over the simplified acquisition threshold. Therefore, contracts for services, including time-and-material and labor-hour contracts, must include QASPs to facilitate assessment of contractor performance. These plans must be prepared in conjunction with the preparation of the SOO/SOW/PWS and should be tailored to address the performance risks inherent in the specific contract type and the work effort addressed by contract.

The objective of contract surveillance is to monitor contractor performance to assure the services received are consistent with contract quality requirements and received in a timely manner. To be effective, contract surveillance requires appropriate and immediate on-site monitoring of the services being performed. On-site monitoring should include periodic verification and analysis of the services performed. The effectiveness of contract surveillance depends on keeping the Contracting Officer informed of deviations from the contractual requirements in a timely manner. The objective of surveillance is to determine if and when to intercede and terminate a contract, when to take other appropriate corrective actions, and if and when to exercise contractual options.

The surveillance procedures must be discussed at the post-award orientation meeting (if held) to ensure understanding by all parties. Because it is developed and used by the Government, the QASP can be modified at any time. The decision to change the plan depends largely on the contractor’s demonstrated capability to carry out its quality control plan effectively.

QASP Composition and Method

The QASP should address the following topics:

- Purpose;
- Roles and responsibilities;
- Procedures;

- Methods of assessment;
- Successful performance and remedies;
- Certification of services;
- Sample of contract discrepancy report;
- Complaint procedures and training instructions; and,
- Abbreviations.

At a minimum, the QASP should do the following:

- Provide a schedule for periodic on-site inspections, floor checks, and audits of contractor's billings to ensure that costs being charged to the contract are legitimate and reasonable. Specify how often (weekly, monthly, etc.) inspections will occur.
- Identify what will be checked during an inspection, how it will be checked, and what type of sample will be used (random, 100 percent, etc.). For example, "Once every month, technical bulletin revisions will be inspected to assess the quality of work and progress toward completion. The revisions will be read for quality and accuracy. Random sampling will be done as work progresses. Near contract completion, a 100 percent inspection will be done."
- Describe the method that will be used for checking cost-type contract invoices to ensure that only those labor categories used for the performance of a task or project are invoiced to the Government. Describe how material or supplies will be delivered and accepted under a cost or fixed-price type contract. Identify the frequency of inspections of time cards and payroll records. Specify the policy for delivery and acceptance procedures.
- For cost type contracts, explain how the Contracting Officer will ensure that the prime contractor has obtained adequate competition when acquiring materials. For example, state in the QASP that contractor's acquisition of materials by competition will be checked for charges over a certain amount of money.
- Explain how the Contracting Officer will ensure that progress payments on fixed-price contracts do not exceed the quality and quantity of work completed and that payment is made in accordance with the progress payment clause. For example, state that the quantity and quality of work will be inspected to determine if the work completed to date justifies the amount of payment to be made.

Effective use of the QASP, in conjunction with the contractor's quality control plan, will allow the Government to evaluate the contractor's success in meeting the specified contract requirements. Surveillance should be increased if the contractor begins to experience problems or difficulties in performance, financial strength, management, quality assurance, or accounting system.

Each inspection made by Government inspectors must be scheduled and the results must be documented and filed for further reference, audit, and proof of inspection. User complaints, unsatisfactory contract performance, equipment breakdown, meetings, and so on should also be documented and filed. This documentation could be in the form of a contract deficiency report, minutes of meetings, annotations on tally checklists, correspondence, and so forth.

Contract Surveillance Checklist

The COR should use a contract surveillance checklist to ensure correct performance of COR duties. Appendix F contains a checklist for contract surveillance.

Incident Reporting

It is important for CORs to know that contractors are required to report offenses alleged to have been committed by or against contractor personnel to appropriate investigative authorities and may need to assist the contractor in locating the appropriate authority. Victim and witness protection and assistance to contractor personnel in connection with alleged offenses will be provided.

Contract Work Hours and Safety Standards Act

Depending on the nature of the contract and the COR's appointment/designation letter, the COR may get involved with reviews of the contractor's time charges. The Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333) requires that certain contracts contain a clause (FAR 52.222- 4, "Contract Work Hours and Safety Standards Act – Overtime Compensation") specifying that no laborer or mechanic doing any part of the work contemplated by the contract may be required or permitted to work more than 40 hours in any work week unless paid for all additional hours at not less than one and a half times the basic rate of pay.

Violations of the act may be detected during a labor interview. A part of the interview requires the employee to divulge the total number of hours he has worked during the previous week. Contractors and subcontractors in violation of this contract provision must pay back wages owed the employee plus liquidated damages per day per affected employee. This amount can be withheld from monies owed the contractor under the contract or from any other contract that the contractor has with the Government. The approval of the use of overtime may only be granted by an authorized agency approving official (i.e. Contracting Officer) after determining in writing that overtime is necessary.

Chapter 9. Key Points

1. The majority of Government service contracts are for nonpersonal services.
2. A personal services contract is a contract that, by its express terms or as administered, makes the contractor personnel appear to be, in effect, Government employees.
3. The acquisition regulation inspection clauses are key in providing the COR the statutory authority with the contractor to allow the COR to oversee contract performance.
4. The PWS is a critical document in that it defines the contract's performance requirements.
5. To assist the COR in ensuring the contractor is meeting performance requirements a QASP is utilized and included in the contract. The QASP establishes the metrics that will be used by the COR to assess successful contract performance.

Chapter 10:

Monitoring Construction Contracts

Performance and Payment Bonds

The Miller Act requires contractors to furnish performance and payment bonds for construction contracts over \$150,000. Bonds are similar to an insurance policy. A bond is a written instrument between the contractor and a third-party surety to ensure fulfillment of the contractor's obligation to the Government and to suppliers of labor and material for a given project. Performance bonds protect the Government from default by the prime contractor and are required in the amount of 100 percent of the original contract price in construction contracts (See FAR 52.228- 15, "Performance and Payment Bonds — Construction"). Payment bonds protect suppliers of labor and materials in the event that the prime contractor does not reimburse the subcontractors. Payment bonds are required because construction subcontractors do not have the legal right to place liens against real property of the Government in the form of mechanics' liens. Such liens can be placed against real property by subcontractors in civilian contracting if the prime contractor does not reimburse the subcontractors.

Contractor Inspection Clauses

When construction contracts are in excess of the simplified acquisition threshold, the contractor is required by FAR 52.246-12, "Inspection of Construction," to maintain an inspection system:

The Contractor is responsible for performing or having performed all inspections and tests necessary to substantiate that the supplies or services furnished under this contract conform to contract requirements, including any applicable technical requirements for specified manufacturers' parts.

The contractor must make its records of inspection available to the Government. At a minimum, the contractor's records must indicate the nature of the observations, the number of observations made, and the number and types of deficiencies found. The records also must indicate the acceptability of the work and the actions taken to correct deficiencies. The COR must ensure that the contractor complies with this contract requirement.

COR Compliance Checking

The COR must make the following compliance checks for construction contracts:

- Review the contractor's certified payrolls.
- Check work sites for required postings.
- Conduct labor standard interviews.
- Compare payrolls and onsite interviews.
- Resolve discrepancies/violations.

Correction of Deficiencies

In accordance with the Inspection of Construction clause, the contractor must replace materials or must correct workmanship not conforming to the contract requirements at no additional cost to the Government. In addition, the contractor is subject to any liquidated damages specified in the contract or actual damages incurred by the Government. If the contractor fails to correct deficiencies, the general provisions of the contract provide for specific actions to be taken by the Contracting Officer, as follows:

- Replace or correct the item or work at the contractor's expense. This may be accomplished by award of a new contract or by use of the Government's own resources.
- Accept the items with a reduction in price. This action is accomplished by formal modification to the contract. The reduced price is based upon the reasonable value of the item, considering the possible cost of correcting the item.
- Terminate the contract for default. This action is taken only as a last resort. If the item or work must be re-procured, the contractor is normally liable for excess costs incurred by the Government.

The COR may not take any of these actions, but must ensure timely notice of deficiencies to the Contracting Officer.

Liquidated Damages

Liquidated damages are required in DoD construction contracts over \$500,000 but may be used in contracts under this threshold if the Contracting Officer determines that the Government may suffer a loss if the project is not completed on time. Liquidated damages are amounts agreed to and settled on in advance to avoid litigation. They are based on the damage one party may incur if the other does not complete the contract on time. Because they are determined prior to award of the contract, they can be only estimates and may not be the actual damages that the party ultimately may incur. The amount does not have to be the exact damages that may be incurred, but must show some reasonable relationship to the anticipated damages. If there is no reasonable relationship to the anticipated damages, these damages will be determined a penalty and will not be enforced. The contract must contain a clause limiting the amount of liquidated damages

that can be assessed a contractor. The Government is entitled to the amount of liquidated damages agreed to unless the contractor has encountered an excusable delay.

The COR must keep accurate notes and records. For example, contractors normally dispute the number of days that have been assessed and not the liquidated damage rate. Consequently, the COR must keep adequate daily records of weather or any conditions that may affect the completion of the contract. Contracting Officers have the final authority as to whether or not they will enforce liquidated damages if the delay is not excusable.

Differing Site Conditions

One of the major risks of a construction project is the type of subsurface or other latent physical condition that will be encountered. If bidders were required to assume the full risk of these conditions, they would either have to examine the site extensively or include contingencies in their bids to protect themselves against potential unfavorable conditions. On the other hand, the Government normally has obtained information concerning site conditions during its design of the project prior to soliciting bids and wants to avoid the disruption and bidding expense that would be involved if each bidder were to make borings or other extensive investigations. The Government's response to this situation has been to make its information about the site available to bidders, to admonish bidders to make reasonable site investigations, and to relieve the contractor from the risk of certain types of unexpected unfavorable conditions while protecting the Government if the conditions turn out to be more favorable than expected. The contractor has an affirmative duty to notify the Government when a differing site condition is encountered.

Contractual Rights of The Government

A contractual right of the Government cannot be waived, nor may a contract be modified for the convenience of a contractor. However, it may be in the best interest of the Government not to reject the materials or services of a construction contract because of resultant utilities shut-off, downtime of equipment or facilities, excessive inconvenience to users or occupants, or other reasons unique to the contract — costs that may not be recoverable from the contractor as damages. If it is desired to accept work that essentially meets the needs of the Government but does not conform to the requirements of the contract, the COR must furnish the Contracting Officer recommendations to accept the work, along with findings on all points in which the work fails to meet contractual requirements and an estimate of the time required (and cost decrease, if applicable) for the contractor to complete performance. The Contracting Officer may extend the contract completion date by formal modification to allow the contractor to correct deficient work.

Progress Payments

FAR 52.232-5, "Payment under Fixed-Price Construction Contracts," provides that the contractor is entitled to progress payments monthly as the work proceeds, or at more frequent intervals as determined by the Contracting Officer. This clause further permits a maximum retention of 10 percent of the amount of the payment until satisfactory progress is achieved, unless a lesser retention percentage is approved by the Contracting Officer. For progress payments, the Contracting Officer should advise the contractor prior to commencement of on-site work to furnish a breakdown of the total contract price showing the amount for each principal category of the work. Such breakdown should be in as much detail as requested by the Contracting Officer, to provide a basis for processing progress payments. The categories of work shown on the contractor's request for progress payment may be the same as set forth in the progress schedule approved by the Contracting Officer in accordance with FAR 52.236-15, "Schedules for Construction Contracts," which is included in all construction contracts having a performance period exceeding 60 days. A detailed breakdown is not needed for final payments under a contract line item.

FAR 52.232-5 also requires the following:

Along with each request for progress payments, the contractor shall furnish the following certification, or payment shall not be made: I hereby certify, to the best of my knowledge and belief, that (1) The amounts requested are only for performance in accordance with the specifications, terms, and conditions of the contract; (2) Payments to subcontractors and suppliers have been made for previous payments received under the contract, and timely payments will be made from the proceeds of the payment covered by this certification, in accordance with the subcontract agreements and the requirements of 31 U.S.C. 39; and (3) This request for progress payments does not include any amounts that the prime contractor intends to withhold or retain from a subcontractor or supplier in accordance with the terms and conditions of the subcontract. This certification is not to be construed as final acceptance of a subcontractor's performance.

The COR must screen each invoice for progress payments and the above certification, and compare the total amount invoiced with the progress reports to ensure that the percentage of the amount invoiced is not excessive relative to the percentage of work accomplished. The COR must ensure that quantities, percentage of work completed, list of materials delivered to the job site, and monetary amounts are accurately stated on all receipts and acceptance documents. The COR must forward a copy of each receipt and acceptance document, processed in connection with progress or final payments, to the Contracting Officer concurrent with forwarding the document to the paying office. The COR is responsible for ensuring that payments to the contractor are processed promptly.

Suspension of Work

The Government includes the Suspension of Work clause in all fixed-price construction contracts and in architect-engineer contracts. The Suspension of Work clause allows the Contracting Officer to suspend a contractor's performance for a reasonable period of time. If the suspension is unreasonable, the contractor may be entitled to reimbursement of certain costs that can be attributed to the delay. Ordered suspensions covered by the Suspension of Work clause can be compensated for only if they result in unreasonable delay. A suspension of work differs from a stop work order, which is used in negotiated contracts for supplies and services.

The CORs must maintain adequate records for any actions taken under the Suspension of Work clause. Adequate records may reveal that the contractor contributed to the suspension, that the contractor may not have been damaged by the suspension, or that the Government's suspension was reasonable. COR records are vital in determining the amount of monies that the contractor may be entitled to if the suspension is determined to be unreasonable.

As prescribed in FAR 42.1305 (a), the Contracting Officer must insert the "Suspension of Work" clause in solicitations and contracts when a fixed-price construction or architect-engineer contract is contemplated. "Suspension of Work: The Contracting Officer may order the Contractor, in writing, to suspend, delay or interrupt all or any part of the work of this contract for the period of time that the Contracting Officer determines appropriate for the convenience of the Government."

If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed, or interrupted (1) by an act of the Contracting Officer in the administration of this contract, or (2) by the Contracting Officer's failure to act within the time specified in this contract (or within a reasonable time if not specified), an adjustment must be made for any increase in the cost of performance of this contract (excluding profit) necessarily caused by the unreasonable suspension, delay, or interruption, and the contract modified in writing accordingly. However, no adjustment may be made under this clause for any suspension, delay, or interruption to the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the contractor, or for which an equitable adjustment is provided for or excluded under any other term or condition of this contract. A claim under this clause must not be allowed (1) for any cost incurred more than 20 days before the contractor has notified the Contracting Officer in writing of the act or failure to act involved (but this requirement may not apply as to a claim resulting from a suspension order), and (2) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the suspension, delay, or interruption, but not later than the date of final payment under the contract.

Chapter 10. Key Points

1. Performance and Payment Bonds are critical tools in ensuring satisfactory contractor performance for construction contracts in excess of the simplified acquisition threshold.
2. The acquisition regulations inspection clause for construction is key in providing the COR the authority to oversee contract performance.
3. Just like service contracts the COR must ensure the contractor is complying with the terms and conditions of the contract and correct any contractor caused deficiencies in a timely manner.
4. Liquidated damages are another key tool of construction contracts and acts as a motivator to ensure timely completion. Liquidated damages cannot be considered a penalty but must adequately reflect what costs the Government will incur if the project is not completed according to the contract schedule.
5. The unique nature of construction is that there will be something discovered during performance that differs from the original contract documentation. Addressing these changes is accomplished through differing site conditions. There are two types of differing site conditions: 1) Category I, and, 2) Category II. The changes clause process is used to definitize these actions.
6. Progress payments are typically provided under a construction contract due to the length of time it takes to complete a project and the incremental nature of the costs incurred under a construction contract.
7. It is imperative for a COR to maintain good records if a suspension of work is issued. The COR records may be vital in determining the amounts the contractor may be entitled to if the suspension is determined to be unreasonable.

Chapter 11:

Foreign Acquisition and International Relationships

Domestic Trade

Many countries, including the U.S., have established domestic preference laws to protect the domestic economy and industry. However, in today's global economy, no one country is immune from the economic benefits to international trade.

International Trade

International Trade is the exchange of capital, goods and services across international borders. Generally, however, international trade is more expensive than domestic trade because of tariffs, time costs in border delays and packaging, and costs directly related to differences in language, culture and legal requirements. Also, factors of production such as capital and labor are more mobile within a country than across borders. To offset the increased costs of international trade, countries often enter into trade agreements, which eliminate tariffs, import quotas, and preferences for most goods and services traded.

Prohibited Sources³⁷

DoD is prohibited from awarding contracts or allowing subcontracts to a firm or a subsidiary of a firm if the government of a terrorist country. Currently the Department of State lists Cuba, Iran, Sudan, and Syria as terrorist countries.

U.S. Domestic Preference Legislation

The Buy American Act

The Buy American Act (BAA) is the major domestic preference statute governing procurement by the Government. Essentially, the BAA protects domestic labor by providing a preference for domestic goods in Government purchases. In determining what are or are not American goods, the place of mining, production, or manufacture is the determining factor. The nationality of the contractor is not considered when determining if a product is of domestic origin. The BAA does not apply to articles

³⁷ For more information about policies toward foreign countries for the export of defense articles and defense services, visit http://www.pmdt.state.gov/embargoed_countries/index.html.

procured for “use outside the U.S.”, nor is it applicable to procurements below the micro-purchase threshold. (See definition in FAR 2.101)

The Trade Agreements Act of 1979 authorizes the President to waive any otherwise applicable “law, regulation or procedure regarding Government procurement” that would accord foreign products less favorable treatment than that given to domestic products. Other treaties and agreements also place limitations on the application of the Act and must be considered when looking at any Buy American question.

Coverage of the Buy American Act

The Act applies to all federal procurements, but has separate provisions for supply contracts and construction contracts. Most of the rules and definitions used in applying the Act are found in the FAR Part 25 and DFARS Part 225, not in the Act itself.

The Act differentiates between manufactured and un-manufactured articles. An un-manufactured article will be deemed a domestic end product or construction material if it has been mined or produced in the U.S. Manufactured articles are considered domestic if they have been manufactured in the U.S. from components, substantially all of which have been mined, produced, or manufactured in the U.S. Substantially all means that the cost of foreign components does not exceed 50% of the cost of all components.

Exceptions to the Buy American Act

The primary exceptions to the Buy American Act are:

- ***Inconsistent with the Public Interest***

The Head of the Agency may waive the requirements of the Act if a determination is made that the application of the Act would be inconsistent with the public interest. This public interest exception has often been used like a national security exception by the DoD, but is also available for non-defense purposes. This exception places considerable discretion in the head of the agency.

- ***Unreasonable Cost***

A federal agency is permitted to use a foreign product if the Contracting Officer determines that the cost of the lowest priced domestic product is “unreasonable.” A 50% differential is applied to DoD procurements.³⁸ The differential is added to the lowest acceptable foreign offer and then compared to the lowest acceptable domestic offer. The differential is applied only to the bid price for material to be delivered under the contract,

³⁸ Outside DoD, the differential is 6% or 12% if the contract involves a small business or labor surplus area.

not the total contract price. In most cases, the differential is applied on an item by item basis; however, a solicitation may provide that, for purposes of the BAA, certain items will be lumped together.

- *Not Produced or Manufactured in the U.S. in Sufficient and Reasonably Available Commercial Quantities and of Satisfactory Quality*

FAR 25.104 provides a list of articles which fall under this exemption.

The Berry Amendment

The Berry Amendment is a statutory requirement that restricts the DoD from using funds appropriated or otherwise available to DoD for procurement of food, clothing, fabrics, fibers, yarns, other made-up textiles, and hand or measuring tools that are not grown, reprocessed, reused, or produced in the U.S. This includes foreign military sale transactions and any time a DoD buying activity is purchasing on behalf of another agency. Likewise, any purchase on behalf of DoD by another agency, for example the General Services Administration (GSA), must also comply. Berry Amendment rules apply even if the DoD-funded purchase is not a DoD-awarded contract. The Berry Amendment follows the funds – if DoD funds are sent to another federal agency, the Berry Amendment still applies.

The Berry Amendment applies to BOTH end items and components. The requirement for domestic origin flows down through all the tiers of suppliers, e.g., it does not stop with what the prime contractor manufactures or assembles. The prime contractor is responsible for verifying the source of all materials and components from subcontractors.

If an acquisition involves items covered by the Berry Amendment, and the contractor cannot locate a domestic source, a Domestic Non-Availability Determination (DNAD) may be appropriate. The prime contractor must request a DNAD through the Contracting Officer. DFARS PGI 225.7002-2(b) establishes the process for requesting a DNAD.

In accordance with DFARS 225.7002-2(b), the Secretaries of the Military Departments and the Director, Defense Logistics Agency, without power of redelegation, have authority to approve DNADs for their respective requirements. The Under Secretary of Defense for Acquisition, Technology & Logistics is the DNAD approval authority for the other defense components.

Note: A comparison of the Berry Amendment and the BAA is provided in figure 11.1. The figure is another way to see the differences discussed above between the Berry Amendment and the BAA.

Figure 11.1 – A Comparison of the Berry Amendment and the Buy American Act

Name	Ref Law	Applies to	Flow down	Covered Items	Thresholds	Domestic Content	Commercial Exception?	Qualifying Country Exception	Where Contract Performed
Berry	10USC 2533a	DoD	All tiers of contractors	Specified in law	> Simplified Acquisition Threshold	100%	No	Applies to Chemical Warfare Protective Clothing (all qualifying countries) and par-aramid fibers (Netherlands only))	Anywhere
BAA	41 USC 10a - 10d	Gov't wide	End item only	Supply Purchases	> Micro-purchase Threshold	50%	Yes - for IT	Applies to all items	In U.S. Only

Trade Agreements

The U.S. is party to many trade agreements worldwide including:

- The World Trade Organization Government Procurement Agreement (WTO GPA) allows for reciprocal acquisition of items with the 39 signatory countries if it is an authorized item (specified broadly by the Federal Supply Code) and meets a certain dollar value threshold (see FAR Part 25);
- Free Trade Agreements (FTA) (with 17 countries);
- The least developed country designation made by the U.S. Trade Representative in acquisitions covered by the WTO GPA (this includes Afghanistan); and
- The Caribbean Basin Trade Initiative, with the exception of Panama, must be treated as eligible products in acquisitions covered by the WTO GPA.

For more information on Trade Agreements, please go to the Office of the U.S. Trade Representative website at <http://www.ustr.gov/trade-agreements>.

International Relationships

CORs need to consider cultural differences when monitoring contracts performed overseas. CORs who work with non-U.S. contractors should be aware of the total spectrum of communication: language, nonverbal communication, customs and perceived values. Examples of cultural differences that can effect contract performance include:

- Americans value equality and believe that they will become successful if they work hard. In the Middle East, family status is more important to success. For example, to become a police officer in Saudi Arabia, a person must be related to the King, even if remotely, like a third cousin.
- Americans value competition, but in many places of the world, cooperation is more important. This cultural difference can lead to collusion among contractors proposing on contracts. Also, nepotism, whereby multiple family members are involved in one or more business units, is very common. For example, contractors may decide which one of them will get the next contract and some of the competing offerors may be extended family members of multiple business units.
- Americans value individuality. In places like the Middle East, the group or tribe is more important than individuals and may be key to an individual's success.
- In the Mediterranean, South American and Asian cultures, extended family is very important.

To work effectively with people from other cultures, the COR should keep the following tips in mind:

- Be careful when using first names. First names may mean a lifelong relationship. Therefore, be careful to use only last names unless the relationship is sincerely close. Using first names too freely may hurt the COR's reputation and possibly the business relationship.
- Constructive criticism is often viewed as a personal attack. Be careful on providing criticism and making a negative point. Foreign cultures handle criticism differently. Always try to make the point without too much criticism unless you have a lot of back-up documentation.
- Find different ways of saying "no" without actually saying "no". For example, the COR could say "I'll see what I can do." Americans appreciate an honest answer, but in many cultures, an evasive answer is the norm. People from such cultures do not want to disappoint others. In some cultures, "no" is interpreted as an expression of personal dislike.
- Be sensitive to ethnic or national sensitivities. For example, do not refer to people from Okinawa as Japanese, and do not refer to the Arabian Gulf as the Persian Gulf when speaking to a Saudi. In other cases, not knowing or not distinguishing the difference between nationalities can cause hard feelings. Do Canadians like being grouped in with Americans? Do the Scots like being referred to as English?
- Ethical and legal dilemmas are always prevalent. Many foreign cultures do not have either a legal or ethical limit regarding providing gifts, food, money, or other items or services of value to people in positions of influence or power. Be very careful to not cross over the legal boundary to violate U.S. Law. It is your responsibility to find the most appropriate tone and phrase to say 'no' when you need to.

Working in another culture can be an exciting experience. CORs may make friends for life and do things they never thought possible. However, CORs must be careful when dealing with foreign contractors. There is a thin line between working within the foreign culture and violating U.S. Laws. Even the best intentions can land someone in jail. CORs must be careful and understand their limitations. Even if it is legal to do something, it does not necessarily mean it should be done. The COR should consult with the legal office about such concerns.

Business Culture

CORs meet with contractors routinely. When scheduling meetings with non-U.S. contractors, remember non-U.S. contractors may routinely start meetings with small talk and even a meal before turning to business. The COR should discuss this issue – particularly the need to accept meals – with their leadership, legal office and the Contracting Officer.

Third world contractors may view time differently than Americans. **Americans place a great emphasis on timeliness.** A COR may find that a contractor's approach to time is much slower and more relaxed than in American culture. This cultural difference can frustrate a COR to the point of being counterproductive. To be most effective, the COR needs to understand the differences and work within the system, rather than forcing American ideas of urgency.

Americans love their personal space, but in many countries, such as in the Middle East, personal space is very small. In those countries, moving away from the person gives the perception you do not like them (and may be considered rude). Touching may be more or less prevalent. In the Middle East, holding hands for a long time, compared to a normal handshake, is common. Their handshake may be soft and may hold your hand for 30 seconds to a minute, which may be awkward for those who are not used to it.

Living patterns in some countries are very different. For example, in Saudi Arabia, transactions are slower from June to September due to vacations. In Europe, many individuals take their vacations for the entire month of August. Also CORs should be prepared for contractors to accomplish very little during Ramadan, a month long Muslim holiday.

Note: CORs should use their understanding of the local culture to achieve successful outcomes. It takes understanding, planning and patience when working with non-U.S. contractors. When communicating, CORs should use clear and concise language and should avoid jargon and acronyms. Above all, CORs should keep a professional working relationship. They should take cultural factors into account, but should discern between cultural differences and excuses.

Additional Guidance

Listed below are some sources of additional guidance on cultural awareness.

- The US Marine Corps Center for Advanced Operational Culture Learning (CAOCL) provides information about regional cultures and languages to help planning and operations in a Joint expeditionary environment. The CAOCL Web site (<http://www.tecom.usmc.mil/caocl/>) provides specific cultural links related to Operation Iraqi Freedom, Operation Enduring Freedom, United States Africa Command, United States Pacific Command, United States Southern Command, and United States Central Command.
- The Defense Language Institute Foreign Language Center offers culturally based education (including predeployment materials) in more than 40 languages. The center's Web site offers downloadable products for predeployment training, deployment use, or refresher training at <http://www.dliflc.edu/products.html>.
- The Air Force Air University Web site offers sociocultural and language resources at <http://www.au.af.mil/culture/index.htm>. One such resource is the Air Force Culture and Language Center's Expeditionary Skills Training Portal (<http://www.culture.af.edu/estPortal.html>) for those who are preparing to deploy.

Chapter 11. Key Points

1. The BAA applies to acquisitions by any organization of the Federal Government. The BAA applies to end products only, not to components. It does not flow down to subcontractors, and there are many exceptions. Two of the most commonly used by DoD are the exception for 21 Qualifying Countries and the exception for items "not reasonably available commercial quantities and of satisfactory quality."
2. The Berry Amendment applies to acquisitions for DoD funds. It requires that 100 percent of the covered products be produced in the U.S. It applies to all components in the product and to suppliers at every tier of the supply chain. There are very few exceptions.
3. The exception allowing overseas purchase for goods to be used only outside the U.S. is very helpful in a deployed theatre.
4. CORs need to consider cultural differences when monitoring contracts performed outside the U.S. CORs who work with non-U.S. contractors should speak clearly and avoid acronyms. The COR may need to take more time to explain what's required in the contract. If there are any problems, the COR must contact the Contracting Officer.

5. Be sensitive to ethnic or national sensitivities.
6. The offering of gifts, food, money, or other items or services of value is common in foreign cultures. Be very careful not to cross over the legal boundary to violate U.S. Law. It is the COR's responsibility to find the balance between tone and the correct phrase to use saying "no". There are many ways to say "no" to a non-U.S. contractor.

Appendix A: Forms

Contents

- Contract Forms:
 - Standard Form (SF) 26: Award/Contract
 - SF 30: Amendment of Solicitation/Modification of Contract
 - SF 33: Solicitation, Offer and Award

- Receiving Reports:
 - SF 1449: Solicitation/Contract/Order for Commercial Items
 - Department of Defense (DD) Form 1155: Order for Supplies or Services
 - DD 250: Material Inspection and Receiving Report
 - Invoices Used as Receiving Reports

- Other Reports:
 - DD 2772: Contractor Discrepancy Report
 - COR Monthly Report to the Contracting Officer
 - SPOT Letter of Authorization

- Funding Forms

Contract Forms

CORs need to understand the terms and conditions of the contract as well as the Uniform Contract Format.

The image shows the SF 26 Award/Contract form, which is a standardized document used for awarding contracts. The form is divided into several sections:

- Section 1:** AWARD CONTRACT. This section includes fields for the contract number, effective date, and the date of purchase request receipt.
- Section 2:** CONTRACT FROM AND AWARD NO.
- Section 3:** EFFECTIVE DATE.
- Section 4:** REQUEST FOR PURCHASE REQUEST RECEIPT NO.
- Section 5:** BIDDING. This section includes fields for the bidding code, the date the contract was awarded, and the code of the awarding agency.
- Section 6:** NAME AND ADDRESS OF CONTRACTOR (Name, Street, City, State, and ZIP Code).
- Section 7:** DELIVERY. This section includes fields for the delivery code, the date of delivery, and the code of the awarding agency.
- Section 8:** DISCOUNT FOR PROMPT PAYMENT.
- Section 9:** TO SUMIT REVISED. This section includes fields for the date of revision and the code of the awarding agency.
- Section 10:** AUTHORITY FOR BIDDING ORDER. This section includes fields for the authority code, the date of award, and the code of the awarding agency.
- Section 11:** ACCOUNTING AND AWARD REFERENCE DATA.
- Section 12:** TABLE OF CONTENTS. This section includes a table with columns for page number, description, and page number.
- Section 13:** TABLE OF CONTRACT CLAUSES. This section includes a table with columns for clause number, description, and page number.
- Section 14:** CONTRACTOR'S SIGNATURE. This section includes a field for the contractor's signature and the date.
- Section 15:** AWARDING AGENCY'S SIGNATURE. This section includes a field for the awarding agency's signature and the date.

Figure A.1: SF 26 – Award/ Contract

SOLICITATION, OFFER AND AWARD		1. THE CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 702)		2. RATED	PAGE OF PAGES
7. CONTRACT NUMBER	8. SOLICITATION NUMBER	9. TYPE OF SOLICITATION	10. DATE ISSUED	11. REGION/PURCHASE NUMBER	
		12. SALES BIC (R) NEGOTIATED (RFP)			
7. ISSUED BY		8. CODE	9. ADDRESS OFFER TO (if other than item 7)		
NOTE: In sealed bids solicitations "offer" and "offeror" mean "bid" and "bidder".					
SOLICITATION					
9. Sealed offers (original and copies, for forwarding the supplies or services in the Schedule will be received at the place specified in item 8, or if not specified, in the Depository located in _____ until _____ local time _____ (Place) _____ (Date)					
CAUTION: LATE SUBMISSIONS, MODIFICATIONS, AND WITHDRAWALS: See Section I, Provision No. 52.214.7 or 52.215.1. All offers are subject to all terms and conditions contained in this solicitation.					
10. FROM INFORMATION: CALL		11. NAME	12. TELEPHONE (AND COLLECT CALLS)	13. EMAIL ADDRESS	
		14. AREA CODE	15. NUMBER	16. EXT	
17. TABLE OF CONTENTS					
(X)	(SIC)	DESCRIPTION	(X)	(SIC)	DESCRIPTION
PART I - THE SCHEDULE			PART II - CONTRACT CLAUSES		
A		SOLICITATION CONTRACT FORM	I		CONTRACT CLAUSES
B		SUPPLIES OR SERVICES AND PRICES/COSTS	II		LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACH
C		DESCRIPTION SPEC. WORK STATEMENT	J		LIST OF ATTACHMENTS
D		PACKAGING AND MARKING	PART IV - REPRESENTATIONS AND INSTRUCTIONS		
E		INSPECTION AND ACCEPTANCE	K		REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF OFFERORS
F		DELIVERIES OR PERFORMANCE	L		RESTRICTIONS, CONDITIONS, AND NOTICES TO OFFERORS
G		CONTRACT ADMINISTRATION DATA	M		EVALUATION FACTORS FOR AWARDS
H		SPECIAL CONTRACT REQUIREMENTS			
OFFER (Must be fully completed by offeror)					
NOTE: Item 12 does not apply if the solicitation includes the provisions at 52.214.16: Minimum Bid Acceptance Period.					
12. If compliance with the above is the underlying basis, if the offer is accepted within _____ calendar days (60 calendar days unless a different period is stated by the offeror) from the date for receipt of offers specified above, to furnish any or all items upon which prices are offered at the price set opposite each item, delivered at the designated points, within the time specified on the schedule.					
13. ESCROW FOR PROMPT PAYMENT (See Section I, Clause No. 52.215.2)		14. NO CALENDAR DAYS (%)	15. CALENDAR DAYS (%)	16. CALENDAR DAYS (%)	17. CALENDAR DAYS (%)
		18. AMENDMENT NO.	19. DATE	20. AMENDMENT NO.	21. DATE
14. ACKNOWLEDGMENT OF AMENDMENTS: The initial acknowledgment must be submitted as the SOLICITATION (or otherwise identified documents numbered and dated)					
15A. NAME AND ADDRESS OF OFFEROR OR		16. FACILITY	17. NAME AND TITLE OF PERSON AUTHORIZED TO SIGN OFFER (Type or print)		
18. TELEPHONE NUMBER		19. CHECK IF REMITTANCE ADDRESS IS DIFFERENT FROM ABOVE. ENTER SUCH ADDRESS IN SCHEDULE	20. SIGNATURE		21. OFFER DATE
22. AREA CODE/NUMBER					
AWARD (To be completed by Government)					
23. AUTHORITY FOR ISSUING OTHER THAN FULL AND OPEN COMPETITION		24. AMOUNT		25. ACCOUNTING AND APPROPRIATION	
26. SUBMIT INVOICES TO ADDRESS SHOWN (If covered under separate contract)		27. PAYMENT WILL BE MADE BY		28. NAME OF CONTRACTING OFFICER (Type or print)	
29. UNITED STATES OF AMERICA		30. UNITED STATES OF AMERICA		31. AWARD DATE	
SIGNATURE OF Contracting Officer					
IMPORTANT: Award will be made on this form or on Standard Form 28, or by other authorized award letter notice.					
AUTHORIZED FOR LOCAL REPRODUCTION. Previous edition is unusable.					
STANDARD FORM 33 (REV. 9-97) Prescribed by GSA - FAR (48 CFR) 53.214(c)					

INSTRUCTIONS for STANDARD FORM 33

The instructions below correspond to the blocks of the form.

1. Include the DPAS rating if applicable IAW FAR Subpart 11.6 and page information.
2. Insert the award PIN once you've made award IAW DFARS 204.7003.
3. Insert the solicitation PIN IAW DFARS 204.7003.
6. Insert the purchase requirement (PR) number from your PR form (i.e., DA 3953, NAVCOMP 2276, AF 9, etc.). This will normally be different from the PIN.
7. Insert the issuing contracting office information (and its code, if applicable).
8. Leave this blank unless you'll have offers sent somewhere other than block 7.
10. Buyer should place her / his name and telephone number here.
11. Place an "X" in each section included in the solicitation / award and the number of pages in each applicable section.
13. Offeror will insert payment terms as applicable.
14. Offeror will acknowledge any amendments by placing the amendment number(s) and date of acknowledgment.
15. Offeror will include its name, address, and telephone number. If offeror knows its Commercial and Government Entity (CAGE) code and has a remittance address different from 15A, it should insert the CAGE code in 15A and place an X in 15C.
- 16-18. Offeror will insert the name and title of the authorized signature authority and have that person sign and date the offer before submission to the contracting office.
19. Insert the line item(s) to be accepted. If you are not accepting all line items, ensure you are complying with the conditions for partial acceptance (usually found in section M of the solicitation).
21. Insert the fund cite(s) from which you'll make payment. If the cite(s) will not fit in this block, insert "see schedule, section 7" (usually G) and list your cite(s) in that section.
22. See FAR Part 63 for guidance.
23. Insert item 7, 8, 24, or 25, depending on where the contractor should address its invoice to receive proper and timely payment.
24. Leave this blank unless administration functions are done somewhere other than the office shown block 7.
25. Insert the paying address (and code, if applicable).
- 26-28. Insert the contracting officer's printed or typed name and have her / him sign and date. An award is not valid until the contracting officer completes these blocks.

Blocks not explained above are self-explanatory.

Figure A.3: SF 33 - Solicitation, Offer & Award

Receiving Reports

Depending on the kind of contract, the COR uses one of the following receiving reports to document the Government's acceptance of the delivered supply or service:

- SF 1449: Solicitation/Contract/Order for Commercial Items;
- DD 1155: Order for Supplies or Services;
- DD 250: Material Inspection and Receiving Report; or
- Invoices used as receiving reports.

The COR most likely will use the SF 1449, DD 1155, or DD 250 (Table A.1 is a crosswalk between the key blocks on these three forms). The COR also may use an agency-specific requirements package or SF 26, Award/Contract.

When partial supplies or services are required, once the initial receiving report is done on the SF 1449, the subsequent receiving reports are made with a DD 250.

This section depicts the three forms and contains some instructions on completing them. The Office of Defense Procurement and Acquisition Policy (DPAP) provides further instructions on completing these forms, and links to the forms themselves, at

<http://www.acq.osd.mil/dpap/ccap/cc/jcchb/HTML/forms.html>. There is also a discussion on invoices used as receiving reports.

The SF 1449, Solicitation/Contract/Order for Commercial Items, Figure A.3, is the most common receiving report for supplies and services for commercial items and is usually the first page of the contract. It is a streamlined document, but it still contains contract line item numbers (CLIN), delivery dates, funding, clauses, and the Statement of Objectives, Statement of Work, or Performance Work Statement (SOO/SOW/PWS).

When preparing the SF 1449, the COR should ensure completion of blocks 32a (check received and accepted), 32b (signature of official authorized to accept supplies/services), 32c (date supplies/services accepted), 32d (printed name and title of authorized representative), 32e (mailing address of authorized representative), 32f (telephone number), 32g (e-mail address), 33 (shipment number), 35 (amount verified correct), 36 (payment: complete, partial, or final), 42a (printed name of receiver), and 42c (date received). The same name may appear in blocks 32d and 42a if the same individual both receives and accepts the supplies or services. If the receiver and acceptor are different individuals, the names in these two blocks will be different.

If partial payment is authorized, the COR should document the number of items or amount of services that have been received and accepted and the total dollars per line item to be paid.

Note: CORs must document partial payments carefully. Some contractors will understand the system better than the COR and may try to obtain double payments for the same work completed.

As noted above, DPAP provides instructions for completing blocks 1 through 31c of the SF 1449. The Contracting Officer will complete blocks 1 through 30, with the exception of blocks 12, 17, 23, 24, and 30, which are completed by the contractor. The remaining blocks are the responsibility of those performing the receiving and payment functions.

Note: CORs may see versions of SF 1449s that do not have the receiving information blocks at the bottom of the back of the form. If that is the case, CORs should use DD 250 as the receiving report.

SOLICITATION/CONTRACT/ORDER FOR COMMERCIAL ITEMS
OFFEROR TO COMPLETE BLOCKS 12, 17, 23, 24, & 30

1. REQUISITION NUMBER: 824 PAGE 1 OF 2
2. CONTRACT NO: W90WH9-09-0011
3. SOLICITATION NUMBER: W90WH9-09-T-0011
4. SOLICITATION ISSUE DATE: 11 Jun 09
5. ORDER NUMBER: 23 Jun 09
6. TELEPHONE NUMBER (include area code): (123)-456-7890
7. FOR SOLICITATION INFORMATION CALL: John Joties
8. OFFER DUE DATE (LOCAL TIME): 05:00 PM 15 Jun

9. ISSUED BY: TFBSO, TFBSO, APO AE 09348
10. THIS ACQUISITION IS: UNRESTRICTED OR SET ASIDE FOR: SMALL BUSINESS ENTERING SMALL BUSINESS, WIDENING SMALL BUSINESS, SERVICE-DISABLED VETERAN (SDB), OWNED SMALL BUSINESS
11. DELIVERY FOR ESTIMATION UNLESS BLOCK IS MARKED: SEE SCHEDULE
12. DISCOUNT TERMS: Net 30 Days
13. THIS CONTRACT IS A RATED ORDER UNDER OAS (15 CFR 700): YES NO
13b. RATING: BFG BR BFP
14. METHOD OF SOLICITATION: BFG BR BFP
15. DELIVER TO: TFBSO, APO AE 09348
16. ADMINISTERED BY: See Block 9
17a. CONTRACT OFFER CODE: 2XKX2 FACILITY CODE:
17b. CONTRACT OFFER CODE: H00302
18a. PAYMENT WILL BE MADE BY: H00302
19. COMPANY'S NAME, ADDRESS, CITY, STATE, ZIP: DFAS ROME-HD0302, DFAS RO-FPT, 325 BROOKS ROAD, ROME NY 13441-4527
20. TELEPHONE NO.: (987)-554-3210
21. CHECK IF REMITTANCE IS DIFFERENT AND PUT SUCH ADDRESS IN OFFER:
22. SUBMIT INVOICES TO ADDRESS SHOWN IN BLOCK 18a UNLESS BLOCK BELOW IS CHECKED: SEE ADDRESS SEE ADDENDUM

19. ITEM NO.	20. SCHEDULE OF SUPPLIES/SERVICES	21. QUANTITY	22. UNIT	23. UNIT PRICE	24. AMOUNT
See Schedule					

25. ACCOUNTING AND APPROPRIATION DATA: See Schedule
26. TOTAL AWARD AMOUNT (For Offer, Use Only): \$12,400.00
27. SOLICITATION INCORPORATES BY REFERENCE FAR 52.212-1, 52.212-4, FAR 52.212-4 AND 52.212-4 ARE ATTACHED: YES NO
28. CONTRACT INCORPORATES BY REFERENCE FAR 52.212-4, FAR 52.212-4 ARE ATTACHED: YES NO
29. CONTRACT IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN COPIES TO BIDDING OFFICE. CONTRACTOR AGREES TO FURNISH AND DELIVER ALL ITEMS SET FORTH OR OTHERWISE IDENTIFIED ABOVE AND ON ANY ADDITIONAL SHEETS SUBJECT TO THE TERMS AND CONDITIONS SPECIFIED.
30. SIGNATURE OF OFFEROR/CONTRACTOR: _____
31. UNITED STATES OF AMERICA (SIGNATURE OF CONTRACTING OFFICER): _____
32. NAME AND TITLE OF SIGNER (Type or print): _____
33. DATE SIGNED: _____
34. NAME OF CONTRACTING OFFICER (Type or print): _____
35. DATE SIGNED: _____

36. SIGNATURE OF AUTHORIZED GOVERNMENT REPRESENTATIVE: _____
37. DATE: _____
38. PRINTED NAME AND TITLE OF AUTHORIZED GOVERNMENT REPRESENTATIVE: _____
39. MAILING ADDRESS OF AUTHORIZED GOVERNMENT REPRESENTATIVE: _____
40. TELEPHONE NUMBER OF AUTHORIZED GOVERNMENT REPRESENTATIVE: _____
41. MAIL OF AUTHORIZED GOVERNMENT REPRESENTATIVE: _____
42. SHIP NUMBER: _____
43. VOUCHER NUMBER: _____
44. AMOUNT VERIFIED CORRECT FOR: _____
45. PAYMENT: COMPLETE PARTIAL FINAL
46. CHECK NUMBER: _____
47. PARTIAL FINAL
48. SIGNATURE AND TITLE OF CERTIFYING OFFICER: _____
49. DATE: _____
50. RECEIVED BY (Print): _____
51. DATE: _____
52. RECEIVED AT (Location): _____
53. DATE REC'D (YYMMDD): _____
54. TOTAL CONTAINERS: _____

STANDARD FORM 1449 (REV. 3/2005)
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PRINTING EDITION IS NOT USABLE

19. ITEM NO.	20. SCHEDULE OF SUPPLIES/SERVICES	21. QUANTITY	22. UNIT	23. UNIT PRICE	24. AMOUNT

32a. QUANTITY IN COLUMN 23 HAS BEEN:
 RECEIVED INSPECTED ACCEPTED, AND CONFORMS TO THE CONTRACT, EXCEPT AS NOTED: _____

32b. SIGNATURE OF AUTHORIZED GOVERNMENT REPRESENTATIVE: _____
32c. DATE: _____
32d. PRINTED NAME AND TITLE OF AUTHORIZED GOVERNMENT REPRESENTATIVE: _____

32e. MAILING ADDRESS OF AUTHORIZED GOVERNMENT REPRESENTATIVE: _____
32f. TELEPHONE NUMBER OF AUTHORIZED GOVERNMENT REPRESENTATIVE: _____
32g. MAIL OF AUTHORIZED GOVERNMENT REPRESENTATIVE: _____

33. SHIP NUMBER: _____
34. VOUCHER NUMBER: _____
35. AMOUNT VERIFIED CORRECT FOR: _____
36. PAYMENT: COMPLETE PARTIAL FINAL
37. CHECK NUMBER: _____
38. PARTIAL FINAL
39. SIGNATURE AND TITLE OF CERTIFYING OFFICER: _____
40. DATE: _____
41. RECEIVED BY (Print): _____
42. RECEIVED AT (Location): _____
43. DATE REC'D (YYMMDD): _____
44. TOTAL CONTAINERS: _____

STANDARD FORM 1449 (REV. 3/2005) BACK

Figure A.4: Sample SF 1449

DD Form 250, Material Inspection and Receiving Report

The DD Form 250, shown in Figure A.4, is a multi-purpose report used for the following.

- To provide evidence of Government contract quality assurance at origin or destination;
- To provide evidence of acceptance at origin or destination;
- For packing lists;
- For receiving;
- For shipping;
- As a contractor invoice; and
- As commercial invoice support.

DD 250 is used as the receiving report for procurement actions awarded using SF 1449 or DD 1155. When filling in the DD 250, the COR can find related information on the SF 1449 and DD 1155 as identified in Table A.1.

The receiving or acceptance activity will complete blocks 1 to 20, 21a, 21b, and 22, including signatures, typed names, titles, mailing address, and phone numbers. If there are separate receiving and acceptance officials, blocks 21 and 22 must reflect each individual appropriately. The acceptance authority (signer) is designated in Section E of the contract.

Defense Federal Acquisition Regulation Supplement (DFARS) Appendix F provides instructions for preparing and completing the DD 250. The following instructions provide guidance for the COR and quality assurance personnel, as appropriate.

MATERIAL INSPECTION AND RECEIVING REPORT							Form Approved OMB No. 0704-0248			
<p>The galleys reporting burden for this collection of information is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering the data needed, reviewing the data collected, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Department of Defense, Executive Secretariat and Communications Directorate (0704-0248). Responses should be made to the extent practicable. Do not send comments to the Department of Defense, Executive Secretariat and Communications Directorate (0704-0248). Responses should be made to the extent practicable. Do not send comments to the Department of Defense, Executive Secretariat and Communications Directorate (0704-0248). Responses should be made to the extent practicable.</p> <p>SEND THIS FORM IN ACCORDANCE WITH THE INSTRUCTIONS CONTAINED IN THE DFARS, APPENDIX F-401.</p>										
1. PROCUREMENT INSTRUMENT IDENTIFICATION (CONTRACT NO.) WJGDW-40-M-1234		2. ORDER NO.		3. INVOICE NO./DATE M-1234/31 Jun 09		7. PAGE OF 1 1	8. ACCEPTANCE POINT			
2. SHIPMENT NO.		3. DATE SHIPPED		4. B/L TCN		5. DISCOUNT TERMS				
9. PRIME CONTRACTOR CAMP VICTORY BAGHDAD IRAQ POC: FRED SMITH				10. ADMINISTERED BY JOINT CONTRACTING COMMAND - IRAQ Task Force - Business Stability Operations International Zone, Baghdad, Iraq APO AE 09348						
11. SHIPPED FROM (If other than 9)				12. PAYMENT WILL BE MADE BY DFAS-ROME 325 Boveks Rd Rome, NY 13442-4527 Customer Service # 800-555-4444						
13. SHIPPED TO Capt David Jones Task Force - Business Stability Operations Baghdad, Iraq APO AE 09348				14. MARKED FOR						
16. STOCK/PART NO.	17. QUANTITY SHIP/REC'D	18. UNIT	19. UNIT PRICE	20. AMOUNT						
15. ITEM NO.	DESCRIPTION (Indicate number of shipping containers - type of container - container number)									
	1. AV 15D-20X24CM 5 YS PAU (Surveillance Camera) (N/A) AF460121A00000, 6P18622180000	1	EA	4,360.00	\$ (1,000)					
21. CONTRACT QUALITY ASSURANCE				22. RECEIVER'S USE						
<p>a. ORIGIN</p> <input type="checkbox"/> ODA <input type="checkbox"/> ACCEPTANCE of listed items <small>This block made by me or under my supervision and they conform to contract, except as noted herein or on supporting documents.</small>				<p>b. DESTINATION</p> <input type="checkbox"/> ODA <input checked="" type="checkbox"/> ACCEPTANCE of listed items <small>This block made by me or under my supervision and they conform to contract, except as noted herein or on supporting documents.</small>				<p>Quantities shown in columns 17 were received in equivalent good condition except as noted.</p>		
<p>DATE: _____</p> <p>TYPED NAME: _____</p> <p>TITLE: _____</p> <p>MAILING ADDRESS: _____</p> <p>COMMERCIAL TELEPHONE NUMBER: _____</p>				<p>DATE RECEIVED: _____</p> <p>TYPED NAME: _____</p> <p>TITLE: _____</p> <p>MAILING ADDRESS: _____</p> <p>COMMERCIAL TELEPHONE NUMBER: _____</p>				<p>SIGNED: _____</p> <p>DATE: _____</p> <p>TYPED NAME: _____</p> <p>TITLE: _____</p> <p>MAILING ADDRESS: _____</p> <p>COMMERCIAL TELEPHONE NUMBER: _____</p>	<p>SIGNED: _____</p> <p>DATE: _____</p> <p>TYPED NAME: _____</p> <p>TITLE: _____</p> <p>MAILING ADDRESS: _____</p> <p>COMMERCIAL TELEPHONE NUMBER: _____</p>	<p>*If quantity received by the Government is the same as quantity shipped, indicate by (X) mark; if different, enter actual quantity received below quantity shipped and receive.</p>
23. CONTRACTOR USE ONLY										

DD FORM 250, AUG 2000

PREVIOUS EDITION IS OBSOLETE.

Reset

Figure A.5: Sample DD 250

<i>SF 1449</i>	<i>DD 1155</i>	<i>DD 250</i>
Block 2 and/or 4	Block 1	Block 1 (procurement instrument identification number)
Block 11	Block 8	Block 8 (acceptance point)
Block 17a	Block 9	Block 9 (prime contractor)
Block 16	Block 7	Block 10(administered by)
Block 18a	Block 15	Block 12 (payment will be made by)
Block 15	Block 14	Block 13 (shipped to)
Page with CLINs	Page with CLINs	Blocks 15-20 (item no, description, quantity, unit, unit price, total amount)

Table A.1: SF1449/DD1155/DD250 Crosswalk

Invoices Used as Receiving Reports

A contractor’s invoice can be used as a receiving report if the contract or purchase order provides for use of Government certified invoices instead of a separate receiving report.

If the COR is accepting contractor performance or delivery by using a Government certified invoice, he or she should include this statement: “I certify the supplies/services have been received and accepted on (day, month, and year).” This statement may be on an invoice, delivery ticket, voucher, or separate piece of paper, and it must contain printed name, title, telephone number, date, and signature of the Government official authorized to receive and accept the supplies or services.

Other Reports

The **DD 2772, Contractor Discrepancy Report (CDR)**, Figure A.5, is generally prepared by a COR to notify the contractor of a pending discrepancy. In most instances the purpose of the form is to allow the contractor to correct the discrepancy without interference from the Government.

CONTRACT DISCREPANCY REPORT				
1. CONTRACT NUMBER		2. REPORT NUMBER FOR THIS DISCREPANCY		
3. TO (Contractor and Manager's Name)		4. FROM (Name of OAE)		
5. DATES (YYYYMMDD)				
a. PREPARED	b. RETURNED BY CONTRACTOR		c. ACTION COMPLETE	
6. DISCREPANCY OR PROBLEM (Describe in detail. Include reference to FV's Directive; attach continuation sheet if necessary.)				
7. SIGNATURE OF CONTRACTING OFFICER				
8a. TO (Contracting Officer)		b. FROM (Contractor)		
9. CONTRACTOR RESPONSE AS TO CAUSE, CORRECTIVE ACTION AND ACTIONS TO PREVENT RECURRENCE. (Cite applicable D.C. program procedures or new D.C. procedures. Attach continuation sheet(s) if necessary.)				
10. SIGNATURE OF CONTRACTOR REPRESENTATIVE				b. DATE (YYYYMMDD)
11. GOVERNMENT EVALUATION (Description: partial acceptance, reflection. Attach continuation sheet(s) if necessary.)				
12. GOVERNMENT ACTIONS (Induced payment, cure notice, show cause, others.)				
13. CLOSE OUT				
	NAME (1)	TITLE (2)	SIGNATURE (3)	DATE (YYYYMMDD) (4)
a. CONTRACTOR NOTIFIED				
b. OAE				
c. ACO				

DD FORM 2772, SEP 1998 REPLACES MT FORM 352-R, WHICH IS OBSOLETE 8-994 (13-00000) (10)

Figure A.6: Sample DD 2772

COR Monthly Report to the Contracting Officer: A sample form for the COR's monthly report to the Contracting Officer appears in Figure A.6.

COR Monthly Report to the Contracting Officer	
1. CONTRACT NO / SERVICE:	
2. CONTRACT PERIOD OF PERFORMANCE:	
3. CONTRACTOR:	
4. METHOD(S) OF SURVEILLANCE:	
5. This document is in accordance with the Inspection of Services Clause FAR 52.246-4 or FAR 52.212-4(a) Inspections (for commercial contracts) and the Quality Assurance Surveillance Plan requirements.	
6. Complete each of the following and provide detailed explanation. Attach additional documents if explanation is long or requires supporting evidence.	
a. Quality of Work: <input type="checkbox"/> Exceptional <input type="checkbox"/> Very Good <input type="checkbox"/> Satisfactory <input type="checkbox"/> Marginal <input type="checkbox"/> Unsatisfactory	
b. Was the contractor's performance timely: <input type="checkbox"/> YES <input type="checkbox"/> NO	
c. Are there any significant issues that should be brought to the contracting officer's attention? <input type="checkbox"/> YES <input type="checkbox"/> NO	
d. Action being taken by contractor to correct discrepancies: <input type="checkbox"/> YES <input type="checkbox"/> NO Discrepancies this month	
7. CUSTOMER COMPLAINTS	
a. Number of customer complaints: b. Number of <u>VALID</u> customer complaints:	
8. ADDITIONAL COR COMMENTS:	
9. I hereby certify that services have been received and accepted.	
CONTRACTING OFFICER'S REPRESENTATIVE SIGNATURE / DATE	

Figure A.7: Sample COR Monthly Report

Synchronized Pre-deployment and Operational Tracker (SPOT) Letter of Authorization

The letter of authorization (LOA) form generated by SPOT states that “the Government organization specified above, in its mission support capacity under the contract, authorizes the individual employee identified herein, to proceed to the location(s) listed for the designated deployment period set forth above.” It identifies specific privileges, and it addresses travel and emergency medical support. The LOA must include the Contracting Officer’s signature, or the COR’s signature (if authorized by the Contracting Officer), and contact information. Figure A.7 shows a sample LOA.

LETTER OF AUTHORIZATION			DATE OF REQUEST																					
REQUIRING ACTIVITY (e.g. Army Contracting Agency)		GOVT AGENCY POC Doe, John	GOVT AGENCY POC PHONE 123-456-7890	GOVT AGENCY POC EMAIL jdoe@army.com																				
NAME (Last, First, Middle Initial) Jones, Stanley		SSN / PIN 000001234	DATE OF BIRTH 8/1/1980	PLACE OF BIRTH																				
HOME ADDRESS		CITIZENSHIP United States	PASSPORT # / EXPIRATION 1234567890123 12/31/2010	DEPLOYMENT PERIOD START Wednesday, August 01, 2007																				
EMAIL s.jones@army.com		THEATER EMAIL s.jones@us.army.mil	DEPLOYMENT PERIOD END Monday, September 01, 2008																					
CLEARANCE LEVEL w/ AGENCY None	CLEARANCE DATE (MM/DD/YYYY) Monday, January 01, 0001	JOB TITLE Access Officer	SUPERVISOR / MANAGER NON-SUPERVISOR / NON-MANAGER <input checked="" type="checkbox"/>																					
COMPANY (Full Name) XYZ Company	COMPANY POC Smith, Jane	COMPANY POC TELEPHONE 123-456-7890	COMPANY POC EMAIL jdoe@us.army.com																					
CONTRACT NUMBER / TASK ORDER XYZ1234ABC7890	CONTRACT PERIOD START 12/12/2006	CONTRACT PERIOD END 12/12/2012	CONTRACT ISSUING AGENCY (e.g. DARPA)																					
NET ID OF NMIC (OR) NAME	NMID RELATIONSHIP	NMID TELEPHONE	NMID ALTERNATE TELEPHONE																					
MULTI-THEATER CONTACT		CONTACT'S PHONE 02939922894738	CONTACT'S EMAIL jdoe@us.army.com																					
COUNTRIES TO BE VISITED Belgium		<table border="1"> <thead> <tr> <th colspan="2">GOVERNMENT FURNISHED SERVICES</th> </tr> </thead> <tbody> <tr> <td><input type="checkbox"/> APO/FPO</td> <td><input checked="" type="checkbox"/> Authorized Weapon</td> </tr> <tr> <td><input checked="" type="checkbox"/> Billing</td> <td><input checked="" type="checkbox"/> CAC/ID Card</td> </tr> <tr> <td><input checked="" type="checkbox"/> Currency</td> <td><input checked="" type="checkbox"/> Dependents Aufhezwand</td> </tr> <tr> <td><input checked="" type="checkbox"/> DFACS</td> <td><input checked="" type="checkbox"/> DoD Essential</td> </tr> <tr> <td><input checked="" type="checkbox"/> Evacuation Baggage</td> <td><input checked="" type="checkbox"/> Fuel Authorized</td> </tr> <tr> <td><input checked="" type="checkbox"/> Medical/Dental</td> <td><input checked="" type="checkbox"/> Mail Exchange</td> </tr> <tr> <td><input checked="" type="checkbox"/> MI Clothing</td> <td><input checked="" type="checkbox"/> MI Exchange</td> </tr> <tr> <td><input checked="" type="checkbox"/> MI Issued Equip</td> <td><input type="checkbox"/> Miller</td> </tr> <tr> <td><input checked="" type="checkbox"/> MVAR</td> <td><input checked="" type="checkbox"/> Transportation</td> </tr> </tbody> </table>			GOVERNMENT FURNISHED SERVICES		<input type="checkbox"/> APO/FPO	<input checked="" type="checkbox"/> Authorized Weapon	<input checked="" type="checkbox"/> Billing	<input checked="" type="checkbox"/> CAC/ID Card	<input checked="" type="checkbox"/> Currency	<input checked="" type="checkbox"/> Dependents Aufhezwand	<input checked="" type="checkbox"/> DFACS	<input checked="" type="checkbox"/> DoD Essential	<input checked="" type="checkbox"/> Evacuation Baggage	<input checked="" type="checkbox"/> Fuel Authorized	<input checked="" type="checkbox"/> Medical/Dental	<input checked="" type="checkbox"/> Mail Exchange	<input checked="" type="checkbox"/> MI Clothing	<input checked="" type="checkbox"/> MI Exchange	<input checked="" type="checkbox"/> MI Issued Equip	<input type="checkbox"/> Miller	<input checked="" type="checkbox"/> MVAR	<input checked="" type="checkbox"/> Transportation
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The government organization specified above, in its mission support capacity under the contract, authorizes the individual employee identified herein, to proceed to the location(s) listed for the designated deployment period set forth above. Non-supervisory positions shall be rated GS-12 or equivalent. Supervisory / Managerial positions shall be rated as GS-13 or equivalent. Upon completion of the mission, the employee will return to the point of origin. Travel being performed is necessary and in the public's service. Travel is in accordance with FAR 31.205-36 and the maximum per diem allowable under the appropriate travel regulations (Joint Travel Regulation (for AK, HI and outlying areas of the United States and US possessions), Federal Travel Regulation for CONUS and US Territories, and Dept of State's Standardized Regulations for OCONUS Foreign Areas designated by DOS).

Emergency medical support will be determined by the appropriate supported commander. Contractor authorization aboard military aircraft will be determined by the supported commander. Necessary identification badges will be determined and provided by the supported command.

This Contractor is considered as "Key Personnel, Government Civilian" in connection with "Non-Combatant Evacuation Orders" at the civil service grade indicated above.



Figure A.8: Sample SPOT Letter of Authorization

Funding Forms

Refer to local procedures for identification of funding forms.

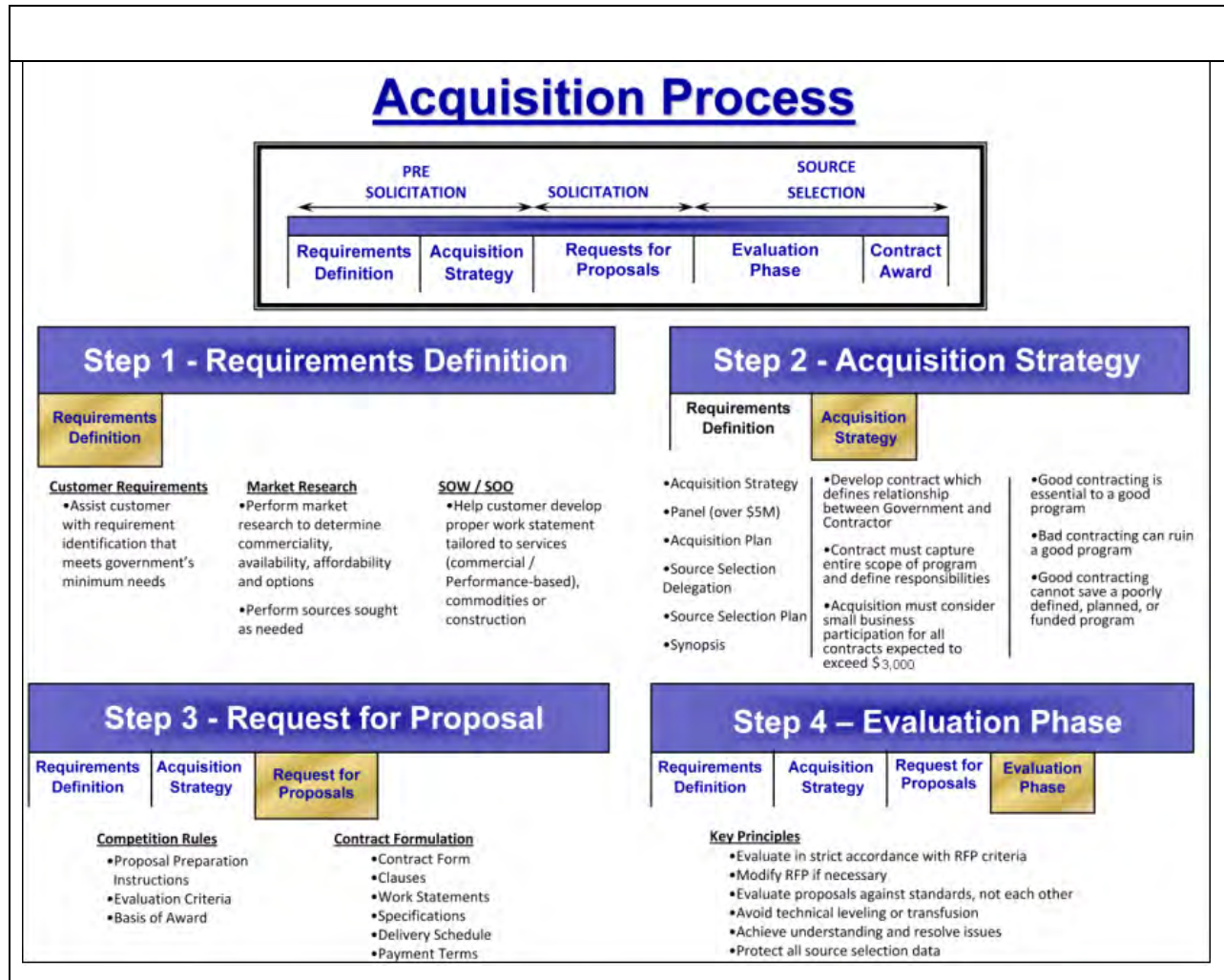
Appendix B: Contract Planning and Source Selection

Contents

- Planning and Source Selection
- Pre-award and Solicitation:
 - Market Research
 - Independent Government Cost Estimate
 - Performance Work Statements
 - Socio-economic Development Programs
 - Planning for the Evaluation of Proposals
 - Types of Source Selections
 - Competition
 - Amending the Solicitation
 - DOs and DON'Ts for Pre-award and Solicitation
- Evaluation and Award:
 - Receiving and Managing Proposals
 - Evaluating Proposals
 - Technical Evaluation Reports
 - Assisting in the Review of Business/Cost Proposals
- Communicating with Proposed Contractors:
 - Determining the Competitive Range
 - Communications after Establishing the Competitive Range
 - Selecting the Right Contractor
 - Debriefing Proposed Contractors
 - Handling Protests
 - Handling Freedom of Information Act Requests
 - DOs and DON'Ts for Evaluation and Award

Planning and Source Selection

This appendix provides an overview of contract planning (pre-award and solicitation) and of source selection (evaluation and award). Figure B.1 depicts the overall acquisition process.



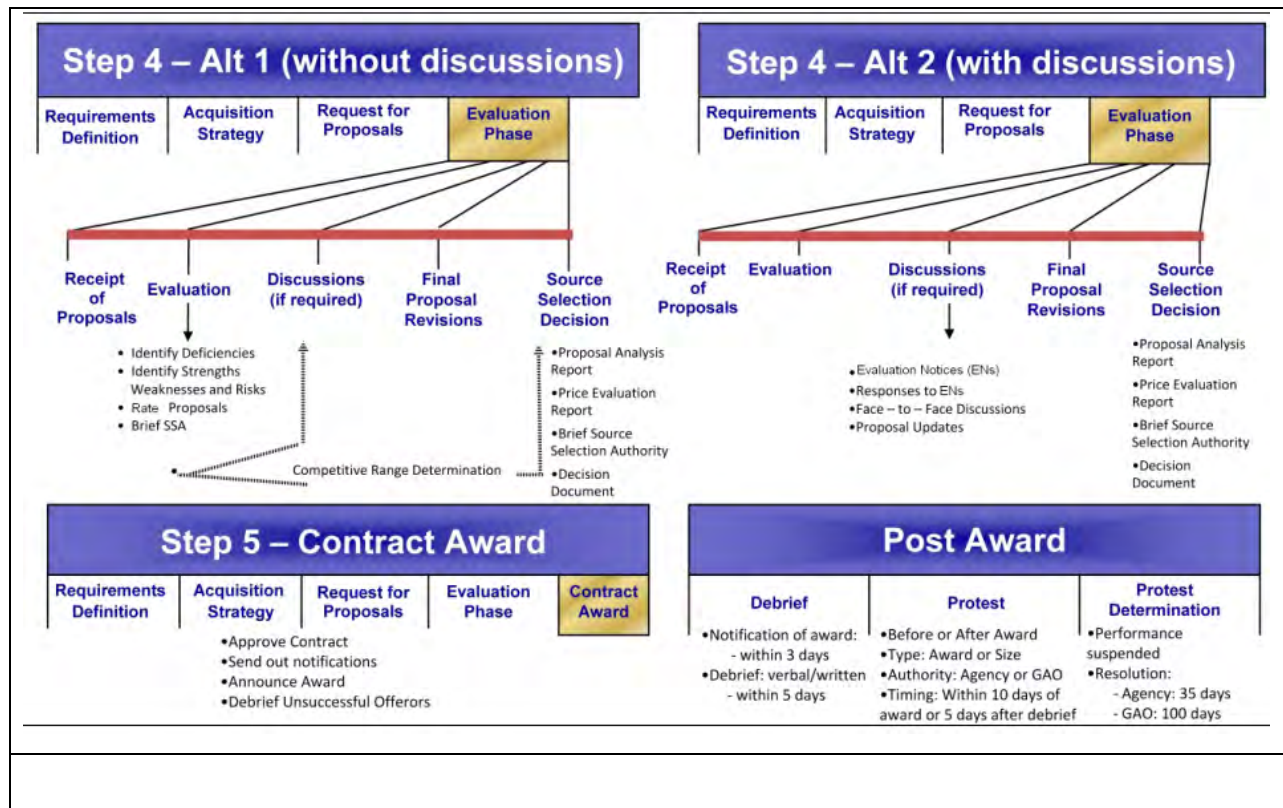


Figure B.1: Acquisition Process Overview

Pre-award and Solicitation

The requiring activity has the responsibility to determine the need for supplies and services. This is the first and most critical step in the planning process. The follow-on steps focus on forecasting, planning, and defining the acquisition requirements; developing and updating acquisition plans and strategies, justifications, and authorizations; conducting market research; preparing program plans, cost estimates, and schedules; and determining priorities. FAR 7.102(a) requires that “agencies shall perform acquisition planning and conduct market research for all acquisitions.” In addition to ensuring compliance with the FAR requirement, contract planning helps anticipate problems, save time in the future, save money, stay on schedule, communicate to higher management, and generate the commitment.

Market Research

Acquisitions of supplies and services begin with a description of the Government’s needs stated in terms sufficient to allow the acquisition team to conduct market research. The results of the market research form the basis for developing new requirement documents

and issuing solicitations. Market research is an ongoing process used to collect, organize, maintain, analyze, and present data. Its purpose is to maximize the capabilities, technology, and competitive forces of the marketplace to meet an organization's needs for supplies and services. The COR may be asked to assist with gathering market research information for use by decision makers to determine the best approach for acquiring the needed supply or service.

The research will vary, depending on such factors as urgency, estimated dollar value, complexity, and past experience. This research involves obtaining information specific to the item being acquired and determining whether the Government's needs can be met by items that are customarily available in the commercial marketplace, by items that are customarily available in the commercial marketplace but need modifying, or by items used exclusively for governmental purposes. Results should be documented in a manner appropriate to the size and complexity of the acquisition. Market research also helps the Government develop independent government cost estimates (IGCE) when conducting cost analysis.

Independent Government Cost Estimate (IGCE)

- Cost Estimates
 - Labor Costs
 - Burden of Labor Costs
 - Other Direct Costs
 - Indirect Costs (Overhead)
 - General and Administrative Expenses
 - Profit and Fee
 - Escalation Considerations for the IGCE
- Price Estimates
- Other Guidance

The IGCE is the Government's estimate of the resources and projected cost of the resources a contractor will incur in the performance of a contract. These costs include direct costs such as labor, products, equipment, travel, and transportation; indirect costs such as labor overhead, material overhead, and general and administrative (G&A) expenses; and profit or fee (amount above costs incurred to remunerate the contractor for the risks involved in undertaking the contract).

This discussion addresses key elements of an IGCE; it is not intended to cover every possible acquisition. Large, complicated acquisitions costing millions of dollars have dozens of cost elements, while acquisitions for single items of relatively low dollar value have only a few cost elements. Their application will vary with the circumstances of the specific acquisition and market situations. The IGCE should include only those elements

applicable to and developed from the statement of objectives/ statement of work/ performance work statement (SOO/SOW/PWS) or description of the supplies, services, or construction to be acquired. An IGCE is required for every procurement action in excess of the simplified acquisition threshold at FAR 2.101.

Commercial items are supplies or services sold to the general public that require no major modification to meet the government's specific requirements.

The IGCE is developed by the requiring activity and used to establish a realistic price/cost for budget purposes. In addition, the Contracting Officer uses the IGCE for technical and management information. The IGCE is the baseline for evaluating an offeror's contract price/cost. The format and contents of the IGCE vary with the complexity and value of the requirement.

Acquisition statutes require analysis of price/cost to determine either a reasonable price in the event of a fixed-priced contract or a realistic cost resulting from award of a cost-reimbursement contract. The results of any contract action in terms of quality and reasonableness of price/cost rely heavily on the accuracy and reliability of the IGCE. Any significant variation between an offeror's proposal and the IGCE requires analysis. When variations exist, the Government can identify and correct inaccuracies in the IGCE or use the IGCE to negotiate a more realistic price.

The IGCE is a procurement-sensitive document and should be handled accordingly. Access to the IGCE is on a need-to-know basis.

The first step in developing the IGCE is establishing a mindset as if the developers would be working in a commercial environment. Standards, practices, and procedures that are normally used by industry should be used as the basis for developing the IGCE.

A simple estimate of current market prices or historical prices may be adequate for requirements up to the Simplified Acquisition Threshold (SAT). Above that level, a more complete cost or price estimate is required.

The differences between a cost estimate and a price estimate can be summarized as follows:

- **Cost estimate.** The cost estimate is a detailed estimate that requires a breakdown of costs anticipated in performance of the contract. A detailed estimate is required for services, construction, and noncommercial products estimated to exceed the SAT. Review of current or previous contract documents and the previous IGCE is usually an excellent place to start research. These documents may be obtained from the supporting contracting office files.

- Price estimate. The price estimate is generally used for products, equipment, and simple services that are routinely available on the open market at competitive prices. The price estimate is required on all contract requirements over the SAT and must be independently developed based on a comparison and analysis of factors such as published catalog prices, historical prices paid, market survey information, and contractor price quotes. The price estimate is not broken down into specific cost elements and depends more upon bottom-line prices paid or available in the marketplace. The Contracting Officer or specialist may help with research for pricing information.

The following sections contain basics on developing an IGCE.

Cost Estimates

Costs are generally divided into the following primary cost elements: labor, burden on labor costs, other direct costs, indirect costs (overhead), G&A, and profit/fee. This section describes these cost elements, as well as escalation considerations.

Labor Costs

Labor costs are often the most significant part of the IGCE in terms of dollars for either services or construction contracts. Direct labor is the labor directly applied to the performance of the contract requirements. In contracts for services and construction performed within the Continental United States (CONUS), most direct labor is covered by the Department of Labor wage determinations provided under the provisions of the Service Contract Act (SCA) for services or the Davis-Bacon Act (DBA) for construction. Neither the statutes nor the related wage determinations apply to declared contingency or peacekeeping operations OCONUS.

Labor categories and skills that, in CONUS operations, are covered by the SCA or DBA, are considered nonexempt. All nonexempt wages must be paid at a rate no less than that identified on the applicable wage determination. Exempt personnel (management and professional salaried staff) are not paid on an hourly basis and are not covered by the wage determinations. They will receive comparable benefits and wages to like employees in comparable industries or the Government.

Setting reasonable estimates for required labor categories will also assist the COR with combating coercive and abusive labor practices during contract administration.

The IGCE should identify the labor categories and the level of effort (work hours) required for each category. For instance, the effort of a carpenter for renovation of one

set of kitchen cabinets may be limited to 100 hours, with proportional benefits, whereas a contract requiring a full-time carpenter working under the terms of a contract year, would project a full-year cost with all benefits.

The IGCE must consider realities of the work environment. Employee benefits (leave and holidays) must be factored into the cost estimate of any Government contract. To estimate costs for a typical service contract year, the COR should begin with the average work year of 2,080 hours (40 hours per week, 52 weeks per year). These are available hours, which are used to estimate how much each employee will be paid under the contract. However, the COR's estimate must be adjusted to also consider productive hours to determine the number of contract employees required. Productive hours are the number of hours an employee actually performs his or her duties. When full-time employees are anticipated, a good rule of thumb is to use 1,880 hours (2,080 hours less 80 hours for holidays, 80 hours for vacation, and 40 hours for sick leave) as productive hours. When part-time employees are anticipated, productive hours may be estimated using a basis of 1,920 hours per year (2,080 hours less 80 hours for holidays, 80 hours for vacation, and 0 hours for sick leave). Actual available/ productive hour patterns may vary by host nation, service/industry, or contract requirement.

Burden on Labor Costs

Once the basic labor categories and hours have been determined labor burdens must be calculated³⁹. Typical burdens on labor costs are:

- Health and welfare (H&W). H&W includes life, accident, and health insurance plans; pension plans; civic and personal leave (vacation and holidays); severance pay; savings and thrift plans; and so on. H&W costs are based on the most recent wage determination issued by the Department of Labor. Currently, the figure of \$2.15 is approved for all wage categories covered by the SCA (services). Refer to individual DBA wage determinations for specific fringe benefits for H&W. Because all figures are subject to change, they should be verified before developing the IGCE. The rate should then be multiplied by available hours. Similar fringe benefits should also be projected for exempt labor hours.
- Federal Insurance Contributions Act (FICA). The FICA tax rate is 7.65 percent (6.2 percent for Social Security and 1.45 percent for Medicare). This rate has been constant for a number of years and rarely changes. Multiply 7.65 percent by total wages up to the FICA maximum rate of \$84,900 (as of 2003).
- Federal unemployment taxes. Federal unemployment taxes are paid on the first

³⁹ The BLS publishes the Employer Cost of Employee Compensation (ECEC) at <http://www.bls.gov/ncs/ect/>. This website publishes current information and provides a statistical basis for the numbers.

\$7K of total wages, multiplied by a factor of 0.8 percent. This rate changes periodically; the current rate is available on the Internal Revenue Service (IRS) Web page at <http://www.irs.gov/formspubs>.

- **State unemployment taxes.** State unemployment taxes are set by individual state governments and are paid on the first \$9K of total wages. The tax rate varies based on the type of business involved. Rates may be available from the states' workers compensation Web sites. However, if state unemployment tax rates are not available, the COR could use an average rate of 3.0 percent. This percentage is then multiplied by the first \$9K in wages per employee.
- **Workers compensation.** Workers compensation is insurance designed to cover injuries and associated benefits that arise from work-related injuries. The rate varies from state to state and, for the most part, depends on a contractor's years of business in the state and claims-related experience. Workers compensation is applied to total wages and will vary between 2 and 5 percent of the total payroll. The state tax code should contain details.

A straight-line approach using an average overall burden rate may be used to estimate fringe benefits. It may be used in place of the separate computation of benefits as outlined above. This may not be adequate for some high-cost areas of the country or for all DBA categories. Whichever method is used, the rationale for the method used should be documented on the IGCE.

For foreign (outside the United States) operations, some of these additives may not be encountered, depending on the host nation and common practices within their industry. Contact authorities from the host nation to inquire about applicable host nation labor practices and common burdens on labor costs. For CONUS, comparable information may also be available from the Defense Contract Audit Agency (DCAA), the Defense Contract Management Agency (DCMA), or the local pricing personnel.

Other Direct Costs

When estimating other direct costs, the emphasis should be on accuracy of type and quantity required to complete the contracted work. The following are general groupings of other direct costs.

- **Materials and equipment.** Item descriptions and related cost estimates can be obtained using catalogs, price quotes, market surveys, historical data, and so on.
- **Travel.** To estimate travel costs, first determine the need for travel by the contractor, including destinations (both local and long distance), the number of trips

anticipated, the number of personnel traveling, and the number of days per trip. Using that information as a starting point, the cost per trip can be calculated. Then the individual trip totals must be summed to arrive at a total for all travel under the contract.

The Joint Travel Regulation (JTR), Volume 2, managed by the Defense Travel Management Office, contains useful information on travel costs. It establishes per diem rates (lodging, meals) that may be used to estimate such costs under any type of proposed contract. The JTR also establishes the reimbursable mileage rates for travel by privately owned automobile. Other travel costs (airfare, rental car) can easily be obtained from commercial Web sites (See also FAR Subpart 31.2, “Contracts with Commercial Organizations”).

- **Consultants.** Any tasks or work that may require the use of consultants must be identified. For example, some tasks may require unique, specialized expertise, not normally available to the contractors performing the work required by the contract. The COR should estimate the number of hours needed for each consultant.
- **Subcontracts.** Some efforts may need to be subcontracted. For example, the prime contractor may not have (and would not be expected have) some specialized labor, equipment, or facilities needed to complete the contract. The COR can estimate the other direct costs for each potential subcontract using the same estimation techniques as those used for the prime contract.
- **Bonds.** Most common in construction contracts, the direct costs of these securities must be identified and incorporated into the IGCE. Performance and payment bonds will generally cost the contractor anywhere from 1 percent to 3 percent of the total bid or proposal price. A review of past bonding requirements may provide a reasonable range for the IGCE. In the absence of specific data on similar contracts, the COR may use 2 percent of the total cost estimate to cover bonding costs, when applicable to the acquisition.

Indirect Costs (Overhead)

Overhead includes any costs not directly identified with a single, final cost objective, individual project, or contract. In other words, indirect costs are general business costs such as rent, utilities, general office supplies, telecommunications, and depreciation. Indirect costs are recouped by the contractor by applying a percentage to direct labor costs, manufacturing costs, or another appropriate base consistent with the firm’s established accounting practices.

Methods and rates to recover indirect costs can vary significantly. One firm may pool all indirect costs and apply one percentage rate to total direct costs to recoup its expenses.

Another may group costs associated with labor costs into one overhead account and separately group its corporate-level expenses (G&A expenses).

General and Administrative Expenses

G&A expense accounts capture the costs of company-wide support functions (accounting, personnel, purchasing, legal) that are not directly chargeable to any single project or contract. G&A expenses also may include executive compensation for corporate officers and management, financial, or other expenses incurred for the overall operation of a business. These costs are distributed equally across all of the company's contracts, both Government and private sector.

Like overhead, G&A expenses are grouped together and recouped by applying a percentage to other cost categories consistent with the cost accounting practices of the firm. These costs vary significantly with the size of the firm and within industry groupings (construction, service, information technology). Thus, the use of a set percentage number or range for the IGCE is not appropriate. Instead, consult with the Contracting Officer to obtain any historical information from similar purchases and industry practices relevant to the current acquisition. DCAA may also be able to provide a representative G&A rate based on prior audit information concerning similar contract situations.

Profit and Fee

Profit and fee are generally regarded as remuneration for the risk involved in undertaking the contract tasks. Profit or fee is the amount of money that the contractor expects to earn above and beyond the costs incurred to complete the contract. Under fixed-price contracts, profit is the amount of money (if any) remaining after all contract costs have been covered. Under cost-plus fixed-fee contracts, profit is a set amount that the contractor is guaranteed as long as it puts forth its best effort to perform the contract.

For the IGCE, profit or fee may be calculated and expressed as a percentage of the total estimated cost. (For example, if the estimated cost totals \$500K and a profit margin of 10 percent is deemed appropriate, the profit will be \$50K.). In very general terms, 7 percent should be the upper limit for routine efforts under a cost-reimbursement contract and 12 percent for routine efforts under a fixed price contract. Add 1 percent for moderately complex work, and add 2 percent for highly complex work (state-of-the art work) or work that will involve significant cost or performance risk to the contractor. These are by no means absolutes; other percentages may be more realistic and should be based on risk, market factors, and any unique factors that may affect the contingency operation or location. In all cases, estimating the profit or fee must be documented.

Escalation Considerations for the IGCE

The impact of inflation should be considered when developing an IGCE for a contract with option years. After developing the estimated costs for the base year, the costs for option years can be estimated by applying appropriate escalation factors. Different escalation factors may be applied to different cost elements, depending on the labor/material mix as appropriate. The following methods may be used.

- The Consumer Price Index (CPI) provides data and percentage of change in inflation/escalation factors. CPI information is available at <http://www.bls.gov/cpi/>. When projecting inflation, major cost factors for the specific requirement should be reviewed. Inflation rates for specific supplies depend on the circumstances specific to the acquisition. In addition, geographic locations for work performance must be considered. Based on a long term view of changes in the CPI, an average factor between 2 percent and 4 percent is generally considered reasonable.
- Market trends should be considered when projecting escalation rates for option years and should be justified in a short narrative. A market survey will provide information on current market prices and potential volatility of prices in the marketplace. In addition, a review of previous Treasury interest rates may be useful.
- DCAA and DCMA tend to use IHS Global Insights as the source for escalation factors⁴⁰. A subscription is required; however the information is readily available to DCMA personnel through the DCMA Portal.

Price Estimates

A commercial item (supplies or services) IGCE is considered a price estimate and is much less complicated than the IGCE discussed above. It is a matter of determining the market value of the supplies or services, using that figure as the IGCE, documenting the research, and furnishing this information along with the funded requisition to the Contracting Officer.

Although IGCE documentation is a part of the Government procurement cycle, statutes or regulations do not contain detailed guidance on preparing IGCEs. The following are general guidelines that apply to most situations.

- Know the requirement. The first, and perhaps most crucial, step is to ensure that the cost estimate is based on the Government's actual needs. Review the SOO/SOW/PWS or specification and make sure that it accurately identifies the contract

⁴⁰ <http://www.ihs.com/products/global-insight/index.aspx>

requirements, clearly defines, and logically divides or aggregates the work (tasks), and includes all required supplies and services to be delivered. Then, estimate the labor categories and level of effort required, plus equipment, materials, and any other direct costs. Apply cost inflation factors if the contract covers multiple years.

- Use historical cost information. Like budgeting, cost estimation uses existing (past) information as a basis for projecting future costs. The same or similar work may have been done under contract before. It can be very useful to obtain the cost information submitted and negotiated during the award of any previous contracts. Consult the Contracting Officer to obtain this information and technical assistance in analyzing it.
- Know the marketplace. Costs and prices are often specific to geographic areas. There may be going rates for competitive businesses for certain costs. Rates of profit may also vary by locality (especially for construction and commercial services). Costs for the same type of work may also vary significantly from place to place and over time. It is crucial, therefore, for the estimator to know the market.
- Consult contracting personnel. The contract specialist and Contracting Officer have considerable expertise in evaluating contract costs. The contracting office may also have historical cost data. Consult them, particularly when estimating overhead, fringe benefits, G&A, and profit or fee.
- Estimate one piece at a time. If preparing a detailed IGCE, do not try to estimate the cost of the contract as a whole. Take it one task (or other division of the required work) at a time and, for each, estimate the types of costs involved.

Other Guidance

When buying a commercial item with stable specifications, the estimator should research past price history and adjust for any changes in specifications, quantities, or inflation factors. For items that do not have a detailed pricing history, a detailed analysis of individual cost elements will be necessary. The IGCE should include a brief narrative describing how the costs were developed and what reference materials were used. Below are methods that can be used to determine the market value.

- GSA schedules. The schedules are pre-priced and awarded to multiple firms for specific supplies and services. GSA schedules may be found at <http://www.gsaadvantage.gov/>.
- Published price lists. These lists are published by individual companies for use by

the general public.

- **Catalogs.** Many manufacturers publish catalogs describing their offerings and stating their prices. The catalogs may be made available to customers in hard copy, on a Web site, or some other format.
- **Market surveys.** A market survey is a comparison of the prices offered within the local area for an item. A survey is normally done in conjunction with the Contracting Officer.
- **Previous buys.** Previous purchases of the same item can be used as the basis for an estimate, assuming comparability in quantities, conditions, terms, and performance times. Adjustments should be considered for inflation and quantity discounts, when appropriate.

Pricing should not be obtained directly by contacting vendors, because disclosure of advance procurement information is considered sensitive, and because the vendor might consider the contact a commitment by the Government. Only purchase card holders acting within their spending limits and Contracting Officers or their representatives may commit the Government. Any other person may be held personally liable and may be subject to disciplinary action.

Performance Work Statements

Performance work statements (PWS) describe the required results in clear, specific, and objective terms with measurable outcomes. Typically, a PWS covers the following topics:

- Introduction
- Background information
- Scope
- Applicable documents
- Performance requirements
- Special requirements or constraints (such as security)

Best practices and lessons learned for developing a PWS include the following:

- The requirement should not be so specific that all offerors propose the same solution, eliminating creativity and innovation.
- A performance-based acquisition requires that the integrated solutions team abandon

some traditional approaches to buying services.

Specifying labor categories, educational requirements, or number of hours of support required should be avoided because they are how to approaches. Instead, let contractors propose the best people with the best skill sets to meet the need and fit the solution. The Government can then evaluate the proposal based both on the quality of the solution and the experience of the proposed personnel.

Prescribing manpower requirements limits the ability of offerors to propose their best solutions and it could preclude the use of qualified contractor personnel who may be well suited for performing the requirement but may be lacking, for example, a college degree or the exact years of specified experience. For some services, in fact, such practices are prohibited. Section 813 of the National Defense Authorization, Fiscal Year 2001, now implemented in the FAR, states that solicitations for information technology services may not describe any minimum experience or educational requirements for proposed contractor personnel unless the Contracting Officer determines that the agency either (1) cannot meet its needs without that requirement, or (2) requires the use of other than a performance-based contract.

Planning for the Evaluation of Proposals

The statement of objectives/statement of work/performance work statement (SOO/SOW/PWS), along with Sections L (“Instructions, Conditions, and Notices to Bidders, Offerors, or Quoters”) and M (“Evaluation Factors for Award”) of the solicitation, establish the principal ground rules for acquisitions. The SOO/SOW/PWS is the portion of the contract that describes the work to be done through the use of specifications, minimum requirements, quantities, performance dates, time and place of performance, and quality. It identifies the supplies or services the United States (U.S.) Government is requesting. The PWS is a statement of work for performance-based acquisitions that describes the required results in clear, specific, and objective terms with measurable outcomes.

Evaluation factors generally fall into four groups:

- Technical/Management
- Cost or price
- Past performance
- Other (Socio-Economic Programs)

However, specific evaluation factors are identified in Section M of the solicitation.

Types of Source Selections⁴¹

In different types of acquisitions, the relative importance of cost or price may vary. For example, in acquisitions for which the requirement is clearly definable and the risk of unsuccessful contract performance is minimal, cost or price may play a dominant role in source selection.

However, if the requirement is less definitive, involves more development work, or entails greater performance risk, technical or past performance considerations may play a more dominant role in source selection than cost or price.

Under either approach, the COR, because of his/her technical knowledge and background, may become part of the team of technical personnel assembled to evaluate contractor proposals. During this process, the Contracting Officer and the technical evaluation team lead will provide the COR with detailed instructions concerning role and responsibilities.

The Contracting Officer is responsible for preparing the solicitation with assistance from other experts. However, the Contracting Officer gets much of the information directly from supporting documentation and the COR.

The U.S. Government uses requests for proposals (RFP) in negotiated acquisitions to communicate Government requirements to prospective contractors and to solicit proposals. The RFP must describe the Government's requirement, the anticipated terms and conditions of the contract, and the factors used to evaluate proposals.

For all planned acquisitions above the SAT, the FAR requires the Contracting Officer to consider both price and non-price factors (past performance and quality in particular) when evaluating proposals. The relative importance of those factors is up to the Contracting Officer or other source selection authority.

Competition

Federal statutes and the FAR establish the policy for describing agency needs, and they stipulate that requirements be written in a way that promotes full and open competition under the Competition in Contracting Act (CICA). FAR Subpart 6.3, "Other Than Full and Open Competition", explains when it is appropriate to contract without providing for full and open competition. Contracting without providing for competition cannot be

⁴¹ For more details on the DoD Source Selection Guide see FAR Subpart 15.3 and OUSD (AT&L/DPAP) Memorandum, "Department of Defense Source Selection Procedures," 4 March 2011, <http://www.acq.osd.mil/dpap/policy/policyvault/USA007183-10-DPAP.pdf>.

based on lack of advance planning or concerns related to the amount of funds available for the acquisition. Statutory authorities permit contracting without providing for full and open competition when one of the criteria listed in FAR 6.302, “Circumstances Permitting Other Than Full and Open Competition”, can be justified.

- FAR 6.302-1 — only one or limited number of responsible sources that can provide the supplies or services needed to satisfy requirements;
- FAR 6.302-2 — unusual and compelling urgency;
- FAR 6.302-3 — industrial mobilization, engineering, or research capability, expert services;
- FAR 6.302-4 — international agreement;
- FAR 6.302-5 — authorized or required by statute;
- FAR 6.302-6 — national security; or
- FAR 6.302-7 — public interest.

Restrictive provisions and conditions severely restrict competition, and they are limited to the extent necessary to satisfy the Government’s needs. When restrictive provisions are used, they must be justified in writing.

Amending the Solicitation

It may be necessary to amend the solicitation after release and prior to contract award. This circumstance could occur for a variety of reasons (for example, changes to the specifications, terms or conditions, or quantities required). However, amendments to solicitations increase administrative effort and cost, and they may delay contract award and performance.

DOs and DON’Ts for Pre-award and Solicitation are outlined in Table B.1.

PRE-AWARD AND SOLICITATION	
DO	DON’T
Use market research. Look for commercial solutions.	Write vague specifications, assuming that “the contractor will do whatever is necessary to satisfy us.”
Promote full and open competition.	Write design specifications, prescribing in detail what materials should be use and how the work should be performed.

Think about contract administration requirements while writing the SOO/SOW/PWS or the specifications.	Ask for progress reports, test samples, or other items from the contractor unless the items are needed for the program or for efficient administration and monitoring.
Use performance-based or functional (rather than design) specifications to describe an objective or standard to be achieved, allowing the contractor to exercise ingenuity in achieving that objective or standard, select the means, and assume corresponding responsibility.	
Limit use of restrictive provisions to satisfy agency needs. Limit use of specifications and instead focus on function, performance, and physical characteristics.	
In the SOO/SOW/PWS and specifications, separate discussion of administrative and progress reporting requirements from discussion of required procedures and deliverables.	

Table B.1: DOs and DON'Ts for Pre-award and Solicitation

Evaluation and Award

Receiving and Managing Proposals

Offerors must submit their proposals, any proposal revisions, and modifications to the Government office designated in the solicitation by the time specified in the solicitation. Offerors may use any transmission method authorized by the solicitation (such as electronically, by regular mail, or by fax). Upon receipt, proposals must be safeguarded from unauthorized disclosure throughout the source selection process.

After the closing date, the Contracting Officer will forward the technical proposals to the technical evaluation team lead for analysis. The Contracting Officer will retain the business/cost proposals until the technical evaluation is completed.

Evaluating Proposals

Note: The source selection team must not reveal any information related to the identity of or number of offerors and information concerning any proposal or the status of any proposal in relation to others. Release of such information could jeopardize any resultant award and subject the individuals involved to disciplinary action, as well as to civil and, in some cases, criminal penalties.⁴²

The Source Selection Board will review and evaluate all proposals submitted in response to an applicable solicitation, based on the evaluation factors provided in Section M of the solicitation. The technical evaluation team is responsible for evaluating the technical proposals; rating them in order of merit; making recommendations to the Contracting Officer regarding clarifications needed and deficiencies identified; reviewing supplemental and revised offers; and, if required, assisting the Contracting Officer during negotiations. The same evaluators should be available throughout the entire evaluation and selection process to ensure continuity and consistency in the treatment of proposals.

Technical Evaluation Reports

When the Contracting Officer forwards the technical proposals to the technical evaluation team for analysis, the technical proposals are accompanied by specific guidance for conducting the evaluation and preparing the technical evaluation report. The team lead prepares and signs the report and submits it to the Contracting Officer, who maintains it as a permanent record in the contract file. The report should present the proposal ratings and identify each proposal in accordance with the evaluation plan and set forth in Section M of the solicitation.

The technical evaluation report must include a narrative evaluation specifying the strengths and weaknesses of each proposal and any uncertainties, reservations, qualifications, or areas to be addressed that might affect the selection of the source for award. The report should include specific points and questions for subsequent discussions with the proposed contractors. If the technical evaluation team determines a proposal is technically unacceptable, the report is passed to the Contracting Officer for his or her final determination.

Assisting in the Review of Business and Cost Proposals

The Contracting Officer is responsible for evaluating the factors related to cost and price analysis and determining the contractor's responsibility (for example, adequacy of resources, ability to comply with delivery or performance schedule, and satisfactory

⁴² Refer to FAR Subpart 15.3 and the DoD Source Selection Procedures for those individuals who are on the source selection team.

record of performance). The Contracting Officer may need the COR's assistance to effectively accomplish this evaluation.

Communicating with Proposed Contractors

In the interval between the release of the solicitation and contract award, all contact with offerors relating to the particular acquisition must be coordinated through the Contracting Officer.

The COR may be asked to assist the Contracting Officer when clarifications (limited exchanges) between the Government and the proposed contractors are needed, when awarding contracts without discussions, or when communications are needed for establishing the competitive range.

Determining the Competitive Range

Considering the ratings of each proposal against all evaluation criteria, the Contracting Officer may establish a competitive range consisting of the most highly rated proposals. Provided the solicitation notifies proposed contractors that the competitive range can be limited for purposes of efficiency, the Contracting Officer may limit the number of proposals in the competitive range to permit an efficient competition among the most highly rated proposals. The COR may be asked to assist the Contracting Officer with debriefing proposed contractors that are excluded or otherwise eliminated from the competitive range.

Communications after Establishing the Competitive Range

In either a competitive or sole-source environment, negotiations are exchanges undertaken between the Government and proposed contractor with the intent of allowing the proposed contractor to revise its proposal. Negotiations in a competitive acquisition take place after establishing the competitive range. Negotiation may include bargaining, alteration of assumptions and positions, and give-and-take discussion. Discussions may focus on price, schedule, technical requirements, type of contract, or other terms of a proposed contract. Discussions are conducted through the release of Evaluation Notices which identify what type of exchange is being conducted.

The Contracting Officer tailors discussions to each proposed contractor's proposal. The Contracting Officer must conduct discussions with each contractor within the competitive range. The primary objective of discussions is to maximize the Government's ability to obtain best value, based on the requirement and the evaluation factors identified in the solicitation.

During discussions, the Contracting Officer should discuss with each proposed contractor any deficiencies, significant weaknesses, and adverse past performance information to which the proposed contractor has not yet had an opportunity to respond. This may include other aspects of the proposed contractor's proposal that could be altered or explained to materially enhance the proposal's potential for award. However, this does not mean that the Contracting Officer is required to discuss every area where the proposal could improve.

The scope and extent of discussions are at the discretion of the Contracting Officer's judgment. The COR may be asked to participate in discussions with proposed contractors in the competitive range.

Selecting the Right Contractor

Note: Under no circumstances may anyone in the Government discuss one offeror's proposal with any of the other offerors.

Note: Debriefings must not include point-by-point comparisons of the proposed contractors' proposals, nor may debriefings divulge any other prohibited information about other proposed contractors.

Upon receipt of revised proposals or other responses to questions raised during discussions, the technical evaluation team will reevaluate the proposals in the competitive range. The results of these evaluations will be documented in writing and submitted to the Contracting Officer.

The Contracting Officer will review the latest set of evaluations. Based on a comparative assessment of proposals against all source selection criteria in the solicitation, the Contracting Officer will then rate the proposals. Although the Contracting Officer may use reports and analyses prepared by others, the source selection authority's decision represents an independent judgment. Documentation for the source selection authority's decision includes the rationale for any business judgments and tradeoffs made or relied on by the Contracting Officer, including benefits associated with additional costs.

Debriefing Proposed Contractors

Contracting Officers may debrief successful and unsuccessful offerors orally, in writing, or by any other method. The Contracting Officer normally chairs the debriefing session. Individuals from the evaluation teams provide support at the debriefing.

At a minimum, the following information must be included in the debriefing.

- Significant weaknesses or deficiencies in the proposed contractor's proposal, if applicable;
- Overall evaluated cost or price (including unit prices) and technical rating (if applicable) of the selected contractor and the unsuccessful proposed contractor;
- Past performance information of the unsuccessful proposed contractor;
- Overall ranking of all offerors, when any ranking was developed by the agency during the source selection;
- Summary of the rationale for the contract award;
- For acquisitions of commercial items, the make and model of the item to be delivered by the winning offeror; and
- Reasonable responses to relevant questions about whether source selection procedures contained in the solicitation, applicable regulations, and other applicable authorities were followed.

Handling Protests

Any interested party may file a protest against the Government concerning a contracting action. Interested parties can file such protests directly with the contracting agency or with the Government Accountability Office (GAO). Interested parties must file protests by the later of the following:

- 10 days after contract award,
- 5 days after a debriefing, or
- 10 calendar days after the basis of the protest is known (or should have been known).

An agency is required to make its best efforts to resolve agency protests within 35 days after the protest filing date, while the GAO has 100 days to resolve the protest. In the case of a protest filed with the GAO, either party can request a 65-day express option.

After contract award, if an interested party files a protest with the GAO, the Contracting Officer must suspend work on the contract unless the Head of the Contracting Activity determines doing so would not be in the best interest of the Government.

If an interested party files a protest to an agency within 10 days after contract award, the Contracting Officer must suspend work on the contract unless continued performance is justified, in writing, to be in the best interest of the Government. An official one level above the Contracting Officer must approve such justification or determination.⁴³

Note: The Government does not accept late protest submissions.

Handling Freedom of Information Act Requests

The Freedom of Information Act (FOIA) specifies how federal agencies will make their records available for public review (upon request), sets time standards for compliance actions, and details those records that are exempt from public disclosure. A Government contract is a public document. The reports that a contractor must submit in compliance with the terms and conditions of a service contract are likewise public documents with certain exceptions, such as the following.

- Classified information;
- Source selection information;
- Trade secrets and confidential commercial or financial information (sometimes referred to as proprietary information);
- Interagency or intra-agency memoranda or correspondence; or

⁴³ For more information on protest, see FAR Subpart 33.1.

- Personal and medical information pertaining to an individual.

If a contractor asks you for information under the provisions of FOIA, immediately refer the contractor to the Contracting Officer or agency FOIA monitor. The FOIA monitor will establish a suspense period not to exceed 20 calendar days, for each request. Remember it is not the COR’s job to determine whether information is releasable.

DOs and DON’Ts for Evaluation and Award are provided in Table B.2.

EVALUATION AND AWARD	
DO	DON’T
Carefully review the contract, especially the technical requirements.	Divulge budget information to prospective contractors.
Develop, or obtain from the contractor, a detailed schedule of performance.	Assume without reading it that the SOO/SOW/PWS is complete, clear, and fully understandable.
Work with the Contracting Officer and the contractor to clear up any misunderstandings and to establish organized contract administration and monitoring procedures.	Allow planning to become an end in itself. Remember: the goal is to get results, not just pretty charts showing the “plan.”
	Forget to update plans and schedules as the situation changes.
	Overlook or ignore contract requirements for GFP, timely reviews and approvals, or technical assistance and direction.

Table B.2: DOs and DON’Ts for Evaluation and Award

APPENDIX C: COR QUALIFICATIONS AND TRAINING

Contents

- DoD Standard for Certification of Contracting Officer's Representatives (COR) for Service Acquisitions
 - COR Responsibilities
 - COR Nomination
 - COR Appointment or Designation
 - COR Performance Appraisals
 - COR Termination
 - COR Training
 - Alternate CORs
 - Delegated Authority

DoD Standard for Certification of CORs for Service Acquisitions

The Under Secretary of Defense for Acquisition, Technology, and Logistics memorandum of March 29, 2010, established the “DoD Standard for COR for Service Acquisitions” (DoD COR Standard). The Standard defines minimum COR competencies, experience, and training based on the nature and complexity of the requirement and contract performance risk. The Standard identifies three types of requirements.

- Type A: Fixed-price, no incentive, low performance risk requirements;
- Type B: Other than fixed-price, no incentive, low performance risk requirements; or
- Type C: Unique requirements that necessitate a professional license, higher education, or specialized training.

Tables C.1, C.2 and C.3 address the training and experience necessary for each of these three types of requirements. The Standard introduces structure and rigor to COR responsibilities and performance, and will be the basis for a DoD instruction establishing a comprehensive COR certification program that addresses roles and responsibilities for the COR, COR management, and Contracting Officer.

DoD STANDARD FOR CERTIFICATION OF CONTRACTING OFFICER'S REPRESENTATIVES FOR SERVICES ACQUISITIONS

NATURE OF TYPE A WORK/REQUIREMENT	REQUIRED COMPETENCY TOPICS	REQUIRED COMPETENCIES	EXPERIENCE/TRAINING REQUIREMENTS
<p>Fixed-price requirements without incentives, low performance risk. Attributes of such requirements might include: lack of technical or administrative complexity, no identifiable risk factors; limited requirement for technical expertise; low likelihood of modification; effort is a follow-on to an existing contract.</p> <p>COR duties/responsibilities are generally limited to minimal technical and/or administrative monitoring of the contract.</p>	<p>General:</p> <ul style="list-style-type: none"> ➤ Attention to Detail ➤ Decision Making ➤ Flexibility ➤ Oral and Written Communication ➤ Problem Solving/Reasoning ➤ Self-management/Initiative ➤ Teamwork <p>Technical:</p> <ul style="list-style-type: none"> ➤ Business Ethics ➤ Effective Communication of Contract Requirements ➤ Effective Contract Performance Management ➤ Effective COR Performance 	<p>Upon completion of mandatory training, COR should be able to perform at least the following competencies in a manner consistent with the nature of Type A work/requirements:</p> <ol style="list-style-type: none"> 1. Assist in acquisition planning. 2. Assist in contract award process. 3. Establish/maintain COR file with all required documentation. 4. Identify/prevent unethical conduct and instances of fraud/waste/abuse. 5. Perform technical/administrative monitoring and reporting duties in accordance with letter of delegation and surveillance plan. 6. Recommend/monitor proposed changes. 7. Monitor contract expenditures/payments. 8. Monitor contract schedule compliance. 9. Perform liaison duties between the Contracting Officer, the Requiring Activity, and the contractor for management of the contract. 10. Inspect, accept or reject deliverables during contract performance and at close-out in conformance with contract terms and conditions. 11. Monitor the control/disposition of Government furnished assets. 12. Perform surveillance in a contingency environment, when applicable. 	<p>Experience:</p> <ul style="list-style-type: none"> ➤ Agency experience: minimum of 6 months (may be waived) ➤ Relevant technical experience: As determined by the nominating supervisor for the Contracting Officer's consideration and appointment ➤ General competencies: As determined by the nominating supervisor for the Contracting Officer's consideration and appointment. <p>Training:</p> <ul style="list-style-type: none"> ➤ DAU C I C 106, Contracting Officer's Representative (Basic) ➤ DAU COR XXX (to be determined). ➤ COR in the Contingency Environment, when applicable (competency 12) ➤ Minimum of 1 hour acquisition ethics training (e.g., CLM 003 or agency provided training) annually ➤ Additional training mandated by the contracting activity (e.g., WAFW). <p>Refresher Training:</p> <ul style="list-style-type: none"> ➤ Minimum of 8 hours COR specific training. ➤ Every 3 years, OR ➤ Prior to assuming COR responsibilities if the individual has not served as a COR within the previous 24 months. ➤ Minimum of 1 hour acquisition ethics training (e.g., CLM 003 or agency provided training) annually. ➤ Any additional training mandated by the Activity.

Table C.1

DoD STANDARD FOR CERTIFICATION OF CONTRACTING OFFICER'S REPRESENTATIVES FOR SERVICES ACQUISITIONS

NATURE OF TYPE B WORK/REQUIREMENT	REQUIRED COMPETENCY TOPICS	REQUIRED COMPETENCIES	EXPERIENCE/TRAINING REQUIREMENTS
<p>Fixed-price requirements without incentives, other than low performance risk. Attributes of such requirements might include: the nature of the work is more complex; effort will be performed in multiple regions/remote geographic locations; contract contains incentive arrangements or cost sharing provisions; contract is cost-type of TRM/LLI type, or FP LOE.</p> <p>COR duties/responsibilities are of increased complexity.</p>	<p>General:</p> <ul style="list-style-type: none"> ➤ Attention to Detail ➤ Decision Making ➤ Flexibility ➤ Influencing/Persuasive interpersonal skills ➤ Oral and Written Communication ➤ Planning and Evaluating ➤ Problem Solving ➤ Reasoning ➤ Self-management/Initiative ➤ Teamwork <p>Technical:</p> <ul style="list-style-type: none"> ➤ Business Ethics ➤ Defining Government requirements ➤ Understanding and knowledge of contract type ➤ Effective analytic skills ➤ Effective Communication of Contract Requirements ➤ Effective Contract Performance Management ➤ Effective COR Performance ➤ Project Management ➤ Strategic Planning ➤ Understanding the Marketplace 	<p>Upon completion of mandatory training, COR should be able to perform at least the following competencies in a manner consistent with the nature of Type B work/requirements:</p> <ol style="list-style-type: none"> 1. Assist in acquisition planning. 2. Assist in contract award process. 3. Establish/maintain COR file with all required documentation. 4. Identify/prevent unethical conduct and instances of fraud/waste/abuse. 5. Review technical submittals/ensure compliance with Statement of Work/Statement of Objectives (e.g., perform technical monitoring and reporting in accordance with a Quality Surveillance Plan) 6. Perform administrative monitoring and reporting duties (e.g., handle security issues, attend meetings, etc.) 7. Recommend/monitor proposed changes 8. Monitor contract expenditures/payments. 9. Monitor contract schedule compliance. 10. Perform liaison duties between the Contracting Officer and the contractor for management of the contract. 11. Inspect, accept or reject deliverables during contract performance and at close-out in conformance with contract terms and conditions. 12. Review and validate that contractor payment requests are commensurate with performance. 13. Monitor control/disposition of Government furnished assets. 14. Perform surveillance in a contingency environment, when applicable. 	<p>Experiences:</p> <ul style="list-style-type: none"> ➤ Agency experience: minimum of 12 months (may be waived by the requiring activity. Waiver to be addressed in nomination package) ➤ Relevant technical experience: As determined by the nominating supervisor for the Contracting Officer's consideration and appointment ➤ General competencies: As determined by the nominating supervisor for the Contracting Officer's consideration and appointment. <p>Training:</p> <ul style="list-style-type: none"> ➤ DAU COR 222 or ALMC-CI, or equivalent course ➤ DAU COR XXXX (to be determined), COR in a Contingency Environment, when applicable (competency 14) ➤ Minimum of 1 hour acquisition ethics training (e.g., DAU CLM 003 or agency provided training) annually. ➤ Additional training mandated by the Contracting activity (e.g., WAWF). <p>Refresher Training:</p> <ul style="list-style-type: none"> ➤ Minimum of 16 hours COR specific training: <ul style="list-style-type: none"> ▪ Every 3 years, OR ▪ Prior to assuming COR responsibilities if the individual has not served as a COR within the previous 24 months ➤ Minimum of 1 hour acquisition ethics training (e.g., DAU CLM 003 or agency provided training) annually. ➤ Any additional training mandated by the Activity

Table C.2

DoD STANDARD FOR CERTIFICATION OF CONTRACTING OFFICER'S REPRESENTATIVES FOR SERVICES ACQUISITIONS

NATURE OF TYPE C WORK/REQUIREMENT	REQUIRED COMPETENCY TOPICS	REQUIRED COMPETENCIES	EXPERIENCE/TRAINING REQUIREMENTS
<p>Unique contract requirements that necessitate a professional license, higher education or specialized training beyond the Type B requirements.</p> <p>Such requirements might include, for example, environmental remediation; major weapons systems; medical/dental/veterinarian services, etc.</p> <p>COR duties/responsibilities are of increased complexity.</p>	<p>General:</p> <ul style="list-style-type: none"> ➤ Attention to Detail ➤ Decision Making ➤ Flexibility ➤ Influencing/Persuasive interpersonal skills ➤ Oral and Written Communication ➤ Planning and Evaluating ➤ Problem Solving ➤ Reasoning ➤ Self-management/Initiative ➤ Teamwork <p>Technical:</p> <ul style="list-style-type: none"> ➤ Business Ethics ➤ Defining Government requirements ➤ Understanding and knowledge of contract type ➤ Effective analytic skills ➤ Effective Communication of Contract Requirements ➤ Effective Contract Performance Management ➤ Effective COR Performance ➤ Project Management ➤ Strategic Planning ➤ Understanding the Marketplace 	<p>Upon completion of mandatory training, COR should be able to perform at least the following competencies in a manner consistent with the nature of Type C work/requirements:</p> <ol style="list-style-type: none"> 1. Assist in acquisition planning. 2. Assist in contract award process. 3. Establish/maintain COR file with all required documentation. 4. Identify/prevent unethical conduct and instances of fraud/waste/abuse. 5. Review technical submittals/ensure compliance with Statement of Work/Statement of Objectives (e.g., perform technical monitoring and reporting in accordance with a Quality Surveillance Plan) 6. Perform administrative monitoring and reporting duties (e.g., handle security issues, attend meetings, etc.) 7. Recommend/monitor proposed changes. 8. Monitor contract expenditures. 9. Monitor contract schedule compliance. 10. Perform liaison duties between the Contracting Officer and the contractor for management of the contract. 11. Inspect, accept or reject deliverables during contract performance and at close-out in conformance with contract terms and conditions. 12. Review and validate that contractor payment requests are commensurate with performance. 13. Monitor control/disposition of Government furnished assets. 14. Perform surveillance in a contingency environment, when applicable. 15. Other specific functions consistent with the objectives of the Activity's mandatory specialized technical training. 	<p>Experience:</p> <ul style="list-style-type: none"> ➤ Agency experience: minimum of 12 months (may be waived by the requiring activity. Waiver to be addressed in nomination package) ➤ Relevant technical experience: As determined by the nominating supervisor for the Contracting Officer's consideration and appointment ➤ General competencies: As determined by the nominating supervisor for the Contracting Officer's consideration and appointment. <p>Training:</p> <ul style="list-style-type: none"> ➤ DAU COR 222 or ALMC-CL or equivalent course ➤ DAU COR XXX (to be determined), COR in the Contingency Environment, when applicable (competency 14) ➤ Minimum of 1 hour acquisition ethics training (e.g., DAU CLM 003 or agency provided training) annually. ➤ Additional training mandated by the contracting activity (e.g., WAWF). <p>Refresher Training:</p> <ul style="list-style-type: none"> ➤ Minimum of 16 hours COR specific training: <ul style="list-style-type: none"> • Every 3 years, OR • Prior to assuming COR responsibilities if the individual has not served as a COR within the previous 24 months. ➤ Minimum of 1 hour acquisition ethics training (e.g., DAU CLM 003 or agency provided training) annually. ➤ Any additional training mandated by the Activity. ➤ Any necessary for maintenance of license/certification etc.

Table C.3

FAR 1.602-2(d) was changed to require the appointment of a COR on any contract that is not firm fixed price, and allows for appointment of a COR for firm fixed price contracts when the contracting offices determines it appropriate. CORs on any contract that is not firm fixed price shall meet Type B requirements for education, training and experience.

COR Responsibilities

A COR assists in the technical monitoring and administration of a contract. DFARS PGI 201.602-2(i)(A) requires designation of a properly trained COR, in writing, before contract award. The surveillance activities performed by CORs should be tailored to the

complexity/dollar value of the specific contract for which they are designated. CORs may not be delegated responsibility to perform functions at a contractor's location that have been delegated under FAR 42.202(a) to a contract administration office. CORs have no authority to make any commitments or changes that affect price, quality, quantity, delivery, or other terms and conditions of the contract. The COR may not re-delegate/sub-delegate any authority. Also, CORs may be personally liable for unauthorized acts.

COR Nomination

To ensure the COR has a thorough understanding of the contract, the COR should be involved in the acquisition process, acting on behalf of the requiring activity in assisting with the development of the technical requirements, QASP, and other pre-award activities. The COR should be identified by the requiring activity as early in the acquisition process as practicable, often when the procurement package is submitted to the contracting office.

To be nominated as a COR, the individual must be an employee, military or civilian, of the U.S. Government, a foreign government, or a North Atlantic Treaty Organization/coalition partner; have the requisite security clearance; and have training and experience commensurate with the responsibilities the Contracting Officer will delegate.

To nominate a COR, the requiring activity submits a request for COR designation to the Contracting Officer through the Contracting Officer's Representative Tracking Tool (CORT Tool). At a minimum, the request will include the following information:

- Services or supplies being procured and requiring activity;
- Individual nominated;
- Nominee's contact information;
- Area of responsibility;
- Duration of requested appointment;
- Completed COR training (attach required certificates);
- Technical qualifications and experience; and
- Supervisor's certification that:
 - The COR nominee was notified of the requirement to complete an Office of Government Ethics (OGE) Form 450, Confidential Financial Disclosure Report, within 30 days of appointment;
 - The COR duties will be reflected in the nominee's annual performance standards; and

- The nominee will be afforded sufficient time, resources and opportunity to accomplish the duties.

COR Appointment or Designation

The Contracting Officer issues the COR appointment or designation via a letter of appointment/designation through the CORT Tool or equivalent approved web based tool. This letter establishes the COR's dual lines of responsibility: (1) to the requiring activity, via the rating chain, and (2) to the Contracting Officer, via the appointment/designation letter. The COR is authorized, within the established limitations of the letter of appointment/designation, to ensure timely progress of contract performance and to provide effective technical guidance and advice to the Contracting Officer. Although a COR may act for the Contracting Officer in technical phases of the contract, the COR may not commit the Government in matters that would change contract price, quantity, delivery schedule, or other requirements of the contract.

The appointment/ designation letter identifies the following:

- Individual area of responsibility;
- Contract number and expiration date;
- Duration of appointment or designation;
- Responsibilities, authorities, and limitations;
- File maintenance requirements;
- Reporting requirements; and,
- Liability in the event of unauthorized acts.

After the Contracting Officer, the COR, and COR management have signed the COR letter of appointment/designation, the Contracting Officer will furnish two copies to the contractor. The contractor must acknowledge receipt of the letter by counter-signing one copy and returning it to the Contracting Officer. The Contracting Officer will make appropriate distribution of this contractor acknowledgement and upload the signed letter of appointment/designation to the CORT Tool.

COR Performance Appraisals

The requiring activity must allow adequate resources (time, products, equipment, opportunity) for the COR to perform his or her COR functions. COR management will evaluate the individual's performance of COR duties as part of their performance assessment throughout the period of the contract. COR management is encouraged to solicit input on performance of COR duties from the Contracting Officer.

COR Termination

The Contracting Officer may terminate the COR appointment or designation at any time, upon written request from the COR's management, at the discretion of the Contracting Officer, or upon approval of a COR's termination request. When a contract is completed, or a COR requests termination of the COR status due to transfer, retirement, or other causes, the Contracting Officer must immediately terminate the COR's designation in writing. Both the Contracting Officer and the COR must sign the termination letter. The termination document will be uploaded to the CORT Tool.

If a COR requests relief from his or her duties, he/she must do so sufficiently in advance of reassignment or separation from the Government to permit the requiring activity to have adequate time to nominate a successor and to permit the Contracting Officer to have adequate time to train and appoint/designate that successor.

A COR may be terminated either without prejudice or for cause. A termination without prejudice is made upon the termination date on the COR's appointment or designation letter. Termination for cause is made according to a termination letter issued by the Contracting Officer. A copy of a termination letter must be provided to the COR, COR management, and the contractor with the original in the contract file.

COR Training

The following COR training is available from the Defense Acquisition University (DAU) at <https://acc.dau.mil/cor>.

- Continuous Learning-Contracting (CLC) 106, "Contracting Officer's Representative with a Mission Focus" (8-hour online course)
- CLC 206, "CORs in the Contingency Environment" (3 hour on-line course)
- CLC 222, "Contracting Officer's Representative" (32 hour on-line course)
- COR 222, "Contracting Officer's Representative" (32 hour customer support in residence offering of CLC222)

CLC106, CLC222 and COR 222 were developed to address the competencies identified in the DoD COR Standard. CLC 206 is designed to supplement CLC106 and CLC/COR222 for CORs deploying to a contingency environment.

Component-sponsored and commercial training must be equivalent to the DAU baseline training for Type B and C work/requirements to meet the standard training requirements. Equivalency requirements are addressed at <http://icatalog.dau.mil/learning/equivalency.aspx>. <http://icatalog.dau.mil/learning/equivalency.aspx>

Trafficking in Persons: CORs are required to complete the Trafficking in Persons training available at <http://www.dodig.mil/inspections/ipo/combatinghuman.htm>.

The following are additional courses available to the COR depending on the COR functions delegated.

Note: Learn more about DAU continuous learning modules (CL*) and Harvard Business School (HBS) continuous learning modules at: <http://icatalog.dau.mil/onlinecatalog/tabnavcl.aspx>.

CLB 018	Earned Value and Financial Management Reports
CLB 02	Software Cost Estimating
CLC 004	Market Research
CLC 006	Contract Terminations
CLC 007	Contract Source Selection
CLC 011	Contracting for the Rest of Us
CLC 013	Performance-Based Services Acquisition
CLC 055	Competition Requirements for DoD Acquisition
CLC 133	Contract Payment Instructions
CLM 013	Work Breakdown Structure
CLM 024	Contracting Overview
CLM 031	Improved Statement of Work
CLM 039	Foundations of Government Property
HBS 204	Customer Focus
HBS 205	Decision Making
HBS 212	Time Management
HBS 220	Meeting Management
HBS 224	Writing Skills

In addition, CORs must annually complete DAU CLM 003, “Ethics” for AT&L Workforce (or Agency provided training).

Regardless of their experience or formal training, CORs will receive contract-specific training from their Contracting Officers.

Multiple/Alternate CORs

Any individual appointed or designated by the Contracting Officer under the authority of FAR 1.602, is, by definition, a COR and must comply with the DoD COR Standard.

There may be only one COR, or multiple CORs, for any specific contract. A COR alternate may be designated to cover periods when the primary COR would not be available. Multiple CORs may be designated when contract performance takes place in multiple locations, over multiple functions, 24 hour operations. The Contracting Officer is responsible for ensuring that the appointment/designation letters are specific when delegating functions to COR(s) and that COR(s) are familiar with their respective roles and responsibilities.

Delegated Authority

Contracting Officers delegate contract administration responsibility under the following authorities of: (1) FAR 42.302(a)(27), “property administration”; (2) FAR Part 46, “quality assurance”; and (3) DFARS 201.602-2, “COR responsibilities”.

The Contracting Officer is responsible for ensuring that all parties understand their relative roles and responsibilities. If there is any question, contact the Contracting Officer.

APPENDIX D: ACRONYMS AND TERMS

ACRONYMS

ACO	Administrative Contracting Officer
ADR	Alternative Dispute Resolution
AKO	Army Knowledge Online
ASBCA	Armed Services Board of Contract Appeals
BAA	Berry Amendment Act
CAC	Common Access Card
CAO	Contract Administration Office
CAP	Contractor-Acquired Property
CCO	Contingency Contracting Officer
CCR	Central Contractor Registration
CDR	Contractor Discrepancy Report
CDRL	Contract Data Requirements List
CI	Commercial Item
CICA	Competition in Contracting Act
CLC	Continuous Learning - Contracting
CLIN	Contract Line Item Number
COI	Conflict of Interest
CONUS	Continental United States
COR	Contracting Officer's Representative
CORTTool	COR Tracking Tool
CPARS	Contractor Performance Assessment Reporting System
CPI	Consumer Price Index
DD	Department of Defense When Used With Form
DA	Department of the Army
DAU	Defense Acquisition University
DBA	Davis-Bacon Act
DCAA	Defense Contract Audit Agency
DCMA	Defense Contract Management Agency
DAEO	Designated Agency Ethics Official
DFARS	Defense Federal Acquisition Regulation Supplement
DID	Data Item Description
DKO	Defense Knowledge Online
DNAD	Domestic Non-Availability Determination
DO	Delivery Order
DoD	Department of Defense
DoDAAC	DoD Activity Address Code

DoDD	DoD Directive
DPAP	Defense Procurement and Acquisition Policy
EPA	Economic Price Adjustment
ETF	Electronic Funds Transfer
FAR	Federal Acquisition Regulation
FedBizOpps	Federal Business Opportunities
FFP	Firm Fixed Price
FICA	Federal Insurance Contributions Act
FSS	Federal Supply Schedule
FTA	Free Trade Agreements
FTR	Federal Travel Regulation
FOB	Free on Board
FOIA	Freedom of Information Act
G&A	General & Administrative
GAO	Government Accountability Office
GBL	Government Bill of Lading
GFP	Government-Furnished Property
GPC	Government Purchase Card
GSA	General Services Administration
GSBCA	General Services Administration Board of Contract Appeals
H&A	Health and Welfare
HCA	Head of the Contracting Activity
IGCE	Independent Government Cost Estimate
IRS	Internal Revenue Service
IT	Information Technology
IFB	Invitation for Bids
J&A	Justification & Approval
LOA	Letter of Authorization
LTDD	Loss, Theft, Damage or Destruction
MFR	Memorandum for the Record
OCI	Organizational Conflicts of Interest
OCONUS	Outside Continental United States
ODC	Other Direct Costs
OFPP	Office of Federal Procurement Policy
OGE 450	Office of Government Ethics Form 450
OF	Optional Form
OT	Overtime
PAS	Pre-award Survey
PBSA	Performance-Based Services Acquisition
PCO	Procuring Contracting Officer
PDI	Program Development and Implementation Directorate of DPAP
PGI	DFARS Procedures, Guidance and Information
POC	Point of Contact

POP	Period of Performance
PR	Procurement Request
PR&C	Purchase Request and Commitment
PRS	Performance Requirements Summary
PWS	Performance Work Statement
QAR	Quality Assurance Representative
QASP	Quality Assurance Surveillance Plan
RFP	Request For Proposal
RIK	Replacement in Kind
SAP	Simplified Acquisition Procedures
SAT	Simplified Acquisition Threshold
SCA	Service Contract Act
SF	Standard Form
SOO	Statement of Objectives
SOW	Statement of Work
SPE	Senior Procurement Executive
SPOT	Synchronized Pre-deployment Operational Tracker
T&M	Time & Materials
TCO	Terminating Contracting Officer
U.S.	United States
UCA	Undefinitized Contract Action
UCF	Uniform Contract Format
U.S.C.	United States Code
WAWF	Wide Area Work Flow
WTO GPA	World Trade Organization Government Procurement Agreement

Definitions

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

Acquisition: Process of acquiring by contract, with appropriated funds, supplies or services (including construction) by and for the use of the Federal Government through purchase or lease, whether the supplies or services already exist or must be created, developed, demonstrated, and evaluated.

Administrative Contracting Officer (ACO): Individual who administers a contract and enforces its provisions. The Procuring Contracting Officer (PCO) sometimes serves as the ACO, especially for contracts performed on a Government installation.

Acquisition Team: All participants in the acquisition process: requiring activity, finance, Contracting Officer, legal counsel, COR, resource manager, quality assurance representative, and others, as applicable. No one person has all the necessary skills for successful contract management. It requires a team with each member having specialized expertise and responsibilities.

Agent: Individual appointed or designated by another party (principal) to enter into a business or contractual relationship with third parties. These relationships are legally binding on the principal and the third parties. A Contracting Officer signing a Government contract does so as an agent of the U.S. Government.

Allocable Costs: Costs that are incurred specifically for the contract, that benefit both the contract and other work and can be distributed in reasonable proportion to the benefits received, or that are necessary to the overall operation of the business, although a direct relationship to any particular cost objective cannot be shown.

Allowable Costs: Costs that are allowable on a Government contract when in keeping with the rules set forth in FAR Part 31, “Contract Cost Principles and Procedures”, and not otherwise disallowed.

Alternative Dispute Resolution (ADR): Any type of procedure or combination of procedures used voluntarily to resolve issues in controversy. Examples of ADR procedures are conciliation, facilitation, mediation, fact-finding, mini-trials, arbitration, and use of ombudsmen.

Amendment: Change made to a solicitation.

Bid: Offer. In the sealed bidding method of contracting, the offer takes the form of a sealed bid. A bid is fixed as of the time of bid opening, and there is no possibility of negotiating even a relatively minor change in it, even if the change would be to the Government’s advantage. It must be accepted or rejected as submitted.

Bilateral Modification: Contract modification (supplemental agreement) signed by the contractor and the Contracting Officer.

Change Order: Written order, signed by the Contracting Officer, directing the contractor to make a change that the Changes clause authorizes.

Civil Augmentation Program: Standing, long-term contracts designed to augment service logistic capabilities with contract support in both preplanned and short-notice contingencies. Examples are U.S. Army Logistics Civilian Augmentation Program, U.S. Air Force Contract Augmentation Program, and U.S. Navy Construction Capabilities Contract.

Claim: Assertion by one of the parties to a contract seeking adjustment or interpretation of an existing contract, subject to the dispute clause in the contract.

Clause: Term or condition used in a contract or both the contract and solicitation.

Commercial Item (CI): Any item, other than real property, customarily used for nongovernmental purposes and that has been sold, leased, or licensed to the general public; or has been offered for sale, lease, or license to the general public; or any item evolved through advances in technology or performance and that is not available in the commercial marketplace but will be available in the commercial marketplace to satisfy the Government delivery requirements.

Competition: Acquisition strategy in which more than one contractor is sought to bid on procurement. In acquisitions at or below the micro-purchase threshold, only assurance of a fair and reasonable price is required. In simplified acquisitions, maximum practicable competition is obtained by soliciting at least three sources. In actions using other than simplified acquisition procedures, full and open competition is to be used unless there are valid exemptions or exceptions.

Constructive Change: A contract change without formal written authority.

Contract: Agreement, enforceable by law, between two or more competent parties to do or not do something not prohibited by law for a legal consideration. FAR 2.101, “Definitions”, defines a contract as a mutually binding legal relationship obligating the seller to furnish the supplies or services (including construction) and the buyer to pay for them.

Contract Administration Office (CAO): Activity identified in the DoD Directory of Contract Administration Services Components assigned to perform contract administration responsibilities. For DoD, the CAO is often a Defense Contract Management Agency (DCMA) regional office servicing the contract.

Contract Administration Plan: Plan describing the procedures and tasks to be used by the Government to administer a contract. Those tasks include file documentation and quality assurance functions. Implementation of the plan will establish a quality audit trail of contract performance with respect to the specifications, cost, delivery requirements, and applicable laws, regulations, and contract clauses.

Contract Data Requirements List (CDRL): List of contract data requirements authorized for a specific acquisition and made a part of the contract. CDRLs are specified by DD Form 1423-1, “Contract Data Requirements List”.

Contract Discrepancy Report (CDR): Report issued for any supply or service found to be unacceptable during contract performance. The CDR is notification to the contractor of failure to meet the contract requirements.

Contract Line Item Number (CLIN): Number that identifies a separate supply or service to be provided under contract. Each CLIN should have a single unit price, separate identification, separate delivery schedule, and single accounting classification citation.

Contracting Officer: Individual who is duly appointed and designated with specific authority to enter into, administer, and terminate contracts and to make related determinations and findings on behalf of the U.S. Government.

Contracting Officer's Representative (COR): Individual, including a Contracting Officer's Technical Representative (COTR), designated and authorized in writing by the Contracting Officer to perform specific technical or administrative functions related to monitoring a contract. According to Defense Federal Acquisition Regulation Supplement (DFARS) 201.602-2, "Responsibilities", the COR must be (1) a Government employee, military or civilian, a foreign government, or a North Atlantic Treaty Organization/coalition partner(the latter two are applicable in a deployed theater), (2) qualified by training and experience commensurate with responsibilities to be delegated in accordance with department or agency guidelines, and (3) designated in writing. The COR has no authority to make any commitments or changes that affect price, quality, quantity, delivery, or other terms and conditions of the contract.

Contracting Officer's Representative (COR) Nominee: Individual identified by the requiring activity and accepted by the Contracting Officer as having the general competencies, agency experience, relevant technical experience, and training (or a training plan if not yet trained) to perform those COR functions delegated by the Contracting Officer. When appropriate, the COR should be nominated as early in the acquisition cycle as practicable. This allows the COR nominee to provide subject matter expertise and to ensure that he or she is familiar with the requirements, specific terms and conditions of the resultant contract, and the functions to be delegated.

Contractor-Acquired Property: Property acquired or otherwise provided by the contractor for its use in performing a contract and to which the government has or will acquire title.

CORT Tool: A web based application, designated by the Undersecretary of Defense, Acquisition Technology and Logistics, to track CORs within the Department of Defense.

Cost-Reimbursement Contract: Agreement that provides for payment of allowable incurred costs, to the extent prescribed in the contract.

Cure Notice: Document the Contracting Officer sends to a contractor to notify the contractor that the contract may be terminated by reason of default if the condition endangering performance of the contract is not corrected. There must be 10 days for the contractor to make the cure.

Customer Complaint: Form of feedback that can be used to monitor quality assurance; this is particularly useful in service contracts.

Data Item Description (DID): Document that defines the data required of a contractor. The DID specifically defines the data content, format, and intended use.

Data Rights: Rights to use recorded information, regardless of its form or the media on which it may be recorded. The term includes rights to technical data and computer software. The term does not include rights to information incidental to contract administration, such as financial, administrative, cost or price, or management information. The Government can acquire three types of data rights: (1) unlimited rights to all data, which is costly; (2) limited rights or restricted rights (a few essential rights for Government personnel only, which has a relatively low cost); and (3) government purpose rights, which includes rights for Government contractors as long as the use is for a Government purpose, at a moderate cost.

Default: Omission or failure to perform a legal or contractual duty to observe a promise, discharge an obligation, or perform an agreement.

Defense Contract Audit Agency (DCAA): Agency that audits all DoD contracts and provides accounting and financial advisory services regarding contracts and subcontracts to DoD components responsible for procurement and contract administration. These services are provided in connection with negotiation, administration, and settlement of contracts and subcontracts. DCAA also provides contract audit services to some other Government agencies.

Defense Contract Management Agency (DCMA): Independent agency within DoD that serves as DoD's contract manager. DCMA is responsible for ensuring that federal acquisition programs (systems, supplies, and services) are delivered on time, delivered within projected cost or price, and meet performance requirements.

Defense Federal Acquisition Regulation Supplement (DFARS): Supplement to the FAR that provides DoD-specific acquisition regulations.

Delivery Order (DO): Order for supplies placed against an established contract or with Government sources.

Delivery Order Contract: Contract for supplies that does not procure or specify a firm quantity of supplies (other than a minimum or maximum quantity) and that provides for the issuance of orders for the delivery of supplies during the period of the contract.

Department of Defense (DoD): Federal department responsible for coordinating and supervising all agencies and functions of the Government relating directly to the military and national security.

Designated Agency Ethics Official (DAEO): Individual appointed or designated by the Attorney General to administer, coordinate, and manage a department's ethics program. The Assistant Attorney General for Administration has been designated to serve as the DAEO.

Dispute: Disagreement between the contractor and Contracting Officer regarding the rights of the parties under a contract.

Economic Price Adjustment (EPA): Provision in a fixed-price contract that allows for upward or downward revision of the stated contract price under specified contingencies.

Equitable Adjustment: Adjustment of price, including an adjustment for profit, due to a change in contracted work, such as a change in the delivery schedule or any other terms of the contract.

Excusable Delay: Delay arising from causes beyond the control and without the fault or negligence of the contractor. Examples are (1) acts of a public enemy, (2) acts of the Government in its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) unusually severe weather.

Executive Agency: Instrumentality of the U.S. Government bound by the FAR. Executive agencies include the executive departments, the military departments, any independent establishment, and any wholly owned Government corporation within the meaning of 31 U.S.C. 102, "Executive Agency".

Fair and Reasonable Price: Basic tenet of Government contracting that an award be made at a fair and reasonable price to both parties to the contract. If the contract is set up with the correct contract type allowing for appropriate cost risk, a good contractor should be able to make a reasonable profit.

Federal Acquisition Regulation (FAR): Regulation that applies to all acquisitions of the executive branch of the U.S. Government. DoD-specific policies and procedures are established in the DFARS.

Federal Business Opportunities (FedBizOpps): Media used by U.S. Government agencies to notify the public of proposed contract actions and contract awards.

Federal Government (Government): The federal government of the constitutional republic of fifty states and one district that is the United States of America.

Federal Supply Schedule (FSS): Program, directed and managed by the General Services Administration, that provides U.S. Government agencies with a simplified process for obtaining common supplies and services at prices associated with volume buying.

Firm-Fixed-Price (FFP) Contract: Agreement to pay a specified price when the supplies or services called for by the contract have been delivered and accepted within a specified time.

Free on Board (FOB) Destination: Title of the goods passes at destination. Contractor has total responsibility until shipment is delivered. Ownership (title and control) remains with contractor until goods are delivered. The contractor is responsible for all of the transportation arrangements.

Free on Board (FOB) Origin: Title passes at origin, and the Government has total responsibility over the goods while in shipment. The Government takes ownership (title and control) of the goods at the origin (when the carrier signs for goods) and is responsible for transportation of the goods beyond this point.

Full and Open Competition: Procurement environment in which all responsible sources are permitted to compete.

General Services Administration (GSA): Agency in the executive branch of the U.S. Government that procures common supplies and services (including construction) used by Government agencies.

Government Accountability Office (GAO): Independent government entity known as “the investigative arm of Congress” and “the congressional watchdog.” GAO supports Congress in meeting its constitutional responsibilities and helps improve the performance and accountability of the Federal Government.

Government Bill of Lading (GBL): Accountable transportation document authorized and prepared by a Government official.

Government-Furnished Property (GFP): Property in the possession of or directly acquired by the Government and subsequently made available to the contractor.

Government Purchase Card (GPC): Card, similar to a commercial charge card, issued to authorize agency personnel to use to acquire and pay for supplies and services.

Head of the Contracting Activity (HCA): Individual who has overall responsibility for managing the contracting activity.

Indefinite-Delivery Contract: Contract used to acquire supplies or services when the exact times and/or exact quantities of future deliveries are not known at the time of contract award. There are three types of indefinite-delivery contracts: definite-quantity contracts, requirements contracts, and indefinite-quantity contracts.

Independent Government Cost Estimate (IGCE): Estimate of the cost for supplies or services to be procured by contract. Government personnel independent of contractors prepare IGCEs.

Information Resources: All resources and activities employed in the acquisition, development, collection, processing, integration, transmission, dissemination, distribution, use, retention, storage, retrieval, maintenance, access, disposal, security, and management of information. Information resources include doctrine, policy, data, equipment, and software applications, as well as related personnel, services, facilities, and organizations.

Information Technology (IT): Any equipment, or interconnected system or subsystem of equipment, used for the automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or receipt of data or information. IT includes computers, ancillary equipment, software, firmware, and similar procedures, services (including support services), and related resources.

Inspection: Process broadly defined as “the examination of an item by comparing it with predetermined standards to determine conformance to requirements.” The narrow definition of inspection is “a visual examination which does not use special laboratory equipment or procedures.” In the phrase inspection and acceptance, the broad definition applies. In the phrase test and inspection, the narrow one applies.

Invitation for Bids (IFB): Solicitation used by the Government (in the sealed bidding method of contracting) to invite offerors to make a bid on a specific requirement and to describe the conditions under which offers will be received.

Justification and Approval (J&A): Document that justifies and obtains approval for contract solicitations that use other than full and open competition.

Labor-Hour Contract: Contract that provides for the procurement of services on the basis of direct labor hours at specified, fixed hourly rates (which include direct and indirect labor, overhead, and profit).

Legal Counsel: Judge Advocate General, or Staff Judge Advocate, or civilian counsel providing legal services.

Letter Contract: Written preliminary contractual instrument that authorizes the contractor to begin immediately manufacturing supplies or performing services.

Market Research: Process used for collecting and analyzing information about the market available to satisfy the minimum agency needs to arrive at the most suitable approach to acquiring, distributing, and supporting supplies and services.

Modification: Written change in the terms of the contract. It can be unilateral (signed by the Government only) or bilateral (signed by both the Government and the contractor).

Negotiation: Contracting approach that uses either competitive or other than competitive proposals and discussions. Any contract awarded without using sealed bidding procedures is a negotiated contract. Negotiation may also be used to modify the contract after award.

Nonexcusable Delay: Delay that could have been prevented by the contractor. Such a delay would not be a reason to extend the delivery schedule without consideration.

Nonpersonal Services Contract: 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.

Offer: One of the five elements of a contract. As a response to a Government solicitation, an offer, if accepted by the Government's Contracting Officer, would legally bind the offeror to perform the resultant contract. An offer could be in the form of a bid or a proposal.

Offeror: Entity that offers, via a proposal, to provide supplies or perform services needed by the Government. An offeror becomes a contractor when the Government accepts the offer. In sealed bidding the offeror is called a bidder.

Operational Contract Support (OCS)⁴⁴: The process of planning for and obtaining supplies, services, and construction from commercial sources in support of joint operations along with the associated contractor management functions.

Option: Contract term giving the Government the unilateral right, for a specified time, to purchase additional supplies or services called for by the contract or to extend the term of the contract. Examples are an increase in the quantity of supplies beyond that originally stipulated, an extension of time for services beyond that originally stipulated, and a change to the principal period of performance (such as the hours of the workday in a maintenance contract). A critical factor in an option is the window during which an option can be exercised. Missing the window voids the unilateral nature of the option.

Order: Instrument used to order work under a task order or delivery order contract. Orders are written and, when obligating funds, must be on a form prescribed by the FAR or DFARS. Orders are made a part of the contract file.

Organizational Conflict of Interest: Situation that exists when the nature of the work to be performed under a proposed Government contract may, without some restriction on future activities, result in an unfair competitive advantage to the contractor or impair the contractor's objectivity in performing the contract work.

Partial Payment: Payment for supplies or services delivered to, and accepted by, the Government, that represent only part of the contract requirements.

Past Performance: History of how well a contractor performs on a contract or contracts. The Government tracks contractor performance to assess the risk of using the same contractor on a similar project sometime in the future. (The Government supplements past performance data with data from other sources.)

Performance Specification: Description of the end item in terms of output, function, or operation. The contractor is responsible for determining the specific design necessary to achieve the performance levels stated. Performance specifications are preferred over design specifications.

Performance Work Statement (PWS): Description of the required results in clear, specific, and objective terms with measurable outcomes.

Performance-Based Services Acquisition (PBSA): Acquisitions that focus on the purpose of the services to be performed rather than the manner in which the work is to be performed. A PBSA is designed to ensure that contractors are given the freedom to determine how to meet the Government's performance objectives so that appropriate

⁴⁴ See Joint Publication 1-02 "DoD Dictionary of Military and Associated Terms".

performance quality levels are achieved, and that payment is made only for services that meet these levels.

Personal Services Contract: Contract that creates an employer-employee relationship between the Government and the contractor's personnel. The Government is normally required to obtain its employees by direct hire under competitive appointment, designation, or other procedures required by the civil service laws. Obtaining personal services by contract, rather than by direct hire, circumvents those laws unless Congress has specifically authorized acquisition of the services by contract. In addition, converting a legal nonpersonal service contract into a personal service contract removes it from being enforceable in a court of law.

Pre-award Survey (PAS): Study of a prospective contractor's financial, organizational, and operational status. A PAS is conducted prior to contract award to determine the contractor's responsibility and eligibility for Government procurement.

Procurement Request: Initial request for a contracting action, submitted by the requiring activity. The procurement request consists of all the documentation required to establish a contract, a purchase order, or a construction contract.

Procuring Contracting Officer (PCO) (sometimes referred as "Contracting Officer"): The individual who has the authority to award the contract. This individual may also administer the contract and may handle termination settlements, functions that, in many instances, are handled by an ACO and a TCO, respectively.

Progress Payment: Method of contract financing in which the Government pays a contractor as work progresses even though supplies or services have not been delivered. Progress payments may be based on costs incurred, percentage of work completed, or completion of particular phases.

Prompt Payment Act: Law defining the standard amount of time allowed for payment to Government contractors.

Proposal: Document submitted by an offeror in response to a request for proposals, issued by the Government, for providing supplies or performing services.

Proprietary Data: Data that belong to an offeror or contractor, and apply to manufacturing processes, operations, or techniques that may distinguish that entity from its competition. The entity must label its proprietary data, and the Government must prevent the release of proprietary data to unauthorized parties.

Protest: An interested party's written objection to an agency's solicitation of offers for a proposed contract to acquire supplies or services. A protest also may be an interested party's written objection to the proposed or actual award of a contract.

Provision: Term or condition that is used in the solicitation and applies before contract award.

Purchase Order: Order for supplies or services (used in the simplified acquisition method of contracting). Normally used above the micro-purchase level, purchase orders may be unilateral (requiring only a Government signature) or bilateral (requiring the signature of both the Contracting Officer and the contractor).

Quality: Combined attributes (performance features and characteristics) that indicate the ability of a supply or service to satisfy a given need.

Quality Assurance: Process consisting of planned, systemic actions necessary to provide confidence that adequate technical requirements are established; supplies and services conform to established technical requirements; and, satisfactory performance is achieved.

Quality Assurance Representative (QAR): When a contract has been delegated to the Defense Contract Management Agency to administer, the COR will work closely with the QAR. The QAR ensures the contractor is in compliance with contractual requirements, evaluates and documents contractor performance, follows up with the contractor on documented deficiencies, and provides input for the Performance Evaluation Board through the Administrative Contracting Officer.

Quality Assurance Surveillance Plan (QASP): Guide that describes the contract monitoring methods in detail. The QASP is usually written by the same team that develops the work statement and is used in monitoring a contract. A QASP is mandatory for contracts, task orders, or delivery orders over the simplified acquisition threshold, including service contracts and construction contracts⁴⁵.

Quality Control Plan: Method put into place by a contractor to monitor or control the performance of services to meet contract requirements. This plan is also known as a quality assurance plan (QAP).

Random Sampling: Method of inspection used when it is not feasible to examine all items presented prior to acceptance. Under this method, a predetermined quantity is inspected at random. In this way, the contractor does not know which items will be

⁴⁵ Reference DFARS 246.401.

inspected. In theory, random sampling is highly reliable as an indicator of overall quality.

Ratification: Approval, by an official with the required authority, of an unauthorized commitment. A ratifying official is never compelled to ratify an unauthorized commitment.

Reasonable Cost: Cost which, in its nature and amount, does not exceed that which would be incurred by a prudent person in the conduct of a competitive business. In determining reasonableness of a specific cost, the Contracting Officer shall consider: Whether it is the type of cost generally recognized as ordinary and necessary for the conduct of a contractor's business or the contract performance; Generally accepted sound business practices, arm's length bargaining, and federal and state laws and regulations; The contractor's responsibilities to the Government, other customers, the owners of the business, employees, and public at large; and Any significant deviation from the contractor's established practices.

Replacement in Kind (RIK): Type of payment on an acquisition and cross-servicing agreement in which logistics support, supplies, or services are transferred to an activity and that activity pays by providing the same kind of logistics support, supplies, or services at a later date.

Request for Proposals (RFP): The solicitation used for negotiated acquisitions to communicate Government requirements to prospective contractors and to obtain proposals.

Requirements Contract: Indefinite-delivery type of contract that commits the Government to the exclusive use of the contractor to provide supplies or services as outlined in the contract for the period stated. This type of contract does not commit the Government to a specific quantity of supplies or services. Delivery orders are used to request supplies and task orders are used to request services when needed. Delivery orders and task orders also give the location and time of delivery or performance. Under this type of contract, the Government is at risk of a breach of contract suit if, for any reason, it gives a competitor the work promised before the contractor has a chance to refuse it.

Responsibility: Determination that the contractor has the capability to perform a contract successfully. Because the responsibility decision must be made prior to award, it is somewhat speculative. It can be based on a formal pre-award survey of technical capability, production capability, quality assurance capability, financial capability, accounting system, and other factors such as property control, transportation, packaging, security, safety, environmental or energy conservation, and flight operation or flight

safety. It is also possible to make a responsibility determination without a formal pre-award survey when data are available to support a positive decision.

Sealed Bidding: Method of contracting that employs competitive bids, involves public opening of bids, and makes an award to the responsive, responsible bidder, considering only price and price-related factors.

Senior Procurement Executive (SPE): Individual who is responsible for management direction of the acquisition system of an executive agency, including implementation of agency-unique acquisition policies, regulations, and standards.

Set-aside: Reserving of an acquisition or portion of an acquisition exclusively for participation by an identified group.

Show-Cause Letter: Document sent by the Contracting Officer to a contractor that is failing to perform in accordance with the terms of the contract. The letter notifies the contractor that the contract may be terminated by reason of default unless the contractor can prove within 10 days that the condition was not the fault of the contractor.

Simplified Acquisition Threshold (SAT): Generally, the SAT threshold is \$150K. However, when the supplies or services are needed to support a declared contingency operation or to facilitate defense against or recovery from nuclear, biological, or radiological attack, the SAT threshold is:

\$250K for any contract to be awarded and performed, or purchase to be made, inside the United States; and

\$1M for any contract to be awarded and performed, or purchase to be made, outside the United States.

Small Business: Entity, including its affiliates, that is independently owned and operated, is not normally dominant in the field of operation in which it is performing on Government contracts, and meets certain other size criteria set by the SBA.

Small Business Program: Program designed to ensure that small businesses — including small disadvantaged businesses, 8(a) firms, women-owned businesses, minority colleges, and labor surplus area firms, among others identified by law — receive a fair share of DoD procurement dollars. In furtherance of economic objectives, various public laws and executive orders have designated that these groups be provided special opportunities in solicitation and award of federal contracts.

Sole Source: Source that is characterized as the one and only source, regardless of the marketplace, possessing a unique and singularly available performance capability for the purpose of the contract award.

Sole-Source Acquisition: Contract for the purchase of supplies or services that is entered into, or proposed to be entered into, by an agency after soliciting and negotiating with only one source. Sole-source contracts require special approvals.

Solicitation: Request for proposal or invitation for bids issued to prospective offerors or bidders.

Source Selection: Process in which the requirements, facts, recommendations, and Government policy relevant to an award decision in a competitive procurement are examined and a decision is made.

Specification: A document used in development and procurement that describes the technical requirements for items, materials, and services. A specification also describes the procedures that the Government will use to determine if the requirements have been met. Specifications may be unique to a specific program or common to several applications.

Statement of Objectives (SOO): Statement, provided in the RFP, that specifies the basic top-level objectives of the acquisition, but does not include *how to* instructions. With a SOO, potential offerors have the flexibility to develop cost-effective solutions and the opportunity to propose innovative alternatives meeting the requirement. By reviewing an offeror's solutions, the Government can assess the extent to which the offeror understands all aspects of the effort to be performed.

Statement of Work (SOW): Statement, provided in the RFP, that specifies the basic, top-level objectives of the acquisition, as well as the detailed requirements of the Government. The SOW also provides the contractor with *how to* instructions to accomplish the required effort, and it forms the basis for successful performance by the contractor and effective administration of the contract by the Government.

Supplemental Agreement: Contract modification accomplished by the mutual action of the Contracting Officer and contractor. This is a bilateral agreement and must be executed by both the contractor and the Contracting Officer.

Supplies: All property except land or interest in land (as defined by the FAR).

Synchronized Pre-deployment and Operational Tracker (SPOT): Joint, web-accessible database used for tracking contractor personnel movements within the forward deployed area and for validating individual contractor personnel associated with specific contracts, their authorization for access to specific DoD facilities, and their individual eligibility for specific DoD support services.

Synopsis: Government's notice in the FedBizOpps (FBO) announcing the specific requirement for supplies or services and the procedure for receiving a copy of the solicitation document. The Government is required to use this vehicle for ensuring full and open competition unless a valid exception exists.

System Support Contract: Contracts awarded by service acquisition program management offices to obtain technical support, maintenance support, and, in some cases, Class IX support for selected military weapons and support systems.

System Support Contractor: Entity, normally with high levels of technical expertise, hired to support specific military systems.

Task Order: Instrument used to order work under a task order contract (see below). Task orders are always written by the Contracting Officer, and when obligating funds, must be on a form prescribed by FAR or DFARS. Task orders are made a part of the contract file and the COR's working file.

Task Order Contract: Contract for services that does not procure or specify a firm quantity of services (other than a minimum or maximum quantity) and that provides for the issuance of orders for the performance of tasks during the period of the contract.

Terminating Contracting Officer (TCO): The individual who has the authority to settle terminated contracts.

Termination: Cancellation of all or part of the work that has not been completed and accepted under a contract. Under specific circumstances, termination may be for default of the contractor or for convenience of the Government.

Time-and-Materials (T&M) Contract: Contract that provides for acquiring supplies or services on the basis of (1) direct labor hours at specified fixed hourly rates that include wages, overhead, general and administrative expenses, and profit and (2) materials at cost, including, if appropriate, material handling costs as part of material costs. A T&M contract establishes a ceiling price that the contractor may not exceed. Substantial surveillance on the Government's part is required to ensure that efficient methods are used. A QASP is mandatory for any contract, task order, or delivery order that involves a T&M service contract or for a T&M construction contract over the micro-purchase threshold.

Unauthorized Commitment: Agreement that is not binding, because the Government representative who made the agreement lacked the authority to obligate the Government contractually. An unauthorized commitment must be ratified at very high levels. If the approval authority decides not to ratify the unauthorized commitment, the person who

caused it may be held personally and financially liable. Even if the action is ratified, the person who caused it may be subjected to administrative or other penalties.

Undefinitized Contract Action (UCA): Any contract action for which the terms, specifications, or price are not agreed upon before performance is begun under the action. Examples are letter contracts, orders under basic ordering agreements, and provisioned item orders.

Uniform Contract Format (UCF): Standard Federal contract format.

Unilateral Modification: Modification that is effective upon signature by the Contracting Officer; the contractor's signature or assent is not required. Unilateral modifications are used to:

Make administrative changes;

Issue change orders;

Make changes authorized by clauses other than a Changes clause (such as Property, Options, or Suspension of Work clauses); and

Issue termination notices.

Warranty: Promise given by the contractor regarding the nature, usefulness, or condition of the supplies or services furnished under a contract. Warranties normally provide a contractual right for the correction of defects, notwithstanding any other contract provision. Warranties also establish a time period for exercising this right. The Government should take advantage of commercial warranty provisions normally offered by contractors rather than designing unique warranty provisions. However, the use of warranties is not mandatory; they should be used only when in the best interest of the Government.

Wide Area Work Flow (WAWF): Web-based system that enables contractors to transmit invoices and shipping notices electronically and enables DoD to record inspection, receipt, acceptance, and invoice approval electronically. WAWF distributes data to downstream systems, including entitlement (payment) systems, accounting systems, property records, and others.

Work Plan: Guideline for monitoring contract performance.

APPENDIX E: COR Resources and References

<p>Air Force Contract Augmentation Program (AFCAP): http://www.globalsecurity.org/military/agency/usaf/afcap.htm AFCAP was initially conceived and implemented to provide civil engineers and services personnel a contract force multiplier.</p>
<p>Anti-deficiency Act: http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=browse_usc&docid=Cite:+31USC1351 and http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=browse_usc&docid=Cite:+31USC1517 Codified at 31 U.S.C. 1351 and 31 U.S.C. 1517(a), the Anti-deficiency Act prohibits authorizing or incurring obligations or expenditures in excess of amounts apportioned by the Office of Management and Budget or in excess of amounts permitted by agency regulations.</p>
<p>Combating Trafficking in Persons: http://ctip.defense.gov/ This DoD site provides links to Trafficking in Persons (TIP) training, including mandatory general awareness course J3TA-US030, Combating Trafficking in Persons.</p>
<p>Defense Contingency Contracting Handbook: http://www.acq.osd.mil/dpap/ccap/cc/jcchb/index.html This handbook provides contingency contracting tools, information, and training.</p>
<p>Defense Contingency Contracting Officer Representative (COR) Handbook: http://www.acq.osd.mil/dpap/ccap/cc/corhb/ This handbook provides information, tools, and training for DoD Contingency CORs.</p>
<p>Contingency Contracting Reports (Department of Defense): http://www.acq.osd.mil/dpap/pacc/cc/reports.html This site lists contingency contracting reports and provides links.</p>
<p>Contract Management Process Guide: http://www.hqmc.usmc.mil/CMPG/ This Web-enabled guide was designed to benefit contracting personnel within the Marine Corps Field Contracting System and their customers.</p>
<p>Contracting Officers Representative Course: www.almc.army.mil The Army Logistics Management College offers this 4-day residence course equivalent of DAU COR222/DAU CLC-222 (See courses and schedules under <i>Academic Info.</i>)</p>

Contractor and Vendor Payment Information Guidebook:

<http://www.dfas.mil/contractorpay/ContractPayInformation011110.pdf>

This Defense Finance and Accounting Service guidebook assists with preparing payment documentation to avoid billing errors that cause payment delays.

Contractor on the Battlefield Resource Library:

<http://www.aschq.army.mil/Home/BattlefieldResourceLibrary.aspx>

The purpose of this Army Sustainment Command site is to accumulate and offer materials helpful to the resolution of legal issues arising from operational contract support.

Contractor Performance Assessment Reporting System:

<http://www.cpars.csd.disa.mil/>

This Web-based system is used to input data on contractor performance.

Contractors Accompanying the Force:

<https://scoe.learn.army.mil/webapps/portal/frameset.jsp>

The Sustainment Center of Excellence offers a contracting basics familiarization course. (See Course Catalogs; select SCOE Courses; and select Contractors Accompanying the Force.)

DAU Contracting Officer's Representative (COR) Community of Practice: (CoP) <https://acc.dau.mil/cor>

DAU's COR community of practice (CoP) provides a central clearinghouse of knowledge and learning assets and enables sharing of best practices and lessons learned. The basic COR training module CLC 106 Contracting Officer's Representative with a Mission Focus (<https://acc.dau.mil/cor>) is an 8-hour online course. DAU also offers additional COR-related training modules. COR nominees should also complete Contracting for the Rest of Us, a 2-hour online course.

DAU Community of Practice : Contractors Accompanying the Force:

<https://acc.dau.mil/CommunityBrowser.aspx?id=18014&view=w>

This CoP includes links to policy and best practices.

Defense Contract Audit Agency (DCAA):

www.dcaa.mil

DCAA performs all contract audits for the DoD, and provides accounting and financial advisory services regarding contracts and subcontracts to all DoD components responsible for procurement and contract administration.

Defense Contract Management Agency (DCMA):

www.dcma.mil

DCMA provides contract administration services to DoD.

Defense Federal Acquisition Regulation Supplement (DFARS) and Procedures, Guidance, and Information (PGI):

<http://www.acq.osd.mil/dpap/dars/dfarspgi/current/index.html>

DFARS 201.602-2 and DFARS PGI 201.602-2, Contracting Officer Responsibility

DFARS 201.602-70, Contract Clause prescribes use of clause 252.201-7000, Contracting Officer's Representative
DFARS 204.70, Uniform Procurement Instrument Identification Numbers DFARS 252.201-7000 Contracting Officer's Representative DFARS Appendix F, Material Inspection and Receiving Report

Defense Hotline:

<http://www.dodig.mil/hotline/>

Anyone, whether uniformed or civilian, who witnesses what he or she believes to be a violation of ethical standards or the law (such as fraud, waste, or abuse of authority; potential leaks of classified information; or potential acts of terrorism) should report such conduct through the chain of command or directly to the inspector general of his or her respective service or directly to the Inspector General of the Department of Defense Hotline at 800-424-9098 (e-mail: hotline@dodig.mil).

Defense Language Institute Foreign Language Center:

<http://www.dliflc.edu/index.html>

This Web site provides instruction in foreign languages.

Defense Security Service (DSS):

<https://www.dss.mil>

DSS is a DoD agency that provides security support services.

DoD Guide to Collection and Use of Past Performance Information:

http://www.acq.osd.mil/dpap/Docs/PPI_Guide_2003_final.pdf

This guide is designed to articulate the key techniques and practices for the use and collection of past performance information.

DoD Specifications and Standards Homepage:

<http://www.dsp.dla.mil>

This site contains information about DoD standardization, key points of contact, frequently asked questions (FAQs), MilSpec Reform, newsletters, training, non-Government standards, and links to related sites.

Developing a Performance Work Statement in a Deployed Environment Handbook:

<http://usacac.army.mil/cac2/call/docs/09-48/09-48.pdf>

Army Handbook 09-48 published September 2009

Embassies and More:

<http://www.allstays.com/>

Resources/embassies.htm This Web site covers "embassies, official offices, and more away from home."

Federal Acquisition Jump Station:

<http://prod.nais.nasa.gov/pub/fedproc/home.html>

This Web site covers procurement and acquisition services by contracting activity.

Federal Acquisition Regulation:

<https://www.acquisition.gov/far/>

FAR Part 7–Acquisition Planning
FAR Part 10–Market Research
FAR Part 11–Describing Agency Needs
FAR Part 12–Acquisition of Commercial Items
FAR 15.304–Evaluation Factors and Significant Sub-Factors
FAR Part 16–Types of Contracts
FAR Subpart 22.10–Service Contract Act
FAR Subpart 32.7–Contract Funding
FAR Part 37–Service Contracts
FAR Part 46–Quality Assurance
FAR 3.104–Procurement Integrity
FAR Subpart 5.1–Dissemination of Information
FAR Part 15–Contracting by Negotiations
FAR 37.602(b)(2)–Quality Assurance for Service Contract
FAR Subpart 42.5–Postaward Orientation
FAR 12.208–Contract Quality Assurance
FAR 12.402–Acceptance
FAR 43.104–Notification of Contract Changes (Constructive)
FAR Part 42–Contract Administration and Audit Services
FAR Subpart 42.11–Production Surveillance and Reporting
FAR 52.232-25–Prompt Payment
FAR Part 45–Government Property
FAR Subpart 17.2–Options
FAR Part 49–Termination of Contracts

FedWorld Information:

<http://www.fedworld.gov>

FedWorld was established by the National Technical Information Service (NTIS), an agency of the U.S. Department of Commerce, to serve as the online locator service for a comprehensive inventory of information disseminated by the Federal Government.

Foreign Corrupt Practices Act (FCPA):

<http://www.justice.gov/criminal/fraud/fcpa/>

This Web site provides statute, recent legislative history, opinions, and other information related to the FCPA.

GSA [General Services Administration] Advantage:

https://www.gsaadvantage.gov/advgsa/advantage/main/start_Page.do

GSA Advantage is the GSA Web site for supplies and services.

Geographic Combatant Command (GCC) Areas of Responsibility (AOR):

Map http://www.acq.osd.mil/dpap/pacc/cc/areas_of_responsibility.html

This Web site contains links to GCC AORs.

Guidebook for Performance-Based Services Acquisition (PBSA) in the Department of Defense:

<https://www.acquisition.gov/SevenSteps/library/DODguidebook-pbsa.pdf>

DoD developed this guidebook as a cooperative effort among the components to help the acquisition team, and any other stakeholder, better understand the basic principles of PBSA and better implement performance-based methods in services acquisitions.

A Guide for Writing and Administering Performance Statements of Work for Service Contracts:

<https://acc.dau.mil/GetAttachment.aspx?id=30609&pname=file&aid=5448&lang=en-US>

OFPP Pamphlet 4.

A Guide to Best Practices for Contract Administration:

<https://acc.dau.mil/GetAttachment.aspx?id=31456&pname=file&aid=5687&lang=en-US>

OFPP's guide "contains best practices in contract administration that should be useful tools to program and contracting officials in administering federal contracts."

Joint Ethics Regulation (JER):

http://www.dod.mil/dodgc/defense_ethics

The JER, DoD 5500.7-R, explains standards of conduct relating to possible conflicts between private interests and official duties, regardless of assignment.

Library of Congress:

<http://www.loc.gov>

The Library of Congress's Web site is a research tool offering resources such as the Country Studies Series (<http://lcweb2.loc.gov/frd/cs/>), which presents a description and analysis of the historical setting and the social, economic, political, and national security systems and institutions of countries throughout the world.

Logistics Civil Augmentation Program (LOGCAP):

<http://www.globalsecurity.org/military/agency/army/logcap.htm>

LOGCAP is a U.S. Army initiative for peacetime planning for the use of civilian contractors in wartime and other contingencies.

Marine Corps Acquisition Workforce Development:

<http://www.marcorsyscom.usmc.mil/sites/acqworkforce/>

This Web site provides workforce developmental policy, planning, and consultation services and individualized education and training services, including recurrent military training services that facilitate the individual and collective development of the Marine Corps' acquisition workforce and the Marine Corps System Command's support personnel.

Monitoring Contract Performance in Contracts for Services:

<http://www.acq.osd.mil/dpap/policy/policyvault/2008-0468-DPAP.pdf>

This memorandum from Deputy Secretary of Defense, issued 22 August 2008, includes COR requirements.

<p>The Office of Federal Procurement Policy (OFPP) Guide on PBSA: http://www.whitehouse.gov/omb/procurement/pbsa/ This guide is a good reference for anyone involved in Government services contracts.</p>
<p>Office of Government Ethics (OGE): http://www.usoge.gov/ Offerings include ethics training, forms, library, and international assistance.</p>
<p>Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics: www.acq.osd.mil/ This Web site offers a library of DoD acquisition and technology documents and links to many other valuable sites.</p>
<p>Seven Steps to Performance Based Services Acquisition: http://acquisition.gov/comp/seven_steps/home.html OFPP guidebook.</p>
<p>Special Instructions for Contracting in Iraq and Afghanistan: http://www2.centcom.mil/sites/contracts/Pages/Default.aspx These instructions include mandatory requirements/guidance for Contracting Officers.</p>
<p>Standards of Conduct Office (DoD): http://www.dod.mil/dodgc/defense_ethics A resource to understand the ethical standards that apply to every DoD employee, both civilian and military.</p>
<p>Standard Industrial Codes (SICs): http://www.sba.gov/regulations/siccodes/ SICs are product numbers for supplies and services.</p>
<p>Synchronized Predeployment and Operational Tracker (SPOT): http://www.bta.mil/products/spot.html SPOT has been designated as the Joint enterprise contractor management and accountability system to provide a central source of contingency contractor information.</p>
<p>Trafficking in Persons: http://www.dodig.mil/Inspections/IPO/TIP_17JUL2008.pdf This site contains awareness training on TIP from the DoD Awareness Initiative.</p>
<p>U.S. Agency for International Development (USAID): http://www.usaid.gov USAID is an independent Government agency that receives overall foreign policy guidance from the Secretary of State.</p>
<p>Wage Determinations Online: http://www.wdol.gov/ This Department of Labor web site presents prevailing wage rates to be paid on Government contracts.</p>

Wide Area Workflow (WAWF):

<https://wawf.eb.mil/>

WAWF includes instructions, registration assistance, and system updates and messages.

World Factbook:

<https://www.cia.gov/library/publications/the-world-factbook/>

This Central Intelligence Agency site provides information on the history, people, government, economy, geography, communications, transportation, military, and transnational issues for 266 world entities.

OTHER REFERENCES

Other Available References

1. Ashton B. Carter, Under Secretary of Defense for Acquisition, Technology, and Logistics, "Personal Conflicts of Interest (PCIs) of Contract Employees," Washington, DC, 24 November 2009.
2. Ashton B. Carter, Under Secretary of Defense for Acquisition, Technology, and Logistics, "DoD Standard for Certification of Contracting Officer's Representatives (COR) for Service Acquisitions," Washington, DC, 29 March 2010.
3. Ashton B. Carter, Under Secretary of Defense for Acquisition, Technology, and Logistics, "Better Buying Power: Guidance for Obtaining Greater Efficiency and Productivity in Defense Spending," Washington, DC, 14 September 2010.
4. Defense Acquisition University, "Acquisition Community Connection," [Online] Available: <https://acc.dau.mil/CommunityBrowser.aspx>.
5. Defense Acquisition University, "Contracting Officer's Representative," Course No 222, January 2009.
6. Defense Acquisition University, "COR With a Mission Focus," Course CLC 106, presentation (undated).
7. Defense Acquisition University, *Student Guide for Performance-Based Service Acquisition and the Seven Step Process*, ACQ 265, November 2009.
8. Defense Federal Acquisition Regulation Supplement 204.7003, *Basic PII Number*, 27 September 2010.
9. Department of the Army, Training and Doctrine Command (TRADOC), *Independent Government Estimate Preparation Guide*, TRADOC Pamphlet 715-6, 19 July 2000.

Appendix F: COR Checklists

The following checklists were developed to assist you during performance of your designated COR responsibilities. These checklists are representative of functions normally designated. There may be functions designated that are not contained within this selection of checklists. It is recommended that you become familiar with the format of these checklists and, if necessary, develop checklists to cover the functions delegated.

Note: Refer to the letter of appointment/designation from the Contracting Officer to determine all functions you have been designated to perform.

Content

- F.1 DOs and DON'Ts - Contract Administration and Remedies Checklist
- F.2 Contents of a COR Working File
- F.3 COR Surveillance
- F.4 DOs and DON'Ts - Contract Monitoring and Pre-award and Solicitation
- F.5 DOs and DON'Ts - Evaluation and Award
- F.6 Considerations for the Performance Work Statement
- F.7 Contractor Performance Assessment
- F.8 Contractor Delay Assessment
- F.9 COR Compliance-Surveillance of Construction Contracts

**F.1: DOs and DON'Ts:
Contract Administration and Remedies Checklist**

CONTRACT ADMINISTRATION	
DO	DON'T
Remember that the COR is an agent of the U.S. Government, with only the authority delegated by the Contracting Officer.	Accept less than what is required by the contract.
Get the names of contractor personnel authorized to represent the contractor.	Assume an interpretation of ambiguous contract language, which would be favorable to the Government. Remember: if the contractor's interpretation is reasonable, it will prevail.
Find out the specific authority of contractor personnel. Does the person you are dealing with have the authority to obligate the contractor?	Hold up payment unless performance is deficient or defective.
See that all Government approvals or consents are timely.	Accept supplies or services without complete inspection.
	Make any change, modification, deletions, or additions to the contract requirements. Work through the Contracting Officer.
	Automatically consider all contractor claims unreasonable. Be fair and impartial.

REMEDIES	
DO	DON'T
Exercise Government rights, such as warranties. Make sure to deal with any problems before the warranty period runs out.	Act without consulting the contracting officer. Work through the contract administration team.
Work with the contracting personnel to prevent problems before they arise.	Allow interim or final delivery dates to be waived.
Take actions to protect Government rights before delivery is due.	

F.2: Contents of a COR Working File

	A copy of the COR letter of appointment or designation from the Contracting Officer; copies of any changes to that letter; and a copy of any termination letter.
	A copy of the contract and/or delivery/task order and all contract modifications.
	A copy of the contract data requirements lists (CDRLs) submitted to the COR as required by the contract, as well as the COR's analysis of the CDRLs and any resulting actions taken.
	A copy of the QASP and a record of each individual surveillance conducted, the results, and any actions taken.
	The notice of award or notice to proceed.
	A copy of the required training certificates.
	The names and position titles of contractor personnel who serve on the contract.
	All correspondence between COR and the contractor, Contracting Officer, or others concerning performance of the contract; together with English translations of all correspondence written in a foreign language.
	Copies of all data, reports, and other documentation furnished by the contractor, along with the COR's analysis of those items, actions taken, and the date of each action.
	A copy of the trip report of every visit to the contractor's facility. A copy of this report must be provided to the Contracting Officer within 7 days after each visit. The trip report must identify people contacted, dates, items discussed, and actions taken.
	Memoranda for record of minutes of any meetings, site visits, telephone conversations, and other discussions with the contractor or others pertaining to the contract or contract performance. These minutes should include persons present, dates, matters discussed, and actions taken.
	Records relating to the contractor's quality control system and plan and the results of the quality control effort.
	A copy of the surveillance schedule, progress schedules, and schedule of cumulative payments approved.
	A list of Government-furnished property.
	A copy of all approvals the COR has given to the contractor. These approvals must be a COR-designated authority.
	Documentation pertaining to the COR's receipt and acceptance (or rejection) of services performed and/or supplies delivered, including receipts, reports, and other data.
	Copies of all DD Form 250s, invoices, vouchers, and receipt documents processed, including COR recommendations relating to them.
	Samples, photographs, witness statements, and other factual data to support documentation.
	Records of all weather conditions. This is particularly important for administering

	construction contracts and any other contracts that call for out-door performance, where severe weather or bad weather conditions could delay contract performance or completion.
	Records of any Government actions that affected or influenced contractor performance.
	Applicable laboratory test reports.
	Copies of deficiency reports.
	A copy of each COR monthly report.
	Any other documentation and data necessary to provide a complete history of all actions taken by the COR under, or in connection with, the contract.

F.3: COR Surveillance

	Is the COR maintaining a separate file for each contract?
	Is the file clearly indexed to enable ready access to pertinent records?
	Has the COR been trained within the past 3 years and is the certificate present?
	Is a copy of the COR's letter of appointment or designation in the file?
	Does the COR file include the following items: Copy of the contract All modifications All invoices All DD 250s Deficiency reports Copy of QASP Copy of required regulations Memos for the record and other correspondence/e-mail Surveillance checklist Surveillance schedule Environmental plan Maintenance plan Work plan GFP inventory Safety plan Test reports GFP validation
	Has the COR reported contractor full time equivalents (CFTE) or validated the contractor's input? ⁴⁶
	If the COR is responsible for contractor performance reporting, has the COR

⁴⁶ Refer to OSD Memorandum, "Guidance for the Submission and Review of the FY 2011 Inventory of Contracts for Services" 29 December 2011.

	completed CPARS report inputs?
	Has the COR performed contractor surveillance/site visits?
	Are the results of surveillance/inspection documented?
	Does the COR complete a periodic contract performance report and forward it to the Contracting Officer?

F.4: DOs and DON'Ts:

Contract Monitoring and Pre-award and Solicitation

CONTRACT MONITORING	
DO	DON'T
Set a level of monitoring consistent with the type of contract, the complexity of the supply or service, and the importance of the contract to the overall program.	Assume that “no news is good news.”
Read progress reports and immediately act on problems they reveal. See that the contractor complies with every requirement of the contract.	Wait until delivery is due or overdue to check progress.
Immediately contact the Contracting Officer when deficiencies or delinquencies are noted. Use the contractor’s invoices to help monitor technical progress.	Take action against a delinquent contractor on your own. Work through the Contracting Officer.
	Order, request, or even suggest that the contractor do work that is not called for by the contract.
	Act as if you are the contractor’s personnel manager. The COR reviews and approves or disapproves; the contractor supervises contractor personnel.
	Assume the contractor billings are correct.

PRE-AWARD AND SOLICITATION	
DO	DON'T
Use market research.	Write vague specifications, assuming that “the contractor will do whatever is necessary to satisfy us.”
Look for commercial solutions.	Write design specifications, prescribing in detail what materials should be use and how the work should be performed.
Promote full and open competition.	Ask for progress reports, test samples, or other items from the contractor unless the items are needed for the program or for efficient administration and monitoring.
Think about contract administration requirements while writing the SOO/SOW/PWS or the specifications.	
Use performance-based or functional (rather than design) specifications to describe an objective or standard to be achieved, allowing the contractor to exercise ingenuity in achieving that objective or standard, select the means, and assume corresponding responsibility.	
Limit use of restrictive provisions to satisfy agency needs.	
Limit use of specifications and instead focus on function, performance, and physical characteristics.	
In the SOO/SOW/PWS and specifications, separate discussion of administrative and progress reporting requirements from discussion of required procedures and deliverables.	

**F.5: DOs and DON'Ts:
Evaluation and Award**

EVALUATION AND AWARD	
DO	DON'T
Carefully review the contract, especially the technical requirements.	Divulge budget information.
Develop, or obtain from the contractor, a detailed schedule of performance.	Assume without reading it that the SOO/SOW/PWS is complete, clear, and fully understandable.
Work with the Contracting Officer and the contractor to clear up any misunderstandings and to establish organized contract administration and monitoring procedures.	Allow planning to become an end in itself. Remember the goal is to get results, not just pretty charts showing the plan.
	Forget to update plans and schedules as the situation changes.
	Overlook or ignore contract requirements for GFP, timely reviews and approvals, or technical assistance and direction.

F.6: Considerations for the Performance Work Statement

Considerations for the Performance Work Statement	
	Does the PWS describe the outcomes (or results) rather than how to do the work?
	Does the PWS avoid specifying the number of contract workers required to perform the work (except when absolutely necessary)?
	Does the PWS avoid specifying the educational or skill level of the contract workers (except when absolutely necessary)?
	Can the contractor implement new technology to improve performance or to lower cost?
	Can the contractor use lower cost materials and still meet the performance standards?
	Are the situations documented when tightly controlled materials or supplies are essential?
	Are commercial performance standards utilized?
	Do the performance standards address quantity, quality, and timeliness?
	Are the performance standards objective, easy to measure, and timely?
	Is the assessment of quality a quantitative or qualitative assessment?
	Will two different evaluators come to the same conclusion about the contractor's performance based on the performance standards?

	Are acceptable quality levels clearly defined?
	Is the time period for the acceptable quality level clearly defined?
	Are the people who will perform the evaluations identified?
	Are the acceptable quality levels realistic and achievable?
	Will the user be satisfied if the acceptable quality levels are exactly met? (Or will they be satisfied only at a higher quality level?)
	Do the acceptable quality levels allow for improvement?
	Is the value of evaluating the contractor's performance on a certain task worth the cost of surveillance?
	Has random sampling or periodic sampling been utilized in the QASP?
	Has user feedback been incorporated into the QASP?
	Does the PWS make use of the contractor's own quality control plan and management information systems to reduce costs?
	Are there incentives to motivate the contractor to improve performance or to reduce costs?
	Are there negative incentives to handle poor performance?
	Will the contractor focus on continuous improvement?

F.7: Contractor Performance Assessment

Contractor Performance Assessment	
	Cost control.
	Timeliness (schedule/delivery). Is the contractor on schedule to meet contractual requirements? Did the contractor meet the contractual delivery requirements? Does the contract include a reward for early delivery, or a penalty for late delivery?
	Quality. Do the supplies or services meet the requirements? Do they conform to the contract specifications, standards, SOO/SOW/PWS, and quality assurance plan?
	Business relations. Is the contractor responsive, professional, and courteous?
	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 supplies reflect the skill and standardization required by the customer?
	Customer satisfaction. Will the customer be satisfied in terms of cost, quality, and timeliness of the delivered supplies or services? What percentage of the deliverable meets the customer's expectations? How long has the contractor taken to answer any customer complaints? How many customer complaints have there been?
	Compliance. Has the contractor complied with Occupational Safety and Health Administration, Environmental Protection Agency, Department of Labor, and other pertinent regulations?

F.8: Contractor Delay Assessment

<p>Before making a final determination, the COR must be certain that the contractor (1) had little or no control over the circumstances that caused the delay, and (2) could not have taken any preemptive action to reduce the negative consequences of the delay. If the organization can prove these two assertions, then a “Yes” answer to any of the following questions means the delay was probably excusable.</p>	
	<p>1. Was the delay caused by a labor strike? If “no,” go to 2. If “yes,” did the contractor: File a charge with the appropriate labor relations board to seek injunctive relief in court? Use other available Government procedures or private boards or organizations in an attempt to settle or arbitrate disputes that caused the strike?</p>
	<p>2. Was the delay caused by Government interference or disruption? If “no,” go to 3. If “yes,” did the Government: Delay in making payments due to the contractor? Deliver GFP late? Fail to reply to a contractor request for clarification? Fail to disclose all facts applicable to performance? Cite or misrepresent conditions that were different from those portrayed? Experience scarcity of supplies due to Defense Production Act priorities over commercial or nonrated orders? Delay issuing a required notice to proceed? Delay issuing changes? Delay performance by other Government contractors? Experience delays because of an interested party protesting the contract award? Delay making the site available? Delay providing funding? Delay inspection or acceptance? Delay because of defective or ambiguous specifications? Delay granting approvals?</p>
	<p>3. Was the delay caused by a subcontractor? If “no,” go to 4. The determination is “no” if either of the following occurred: Did a dispute between the subcontractor and prime cause the delay? Were subcontracted products or services available from other sources in time for the prime to complete performance?</p>
	<p>4. Was the delay caused by any other occurrence specifically characterized in Default or Excusable Delays (or other clauses), as generally excusable? If “no,” go to 5.</p>

	<p>If “yes,” was the delay caused by: Acts of the Government in either its sovereign or contractual capacity? Acts of God or the public enemy? Fire? Flood? Unusually severe weather? Epidemics? Quarantine restrictions? Labor disputes resulting in strikes? Freight embargoes? Common carrier delays?</p>
	<p>5. Was the delay caused by other circumstances not previously mentioned? If “yes,” did the contractor: Not cause the delay? Not have any control over the circumstances that caused delay?</p>

F.9: COR Compliance - Surveillance of Construction Contracts

COR Compliance - Surveillance of Construction Contracts	
	Review the contractor’s certified payrolls.
	Check work sites for required postings.
	Conduct labor standard interviews.
	Compare payrolls and on-site interviews.
	Resolve discrepancies/violations.

Appendix G: Metric Conversion Table

English to Metric			
inches (ins)	X 25.4	=	millimetres (mm)
feet (ft)	X 0.3	=	metres (m)
yards (yds)	X 0.9	=	metres (m)
miles (mi)	X 1.6	=	kilometres (km)
sq inch (in ²)	X 6.5	=	sq centimetre (cm ²)
sq feet (ft ²)	X 0.09	=	sq metres (m ²)
sq yard (yd ²)	X 0.8	=	sq metres (m ²)
cu. in (in ³)	X 16	=	cu.centimetres
cu. ft (ft ³)	X 0.03	=	cu.metres (m ³)
cu. yd (yd ³)	X 0.8	=	cu.metres (m ³)
(liq) quart (qt)	X 0.9	=	litre (l)
gallon (gal)	X 0.004	=	cu.metres (m ³)
(advp) ounce (oz)	X 28.3	=	grams (g)
(advp) pound (lb)	X 0.45	=	kilogram (kg)
horsepower (hp)	X 0.75	=	kilowatt (kW)
ft per second (ft/s)	X 0.304	=	met. Per second (m/s)
ounce-force (ozf)	X 0.278	=	newtons (N)
pound-force (lbf)	X 4.448	=	newtons (N)
foot pounds (ft.lb)	X 1.355	=	newtons-metres (N.m)
foot pounds (ft.lb)	X 1.355	=	joules (j)
in. pounds (in.lb)	X 0.112	=	newtons-metres (N.m)
lb per foot (lb/ft)	X 14.59	=	newtons-metres (N.m)
cycles per sec (cps)	X 1	=	hertz (Hz)
Brit therm unit (Btu)	X 1055	=	joules (j)

Metric to English			
mm	X 0.04	=	ins
m	X 3.3	=	ft
m	X 1.1	=	yds
km	X 0.6	=	mi
cm ²	X 0.16	=	in ²
m ²	X 11	=	ft ²
m ²	X 1.2	=	yd ²
cm ³	X 0.06	=	in ³
m ³	X 35	=	ft ³
m ³	X 1.3	=	yd ³
l	X 1.05	=	qt
m ³	X 264.2	=	gal
g	X 0.035	=	oz
kW	X 1.34	=	hp
kg	X 2.2	=	lb
m/s	X 3.28	=	ft/s
N	X 3.597	=	ozf
N	X 0.224	=	lbf
N.m	X 0.737	=	ft.lb
j	X 0.737	=	ft.lb
N.m	X 8.85	=	in.lb
N.m	X 0.068	=	lb/ft
Hz	X 1	=	cps
j	X 0.0009	=	Btu