

# CHAPTER CONTENTS

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## Chapter 6 Contract Administration



## Contract Administration



### Key Points

- All Federal Acquisition Regulation (FAR) and Defense Federal Acquisition Regulation Supplement (DFARS) administrative recordkeeping and file management requirements continue under contingency, humanitarian assistance, or peacekeeping conditions.
- Contract files must be organized and sufficiently annotated to document the actions taken and the supporting rationale for the entire procurement process.
- Contracting does not end with contract award. Contract administration completes the cycle and assures the customer's needs are satisfied.
- Fast and accurate reporting is the key to satisfactory contract performance. Timely identification and documentation of deficient contractor performance is critical.
- Contracting officer's representatives (COR) must be appointed and trained properly.
- When the contractor has satisfactorily completed performance of the terms of the contract, and final payment has been made, the contract file should be closed out as soon as possible.

### Introduction

**T**his chapter discusses actions a contracting officer should take to administer a contract. It covers actions to be taken and documentation to be included from contract award to contract closeout. This includes monitoring, transferring, terminating, and closing out contracts.

## Administration Documentation

Contract administration documentation involves recordkeeping and ensuring adequate documentation exists to provide an audit trail. It cannot be overemphasized how important it is to accurately document all purchases, especially in a contingency environment. Since normal checks and balances may not exist during contingency situations, contingency contracting officers (CCO) can be assured auditors will be interested in all paperwork when the unit returns home.

**Problems You Will Face.** You can expect to face difficulty obtaining detailed documentation from contractors. This holds true not only for documents supporting their claims, but also for general purchases, as many overseas vendors operate on a strict cash-and-carry basis, and are not in the habit of providing paper receipts or using invoicing procedures. General guidance on recordkeeping is provided by FAR 4.8 and DFARS 204.8.

## File Management



**Contract Files.** All FAR and DFARS administrative recordkeeping and file management will continue under contingency, humanitarian assistance, or peacekeeping conditions unless specifically stated otherwise. Contract files must be organized and sufficiently annotated to document the actions taken and the supporting rationale for the entire procurement process to include blanket purchase agreements (BPA), purchase cards, and other expenditures.

Documentation in files shall:

- Furnish essential facts (including a description of the acquisition environment) used as a basis for informed decisions at each step in the acquisition process

- Document the rationale for actions taken
- Provide a complete audit trail that may be used to support reviews and future investigations, litigation, or congressional inquiries

**File Contents.** The following are examples of the records normally contained, if applicable, in contract files: (*FAR Subpart 4.803*)

- Purchase request, acquisition planning information, and other presolicitation documents
- Justifications and approvals, determinations and findings, price negotiation memorandums, and supporting documents
- Evidence of availability of funds
- List of sources solicited
- Independent government estimate
- Copy of the solicitation and all amendments
- Copy of each offer or quotation and related abstract and records of determinations concerning late offers or quotations
- Contractor's contingent fee representation and other certifications and representations
- Pre-award survey reports
- Source selection documentation
- Cost and pricing data and certificates of current cost or pricing data
- Packing, packaging, and transportation data
- Cost or price analysis
- Determinations and findings
- Justification for type of contract
- Records of negotiation
- Required approvals of award and evidence of legal review

- Notice of award
- The original of the signed contract, all contract modifications, and documents supporting modifications
- Notice to unsuccessful bidders or offerors and record of any debriefing
- Post-award conference records
- Orders issued under the contract
- COR appointment letters and training
- Quality assurance records
- Property administration records
- Bills, invoices, vouchers, and supporting documents
- Record of payments or receipts
- Receiving documentation
- Contract completion documents

**Format, Numbering, and Transfer.**

- File large purchase orders and contracts in six part folders. Avoid the use of multiple manila folders.
- Maintain a central registry of all contract instruments including basic instruments and modifications, amendments or other changes.
- Establish a file tracking system that permits the location of files to be closely monitored as they are used within the contracting office and eventually closed out or transferred to another activity for administration. You must be able to locate files quickly to support efficient contracting operations and potential audits or reviews.
- Logs, either through an automated system or manual, will be maintained to identify purchase requests that are open, completed, and closed. This will provide a common reference point through the

purchase request number between the customer, finance, comptroller, and contracting. In addition, the logs may be used to develop reports and graphs to present production status.

**Status of Procurement Action Database.** A simple database reporting system to provide visibility and status of procurement actions is required and should be implemented upon arrival at the contingency location. Automation to include laptop computers will assist in establishing a more efficient system which will coincide with continental United States (US) systems. To prevent total loss, all procurement actions should also be stored in a backup system. The procurement actions will be collected and maintained by the contracting office and transferred to the senior contracting official per theater guidance. The system should include the following data fields:

- Date of receipt of requisition
- Date of award
- Contract end date
- For services: option periods
- For construction: notice to proceed date, completion date
- Type: construction, service, commodity
- Type of contracting action (for example, contract, purchase order, BPA, delivery order, or modification)
- Amount of committed dollars
- Contractor name
- Contractor Nationality: United States, host nation, third country national
- Uniform Procurement Instrument Identification Number (PIIN)
- Contract number and requisition number
- Amount of obligated dollars

- Unit of measure
- Quantity (for example, job, lot, or each)
- Item description
- Contracting officer's name
- Customer organization
- Date of receiving report
- Date of final payment
- Date contract was closed out
- Location of contract file
- Remarks (to include pertinent e-mail)

## General Contract Administration



**Contract Administration.** The contracting process does not end with the award of a contract, purchase order, or delivery order. All the effort spent in planning, describing, and funding the customer's requirement could potentially go for naught without effective administration of the resultant contractual instrument. The role of contract administration is to complete the cycle, assure the customer's needs are satisfied, and the contractor is fully compensated for services or supplies rendered per contract terms and conditions.

**Purchase, Pickup, Receive, and Deliver.** The CCO's responsibilities for supply purchases are more challenging during deployments than during peacetime. Many of these challenges are associated with the lack of proper receipt of goods and services. First, the lack of reliable communications in many contingency environments makes it necessary to travel to the vendor's location. Second, most businesses will be cash-and-carry, which may require the CCO to officially receive and deliver items on behalf of the customer. There are times, of course, when the CCO

will not have to make delivery. For example, a large order of construction materials will have to be delivered by the contractor or picked up by the customer. For the most part, the CCO can count on being the *link in the supply chain* for validating proof of delivery. Contracting may set up a receiving area outside the installation and then have the customers pick up orders there, or shuttle the merchandise into the compound or base. Other options include the customer going into *town* to pick up their goods, or the CCO or his designee delivering the items to the customer. There is no policy or procedure set in stone regarding where merchandise will be received. Expect frequent changes and some possibly cumbersome procedures throughout your deployment.

**Followup.** Because you are in a deployed situation you may not have the benefit of interconnected computer information systems. Therefore, followup is a must with your customer. Having as much information available as possible for your customer along the way will save you a lot of headaches in the end. If the delivery date has passed, the customer received the wrong item, part of an item, or a broken or damaged item, you will hear about it. The customer should be prepared to describe what was received versus what the order said. The best method is to instruct your customer not to sign for a purchase until the problem is resolved. Sometimes, however, the discrepancy is not immediately apparent. In any event, the customer should call you as soon as practical (if possible, when the delivery truck is still there), so you can assist. Written followup is essential because it helps keep the facts straight when dealing with vendors. The customer should never deal with the vendor directly in resolving a discrepancy. It is your job to take care of your customers.

**Receipt, Inspection, and Payment.** Goods and services are inspected by the customer. Once the item is delivered or service is performed, the customer must sign a receiving report acknowledging receipt and authorizing payment. The contractor's invoice is then submitted to the contracting office. Next, the contracting office will ensure the invoice is correct. This receiving report must accompany the invoice in order for

the vendor to be paid in a timely manner. It is important to know that government support contractors are not authorized to accept or sign for the government in any situation. The report goes to finance where they will issue payment to the vendor. Finance will not pay without a signature acknowledging the government received the goods or services.

To read more about receipt and inspection consult the DVD. 

**Typical Problems Encountered.** There are many problems associated with the proper receipt of goods. There may be no central control point for contractors to deliver goods. Vendors may deliver directly to the user and the user may fail to notify the contracting activity upon receipt. Additionally, someone at the site may accept the delivery, but when it is time to verify delivery and quantity, no one will accept responsibility for receiving the goods. Consequently, payments to the vendor are ultimately delayed. Without all the key support members involved and coordinating on purchases, accountability is quickly lost. Spending a little time and effort planning and ironing out the processes will help you tremendously in the end.

Tracking initial vendor deliveries will be difficult; however, not taking the time to organize for receipt of vendor goods will present several long-term problems. Two alternatives to alleviate some of the problems involved in receiving emergency goods are as follows:

- Strive for a central base receiving point where all goods can be processed. This will ensure all goods are accounted for and will aid in timely payment to vendors.
- Have supply provide a receiving individual to accompany the CCO on all initial buys. Accountability and control will be established from the onset. Note, however, this approach has limited application. It will only solve the problem for government pickup items. Direct vendor deliveries to the base will still require proper receipt.

Regardless of what system is used, prior coordination with base supply is necessary to ensure accountability on all emergency goods delivered. A good accountability system can ensure quick and accurate payment to vendors.

**Contract Payments.** While the customer does not actually make the payments to contractors, it is important to understand the nature of business in foreign areas. Payment methods will vary at each location. They may be made by check, electronic funds transfer, or cash. Some installations make payments once a week or even once a month. In this case contractors come to the location at a given time with their invoices and are paid on the spot. In other cases finance may issue checks to be hand carried into town to pay for previous deliveries. In many cases during the outset of a deployment, payment is a rather large issue for foreign vendors. Many times they will insist on being paid in cash on delivery the first time you do business with them.

**Paying in Local Currency.** Unless otherwise directed in a host nation agreement or status of forces agreement, payment can be made in the local currency. See your local finance office for currency exchange rates or <http://www.fms.treas.gov/>. For additional information see Chapter 5.

**Customer and Contractor Training.** Do not just issue an order or contract and assume the customer and contractor understand the receiving report and how to invoice. It is critical to ensure both parties understand their responsibilities here (as getting the goods and getting paid are of paramount interest to both parties).

**Increased Funding Requirements.** In more cases than not, your customers will need additional funding for their requirements in an overseas environment. If the customer needs to obtain an increase in funding and the amount exceeds the percentage deviation authority from the deployed commander, the CCO needs to work with the requiring activity and process a request for an *increase in funds letter*.

**Installation Access.** Usually, the host nation installation or headquarters commander determines the type of credentials required for installation

entry. What is required may therefore vary from not only country to country, but also from base to base within a country. Additionally, some nationalities aren't allowed on any military installation. You must pay particular attention to this in the Middle East where virtually all normal laborers or truck drivers are third country nationals. Regardless of your location, solicitations and contracts shall contain a provision identifying which credentials are required for base entry.

Generally, contractors submit requests for passes for their employees and vehicles in coordination with the contracting officer or designated representative. As with bases in the US, you must ensure passes are returned whenever one of the following conditions occur:

- The contract is complete.
- A particular individual is no longer working on the contract.
- A vehicle or piece of equipment is no longer required for the work required by the contract.

The security personnel must establish clear procedures or local installation authorities to facilitate access to the base. In some cases, deliveries and shipments have been held at the gate for hours or not made at all due to access problems. To work around some of these problems, installations often establish receiving sections outside the gate and then reload supplies and equipment onto government vehicles to make final delivery.

#### **Shipment of Supplies and Equipment to an Overseas Location.**



Waiting for the supplies and equipment ordered from the United States can be very frustrating for the CCO's customers. To minimize shipping time, contractors can use the mail or similar commercial services (for example, DHL or Federal Express), if available. While the shipping time may be shorter, shipments sent by ordinary mail incur some additional risk because they are not traceable.

Military transportation, either ship or aircraft, does provide traceability for shipments. For military transportation, the reachback buying office will check with the local traffic management office for assistance in determining:

- Port of Embarkation. The geographic point in a routing scheme from which cargo or personnel depart.
- Port of Debarkation. The geographic point at which cargo or personnel are discharged.

Additionally, the reachback buying office can obtain a transportation control number for the shipment. If contractors use commercial transportation, they must understand preference shall be given to US flag vessels and air carriers.

## Construction Contract Administration



Full administration is used on construction contracts. **Note:** For ‘Unspecified Minor Construction,’ see 10 United States Code § 2805, Unspecified Minor Construction and Department of Defense Directive 4270.5, Military Construction for additional policy and guidance.

The CCO needs to ensure that all pre-award actions have been accomplished.

### Preconstruction Conference.

- Construction contracts may require a preconstruction conference. This conference gives the government one more opportunity to inform the contractor of his obligations, discuss safety and fire precautions, emphasize who may obligate the government, and get everyone organized for the start of work. The user or building occupant is usually invited to these conferences. This conference is

not a place to decide how the work really should be done (that is all in the contract), but a time to review the terms, conditions, and specifications to ensure everyone knows what is happening. The contracting officer chairs the meeting.

- Each contract, regardless of value, has a designated COR. The COR (unless his or her authority is expanded) has no authority to interpret the specifications for the contractor, effect changes, or direct the contractor's employees; neither does the building occupant.

### **Liquidated Damages (LD).**

Although LDs are most commonly used in construction contracts, CCOs need to be aware they can be used in other types of contracts. See *FAR 11.501* and *DFARS 211.503* for LD procedures.

- LD clauses are mandatory on construction contracts over \$550K. (*DFARS 211.503*)
- LD clauses on construction contracts under \$550K should be used only when both:
  - The time of delivery or performance is such an important factor in the award of the contract that the government may reasonably expect to suffer damage if the delivery or performance is delinquent.
  - The extent or amount of such damage would be difficult or impossible to ascertain or prove.
- The rate of LD used must be reasonable and considered on a case-by-case basis.
- The contracting officer shall take all reasonable steps to mitigate LD.

### **If Liquidated Damages are to be Assessed.**

- Adjust invoice for payment.
- Assess LDs in accordance with (IAW) contract terms.

- Obtain contractor's release of claims on a final invoice where the payment amount is subject to contract settlement actions. If a release of claim cannot be obtained, acceptance of the LD shall be deemed to have occurred on the effective date of the contract settlement.
- Obtain contractor's receipt of notice that the assessment was received.

**LD Procedures.** (*FAR 11.502*)

- If an LD clause is to be used, the applicable clause and appropriate rates of LD shall be included in the solicitation.
- If an LD clause is used in a construction contract, the rates of LD to be assessed against the contractor should be for each day of delay and the rates should, as a minimum, cover the estimated cost of inspection and superintendence for each day of delay in completion. Whenever the government will suffer other specific losses due to the failure of the contractor to complete the work on time, the rates should also include an amount for these items. Examples of specific losses are as follows:

- The cost of substitute facilities.
  - The rental of buildings and equipment.
  - The continued payment of quarters allowances.
- If appropriate to reflect the probable damages, considering that the government can terminate for default or take other appropriate action, the rate of assessment of LD may be in two or more increments which provide a declining rate of assessment as the delinquency continues. The contract may also include an overall maximum dollar amount or period of time, or both, during which LD may be assessed, to ensure that the result is not an unreasonable assessment of LD.
  - Consideration may be used instead of assessing LDs

**Payments.** There are three different types of payments a CCO can authorize: advance, progress, and final. Advance payments occur rarely in construction and should be used only as a last resort. Progress payments are supported by a customer satisfaction report from the COR or contract monitor. For a construction contract, the report should also include an estimate of job completion (or progress report) stated in percentages to let the CCO know what percentage of the total contract amount can be released to the contractor. Final payments are made whenever the contractor has successfully completed the contract and the work has been accepted by the government, or the CCO has cancelled any remaining requirements.

For construction final payment the following items are required.

- Invoice
- Release of claims (if contractor refuses to sign, a memorandum of record must be included in the file)
- Receiving report

## **Contract Monitoring**

As a representative of the contracting officer, it is the COR's responsibility to ensure the contractor has provided at least the minimum contract requirements. Any perceived deviations from the statement of work (SOW), statement of objectives, or performance work statement should be brought to the attention of the contracting officer. The customer should not attempt to interpret these documents for the contractor and cannot 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.

**Contract Monitoring System (Past Performance).**

The formal Contractor Performance Assessment Reporting System/ Construction Contractor Appraisal Support System [CPARS/CCASS] contract monitoring system used in peacetime is much too complex and time consuming for the contingency environment. This system should be replaced with an informal *contractor compliance system* as the method for contractor surveillance. If the customer is satisfied, the contractor is performing sufficiently; this should satisfy the CCO as well. Paperwork could be a simple handwritten statement from the COR in order for the CCO to support a progress payment or a final payment. If the contractor is not performing well, the COR will be the first to inform the CCO. All directions given to contractors, whether verbal or written, will be given by the CCO and should be made a part of the record in the contract file.

**Contracting Officer's Representatives (COR).**

Contractor surveillance by contracting personnel under contingency conditions may be difficult due to ongoing military operations, local threat conditions, remote location, broad customer base, and the performance and delivery time involved. Therefore, it is important to establish a properly trained cadre of CORs within the organization's major customers you support. CORs are qualified individuals appointed and trained by the CCO to assist in the technical monitoring or administration of a contract. If a COR is planned for a procurement, the CCO should include the clause at DFARS 252.201-7000, *Contracting Officer's Representative*, in the solicitation and resulting contract. Figure 9 provides a summary of key COR duties, file content, and important forms. Additional COR information is as follows.

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| <p><b>COR File should include the following:</b></p> <ul style="list-style-type: none"><li>▶ A copy of your letter of appointment from the contracting officer, a copy of any changes to that letter, and a copy of any termination letter.</li><li>▶ A copy of the contract or the appropriate part of the contract and all contract modifications.</li><li>▶ A copy of the applicable quality assurance surveillance plan (QASP).</li><li>▶ All correspondence initiated concerning performance of the contract.</li><li>▶ The names and position titles of individuals who served on the contract.</li><li>▶ A record of inspections performed and the results.</li><li>▶ Memorandum for record of minutes of any meetings and discussions with the contractor or others pertaining to the contract or contract performance.</li><li>▶ A copy of the surveillance schedule.</li><li>▶ Documentation pertaining to your acceptance of performance of services, including reports and other data.</li></ul> <p>Remember you should receive most of these files from your contracting officer during your COR training. COR File should be considered confidential and safeguarded appropriately.</p> <p><b>COR Key Duties:</b></p> <p>Monitor the contractor performance, perform inspections, verify corrected deficiencies, perform governmental acceptance, liaison with all parties, submit performance reports and perform properly surveillance. See your COR appointment letter for further details of your duties.</p> | <p><b>Forms you need to know:</b></p> <p><b>Typical Contractual Instruments</b></p> <ul style="list-style-type: none"><li>▶ SF 44 Pocket-sized purchase order/invoice/voucher</li><li>▶ DD Form 1155 Order for supplies or services</li><li>▶ SF 1449 Solicitation/contract/order for commercial items (common)</li><li>▶ SF 1442 Solicitation/offer/award for construction</li><li>▶ SF 30 Amendment of solicitation/modification of contract (common)</li></ul> <p><b>Typical Receiving Report Instruments</b></p> <ul style="list-style-type: none"><li>▶ SF 44</li><li>▶ SF 1449</li><li>▶ DD 250 (common)</li><li>▶ Invoices used as receiving reports</li><li>▶ SF 1442</li></ul> <p><b>Typical Funding Instruments</b></p> <ul style="list-style-type: none"><li>▶ DA 3953 Purchase request (PR) form (common)</li><li>▶ AF 9 Air Force purchase request</li><li>▶ DD 448 military interdepartmental purchase</li></ul> |
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**Figure 9. COR Key Duties, File Content, and Important Forms**

- Commanders, as well as CORs, must understand they do not have contractual authority to issue directions or changes to any contract or purchase order. In cases where changes have been made by unauthorized personnel, the CCO must be immediately notified. The CCO will then determine if the work performed was within the scope of the original contract. If the work is determined not to be within scope, corrective action through the ratification process will be taken.
- CORs shall forward any correspondence received from the contractor to the CCO. Since the COR is an authorized representative of the CCO, the COR's records are a part of the

official post-award contract files and shall be forwarded to the CCO for retirement with the official contract file upon completion of the contract. Documents that pertain to the contract shall be clearly identified when forwarded to the CCO.

- Appointment of a COR:
  - Appointment of CORs will be done by the CCO in writing to include the rank or grade of the COR and the applicable contract number.
  - Appointment letter will define scope and limitations of the COR's responsibilities and will state the period for which the appointment is effective.
  - Normally appoint COR and an alternate COR. Ideally, both should be identified and trained prior to deployment.
  - All service and construction contracts require CORs. Some highly technical goods may also require a COR. CCOs must ensure COR personnel have the technical experience and ability to monitor contractor performance.
  - State that the COR authority cannot be redelegated.
  - State that the COR may be personally liable for unauthorized acts.
- Appoint COR prior to contract award—if practical, identify with purchase requisition (PR).
- A COR will not:
  - Obligate funds.
  - Direct the contractor by words, actions, or failure to act for contractor to take on new work.
  - Interfere with contractor performance.
  - *Supervise* contractor employees.
  - Authorize contractor to obtain property or use government-furnished property (GFP) from another contract.

- Modify contract terms and conditions via words, actions, or failure to act.
- COR Training: The following COR training is available prior to deployment from the Defense Acquisition University (<https://acc.dau.mil/cor>).
  - CLC106, Contracting Officers Representative with a Mission Focus (8-hour online course)
  - CLC 206, CORs in the Contingency Environment
  - COR 222, Contracting Officer Representative Course
- To the maximum extent practicable, CORs should receive COR training prior to deployment.
- COR training should focus on the duties of a COR, ethics training, and then the specific issues, terms, and conditions of the SOW associated with the contract to which the COR will be assigned.

The following are additional courses available depending on the mission of the COR:

- 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*

On 29 March 2010, the Under Secretary of Defense for Acquisition, Technology, and Logistics issued a *DoD Standard for Certification of Contracting Officer's Representatives (COR) for Service Acquisitions*. 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 COR competencies, experience, and minimum training for three types of requirements:

- Type A: Fixed price, low performance risk requirements
- Type B: Other than fixed-price, low performance risk requirements
- Type C: Unique requirements that necessitate a professional license, higher education, or specialized training

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.

## Contract Modifications



**Contract Modifications.** The contracting officer can expect wide fluctuations in projected requirements versus actual requirements. *FAR 43.1* and *FAR 52.212-4* provide definitions, policy, and limitations regarding the modification of contracts. One important aspect of modifying contingency contracts is the impact these changes will have on timely performance and cost. There are three ways to change the contract terms or contractor performance: change orders, administrative change, or constructive change. Contracts can be modified either bilaterally or unilaterally.

**Change Orders.** Contract modification is a generic term meaning any written change in the terms and scope of the contract. Contracts may be modified by use of a change order. A clear distinction must be made between the terms change and change order, and in scope and out of scope.

- A change is any alteration within the scope of the contract. Changes can be made in the specifications, drawings, designs, method of packing or shipment, time or place of delivery, and quantity or type of government provided materiel.
- A change order is a unilateral order signed by the contracting officer directing the contractor to make changes under the various change clauses. If the change order causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under the contract (whether or not changed by the order) the contracting officer shall make an equitable adjustment in the contract price, the delivery schedule, or both. The contractor is required to comply with the change order immediately upon issuance thereof. **Note:** changes clause is not applicable to *FAR Part 12, Commercial Item Contracts*.
- Within scope or out of scope? Oral agreements, letter contracts, and the rapid pace of acquisition can lead to loosely worded arrangements for contractual actions. This should not be construed to mean that CCOs can make broad interpretations of what items are within the original scope of the contract. The process of issuing an out of scope modification is not complicated. There are only 3 general rules to follow: (1) The modification must be bilateral, (2) A justification and approval is required, and (3) Approval above the CCO level is needed if the modification exceeds \$550K.
- CCO should verify proper change order authority (on Standard Form [SF] 30) used prior to issuing modification.

- Ensure supplemental agreements containing an equitable adjustment as the result of a change order include a statement of release. (*FAR 43.204(c)(2)*)

**Administrative Change.** Administrative changes are unilateral changes that do not affect the substantive rights of the parties. They are used to make changes such as a change of paying office or the name of the contracting officer.

**Constructive Change.** A constructive change occurs when the contract work is actually changed but the procedures of the changes clause have not been followed. There are two essential elements for all constructive changes:

- To find the *change* element we must examine the actual performance to see whether it went beyond the minimum standards demanded by the terms of the contract.
- The *order* element must also be present for the change to be compensable. The change must be ordered by the government. The government representative, by words or deeds, must require the contractor to perform work which is not within the scope of the contract.
- Several common actions which often lead to a constructive change include: (1) Directing a particular method of performance, (2) Late or defective government-furnished equipment (GFE), (3) Requiring higher quality than specified, and (4) Failure to approve time extensions. For example, if a contractor fails to complete performance within the specified contract date and time, and the government allows work to continue without approval, the government has executed a constructive change by not placing the contractor on notice for failure to meet a contract deadline.
- Constructive changes must be formalized with a contract modification.

**Methods to Incorporate Contract Changes—Unilateral and Bilateral Modifications.** For the protection of all parties, unilateral and bilateral contract actions should be priced before execution of the modification. IAW FAR 52.212-4(c), commercial item contracts require bilateral modifications to contracts. However, the magnitude of some changes and the contingency environment make this difficult.

- Unpriced orders are risky business because, during the time that negotiations are being conducted and performance is going on, the contractor has no incentive to keep costs down. If a contract action cannot be priced before it is authorized, an agreement should be reached with the contractor on a ceiling (not to exceed) price.
- For changes that result in a relatively small increase or decrease in price, efforts should be taken to reach an agreement to incorporate them into the contract on a *no-cost* basis.

**Bilateral Modifications.** Supplemental agreements must be in writing and must be signed by both parties. (FAR 43.103(a)) Supplemental agreements are appropriate when the contractor's consent is needed before modifying the contract. All supplemental agreements to contracts for commercial items must be bilateral.

- Examples of circumstances that require a supplemental agreement are when:
  - Incorporating substantive contract changes that were agreed to by both parties.
  - Negotiating an equitable adjustment resulting from a change order.
- Prepriced or unpriced? The more formal, regulatory words for this concept are “definitized” and “undefinitized.” The risk of unpriced actions is that the government must be willing to pay for what it wants. Policy and procedure for definitizing an unpriced action can be found at DFARS Subpart 217.74. More information on undefinitized contract actions can be found in Chapter 5.

**Unilateral Modifications.** Unilateral modifications (signed only by the contracting officer) are used to make administrative changes, issue change orders or termination notices, or make changes authorized by clauses other than the changes clause, such as option clause, property clause, or suspension of work clause, or for changing GFP or incorporating a value engineering proposal into the contract. (*FAR 43.103(b)*)

**The Changes Clause.** Generally, government contracts contain a changes clause that permits the contracting officer to make unilateral changes in designated areas within the general scope of the contract. There are slight differences in the particular changes clauses, depending on what is being purchased (supplies, services, or construction) and the type contract that is awarded (fixed price or cost reimbursable). (*FAR 43.2*) However, there are elements that are common to all changes clauses. They are as follows:

- A change order must be within the general scope of the contract.
- The change order must be in writing.
- The change order must be issued by the contracting officer.
- Quantities may not be unilaterally adjusted by use of the changes clause. A decrease in quantity may be affected by a partial termination for convenience. If the contract contains the *Variation in Estimated Quantity* clause, a price adjustment is required for items received in excess of the quantity called for (including the variation allowed) that are in excess of \$250. These items may, however, be returned at the contractor's expense. (*FAR 11.701*)

### **Request for Equitable Adjustments (REA).**

The government's policy is to try to resolve all contractor REAs at the contracting officer's level without litigation.

- If a mutual agreement regarding an appropriate equitable adjustment to the contract cannot be reached with the contractor,

the contractor can submit a claim. The contracting officer must then issue a final decision to a contractor's claim (see Chapter 7).

- A valid contracting officer's final decision must: (*FAR 33.211*)
  - Be in writing.
  - Be the decision of the contracting officer.
  - Inform the contractor of the right to appeal.
  - Adequately inform the contractor of the reasons behind the contracting officer's decision.

## **Transferring Contract Functions**

Established, permanent-station contracting offices rarely, if ever, transfer contract administration functions to another agency. On the other end of the spectrum, many CCOs will transfer contract functions for redeployment. As one unit packs up their bags to return to their home station, another unit arrives to assume the mission.

**Delegation of Contract Administration.** Delegation most commonly occurs in large contingencies. The responsibility for administration of contracts can be assigned to the Defense Contract Management Agency (DCMA). The team that assumes the mission will either be the on-site DCMA theater area operations organization (for locations that have a permanent DCMA office) or a deployable DCMA team. While the DCMA teams typically only deploy in support of major contingencies, the theater chief administrative officer may be able to provide limited support to smaller operations. (IAW *FAR 42*)

When delegating or transferring functions, the following matters should be considered:

- Accounting for Government and Contractor Property. If the contract calls for GFE or government-furnished materiel, the follow-on unit must be aware of all the details.

- Transfer versus Termination for Convenience (T4C) and New Award. The CCO will have to make a judgment call as to which of these options is better suited to the particular instances involved.
- Although the mechanics of transfer are simple—a delegation letter and a unilateral modification are sufficient—the impact on the contract could be significant. If the atmosphere of the contracting has been largely based on a mutual trust and personal relationship between the government and the contractor, bringing in a new player may be viewed with suspicion by the contractor.

## Terminations



There are basically two options for termination of contracts. They include T4C and termination for default (T4D) or cause. Once you've decided which method to pursue, be prepared to negotiate a fair and reasonable settlement. Remember that termination implies a breach of contract, and adequate compensation is appropriate. Follow local procedures for reporting and reviewing any termination actions.

To read more about terminations consult the DVD. 

- Notice of termination should be in writing. It will state or contain:
  - The contract is being terminated.
  - Extent of termination.
  - Any special instructions.
  - The steps the contractor should take to minimize impact on personnel if the termination, together with all other outstanding terminations, will result in a significant reduction in the contractor's work force.

Upon receipt of a termination notice, the contractor should (FAR 49.104):

- Stop work immediately
- Terminate all subcontracts
- Immediately advise the termination contracting officer (TCO) of any special circumstances precluding the stoppage of work
- Perform any continued portion of work
- Submit a request for equitable adjustment if necessary
- Protect any GFP
- Notify the TCO of any legal proceedings growing out of terminated subcontracts
- Settle any outstanding liabilities (subcontracts)
- Submit a settlement proposal
- Dispose of termination inventory

**Termination for Convenience (T4C).** The rapid pace at which requirements change can often result in a situation where the government no longer needs the supplies or services for which it has contracted. Asking a contractor to stop providing these supplies or services can often be met with confusion. Regardless of your reason for not wanting performance to continue, the contractor may perceive that you are simply not satisfied with his or her performance. If less than \$5K remains on contract, you should not terminate. (FAR 49.101(c))

General procedure for T4C (these items are not necessarily performed in the exact sequence listed):

- Issue suspension of work for construction or architecture and engineering, specifically excludes profit. (FAR 42.1302; 52.242-14)
- Issue stop work for service or supply, does not exclude profit. (FAR 42.1303; 52.242-15)

- Usually in effect for 90 days. If no notice after 90 days, contractor is to restart work.
- Negotiate settlement. If no settlement reached, unilaterally make determination and notify the contractor that changes are under the disputes clause.

When a T4C is requested, the following actions should be taken:

- Request or recommend meeting with contractor.
- For construction, engineering should provide an estimate of the contractor cost incurred.
- Establish and negotiate a cost settlement.
- Stop work or suspension of work should be prepared. If necessary, consult with the head of contract activity (HCA).
- Prepare an SF 30 using the T4C clause. (*FAR 52.249-2*)

When you have a partial contract cancellation or a total contract cancellation, consider the following:

- No-cost settlement
- Partial settlement (such as restocking charge), and
- Total termination

**Termination for Default (T4D).** When the contractor fails to perform as required, the CCO may terminate the existing contract and begin procurement under a new contract. If you anticipate needing to enter another contract with a specific vendor in the future (especially in areas with limited sources), defaulting that vendor on an existing contract may hinder future contracts.

General procedures for T4D (these items are not necessarily performed in the exact sequence listed):

- Reference default clause *FAR 52.249-8, Supply and Service*, or *FAR 52.249-10, Construction*.
- Issue a cure notice and give the contractor a minimum of 10 days to cure. (*FAR 49.607* for format)

- After 10 days, or if there are not 10 days left in performance, issue a show cause notice. (*FAR 49.607* for format)
- Completion of work—have an engineer verify the extent of completion and give an estimated value of the completed work.
- Consult with the HCA prior to issuing modification.

**Termination or Cancellation of Purchase Orders.** (*FAR 13.302-4*) If a purchase order that has been accepted in writing by the contractor is to be terminated, the contracting officer shall process the termination in accordance with *FAR 52.212-4 (l) or (m)* for commercial items; or *FAR 52.213-4* for other than commercial items.

If a purchase order that has not been accepted in writing by the contractor is to be cancelled, the contracting officer shall notify the contractor in writing that the purchase order has been cancelled and request the contractor's written acceptance of the cancellation.

**Termination for Cause.** (*FAR Part 12, Contracts*) The government may terminate for cause in the event of any default by the contractor if the contractor fails to comply with terms and conditions of the contract or fails to provide the government, upon request, adequate assurance of future performance. Contracts for commercial items purchased under the procedures outlined in *FAR Part 12* may be terminated for convenience or for cause. In general, the constraints of *FAR 49* (T4C) and *FAR 49.4* (T4D) are inapplicable. Procedures for termination of commercial item contracts are provided at *FAR 12.403*.

**Delinquency Notices.** (*FAR 49.607*)  

The formats of the delinquency notices discussed in this section may be used to satisfy the requirements of *FAR 49.402-3*. All notices will be sent with proof of delivery requested. (*FAR Subpart 42.1303* for stop-work orders)

**Cure Notice.**   

If a contract is to be terminated for default before the delivery date, a cure notice is required by the default clause. Before using this notice, it must be ascertained that an amount of time equal to or greater than the period of *cure* remains in the contract delivery schedule or any extension to it. If the time remaining in the contract delivery schedule is not sufficient to permit a realistic cure period of 10 days or more, the cure notice should not be issued.

After the cure notice is issued:

- Negotiate changes
- Prepare modification to T4D
- Document negotiations
- Obtain contractor's receipt of cure notice

**Show Cause Notice.**   

If the time remaining in the contract delivery schedule is not sufficient to permit a realistic cure period of 10 days or more, a show cause notice may be used. It should be sent immediately upon expiration of the delivery period.

**Considerations.** When deciding whether to use T4C, T4D, or allow the contract to run to completion, the CCO must utilize sound business judgment. Remember that contractors are providing goods and services at a time when the government has been fairly demanding. Vendors may incur costs in order to perform in accordance with our wishes, and should be properly compensated for doing so. The CCO may have to balance fair and just compensation against legally sufficient adjustment and allowability of costs. 

## Contract Closeout



**Contract Closeout.** When the contractor has satisfactorily completed performance of the terms of the contract, and final payment has been made, the contract file should be closed out as soon as possible. The following steps should be used:

- Upon receipt of final invoice and a receiving report, issue a unilateral modification to deobligate any excess funds.
- Release of Claims. 

On a final invoice where the payment amount is subject to contract settlement actions (release of contractor claims), acceptance shall be deemed to have occurred on the effective date of the contract settlement. (*FAR 43.204(c)(2), Release of Claims*, provides language for supplemental agreements)
- Complete a *Department of Defense (DD) Form 1594 (Contract Completion Statement)*, or agency specified form for all contracts, and *DD Form 1597 (Contract Closeout Checklist)* or agency specific form such as Air Force Form 3035 for contracts over the simplified acquisition threshold (SAT) after receiving proof that work or delivery is complete.
- Place the completed and certified *DD 1594* in the contract file, write the word *closed* on the file (preferably in large, bold letters), and remove the file from the active contracts. Retain the completed contract file as required by FAR or your particular agency.
- Perform procedures for closing out contracts:
  - The *DD Form 1597, Contract Closeout Checklist*, is the primary document for initiating a systematic contract closeout. When all necessary and applicable actions have been completed, the

contracting officer will sign and attach this form to the DD Form 1594.

- When the physically completed contract involves government property in the possession of the contractor, the contracting officer will forward a DD Form 1593, Contract Administration Completion Record, to the property administrator requesting the actual or estimated dates for completion of property administration. The DD Form 1593 should also be used to verify that other functional activities have completed their required closeout actions.
- The contracting officer will review the status of funds on physically completed contracts to ascertain whether funds are available for removal prior to final payment.
- For all contracts not in excess of the SAT, the contracting officer shall include in the contract file a statement that all contract actions have been completed. The completed form or statement is authority for closing out the contract file.
- When the purchasing office administers a contract, that office is responsible for ensuring that all required purchase actions and contract administration have been completed, utilizing as necessary DD Form 1597, Contract Closeout Checklist, and DD Form 1593, Contract Administration Completion Record.
- When all required actions have been completed, the purchasing office shall prepare a Contract Completion Statement, DD Form 1594, for all contracts in excess of the SAT. The contract completion statement shall be made a part of the official contract file.
- DFARS 204.804 prescribes the use of the DD Form 1594.

**Closeout of CCO, Field Ordering Officer (FOO), and BPA Authorized Callers Accounts.**



When FOO and BPA authorized callers are ready to redeploy, be sure they return their original appointment order, any completed forms and documents, updated PIIN logs, and any unused forms (especially SF 44). Throughout the contingency, you should be getting Joint Uniformed Lessons Learned System and after action report input from your ordering officers.

See *FAR 4.804-5* for procedures on closing out the contract files. The main issues are as follows:

- Contractor's release of claims
- Final invoice has been submitted and paid
- Contract funds review completed and excess funds deobligated

**Abandoned or Unclaimed Property.** An issue that may arise is disposal of contractor-owned property that has been abandoned. (*FAR Subpart 45.6, Reporting, Reutilization, and Disposal*) Consult with the local judge advocate for disposition of contractor property left behind by the contractor before utilizing or appropriating the asset.

## **Chapter Acronyms**

BPA – Blanket Purchase Agreement  
CCO – Contingency Contracting Officer  
COR – Contracting Officer’s Representative  
DCMA – Defense Contract Management Agency  
DD – Department of Defense (Form)  
DFARS – Defense Federal Acquisition Regulation Supplement  
DoD – Department of Defense  
FAR – Federal Acquisition Regulation  
FOO – Field Ordering Officer  
GFE – Government-furnished Equipment  
GFP – Government-furnished Property  
HCA – Head of Contracting Activity  
IAW – In Accordance With  
LD – Liquidated Damages  
PIIN – Procurement Instrument Identification Number  
REA – Request for Equitable Adjustment  
SAT – Simplified Acquisition Threshold  
SF – Standard Form  
SOW – Statement of Work  
T4C – Termination for Convenience  
T4D – Termination for Default  
TCO – Termination Contracting Officer  
US – United States



