



## OFFICE OF THE UNDER SECRETARY OF DEFENSE

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ACQUISITION  
AND SUSTAINMENT

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DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE  
(CONTRACTING)  
DEFENSE AGENCY AND DOD FIELD ACTIVITY DIRECTORS

SUBJECT: Department of Defense Contracting Officer Representatives Guidebook

This memorandum issues the new, updated Department of Defense Contracting Officer Representative (COR) Guidebook and rescinds the COR Guidebook published May 2021. This document includes new guidance on Combating Trafficking in Persons (CTIP) as a result of Government Accountability Office (GAO) audit GAO-21-546, "Human Trafficking: DOD Should Address Weakness in Oversight of Contractors and Reporting of Investigations Related to Contracts." The updated CTIP guidance is located on pages 87 through 89, additionally a new CTIP checklist was added as Appendix D.7 on pages 167 and 168.

Other factual changes were made such as updates to web links (e.g., <https://wawf.eb.mil> is now <https://piee.eb.mil>) and other administrative corrections. The COR Guidebook is posted at <https://www.acq.osd.mil/asda/dpc/cp/policy/other-policy-areas.html> and is effective as of the date of this memo.

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Attachment:  
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**DEPARTMENT OF DEFENSE**  
**CONTRACTING OFFICER'S**  
**REPRESENTATIVES**  
**GUIDEBOOK**

**OCTOBER 2022**



**OUSD(A&S)/DPC**

# Quick-Start Guide for Contracting Officer's Representatives (CORs)



## COR Nomination, Training, and Qualification

See DoDI 5000.72 and Appendix B.

The organization nominates the COR, and the contracting officer approves the nomination.

The COR receives training from the contracting officer and DAU.

Know your training requirements (for Type A, B, and C contracts).

The COR is appointed with a Designation Letter of Nomination/Appointment.

This letter will tell you what contracts you are assigned to and will define your pre-award and post-award responsibilities.

This letter should include specific details on monitoring contractor performance, conducting inspection if applicable, and conducting Government acceptance of goods or services.

Appointment/designations are done in the Joint Appointment Module (JAM)—  
<https://piee.eb.mil/>.

The new COR receives a turnover from the previous COR.

**Warning:** A COR cannot delegate responsibilities to a replacement or to subordinates!



## Understanding Your Contracts

See Chapter 5.

Uniform Contract Format (UCF): Sections A through J (or Sections K, L, and M in a solicitation)

Commercial Format: Sections A through D (or Section E in a solicitation)

**Pay close attention to Sections B, D, F, G, and J.** These sections should help you understand what is being bought, schedules, inspection/acceptance criteria, specifications, and invoicing procedures.



## COR Surveillance Files in SPM

See Chapter 7 and Appendix D, Table D.2.

At a minimum, your file should contain your COR Designation Letter and the following:

Copy of the contract and all modifications, unless in Electronic Document Access (EDA)



- Copy of acceptance documents and invoices in Wide Area Workflow (WAWF)
- Copies of all correspondence
- Memoranda of Record for all actions taken/issues addressed
- Performance assessments (negative and positive)
- Weather reports (if applicable to your contracts)



## **Contract Surveillance and Performance Monitoring via SPM**

*See Chapters 6, 7, 8, and 9, and Appendix D, Tables D.3 and D.6.*

How much and how often you conduct surveillance on the contract depends on the contract (e.g., length, complexity, dollar value) and the contractor, the services or supplies (or both) that the contractor will tender for acceptance, and the Inspection and Acceptance clause.

The Statement of Objectives (SOO), Statement of Work (SOW), or the Performance Work Statement (PWS) is probably the single most critical document in the acquisition process. The PWS should define requirements in clear and concise language, identifying specific work to be accomplished. The PWS defines respective responsibilities of the Government and the contract and provides an objective measure so that both will know when work is complete and payment is justified.

The QASP recognizes the responsibility of the contractor to carry out its quality control obligations. The QASP must contain measurable inspection and acceptance criteria corresponding to the performance standards in the SOW. The QASP focuses on the level of performance required by the PWS rather than the methods used by the contractor to achieve that level of performance.





## Inspection of Supplies

*See Chapters 6, 7, 8, and 9.*

### Inspection Types

Visual checks, an examination to reveal surface defects, missing pieces, parts out of alignment

Physical or performance tests (conducted or witnessed) that involve more objectivity

### Inspection Methods

Random or stratified sampling

100% inspection

Periodic performance tests

The COR's role in inspection depends on inspection type.

The Government always reserves the right to inspect!

Never accept an item if you are unsure or if it has deficiencies.



## Completion, Payout & Closeout

*See Chapter 6.*

Acceptance is evidence based on the execution of an acceptance certificate on an inspection or receiving report form or on a commercial shipping document (or packing list). A 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 on the COR to identify deficiencies and to advise the contracting officer.



## COR Role in Contractor Payment

*See Chapters 6 and 11.*

If performance monitoring is conducted appropriately, the COR's role in payment consists of documenting the receiving report and confirming that the invoice/voucher is "proper."

The DD Form 250 Material Inspection & Receiving Report is accessible in WAWF at <https://piee.eb.mil/>.

Also see Figure B-5 & DVD.



## **Transitioning**

*See DoDI 5000.72 and Chapter 11.*

It is critical that you plan for and execute a quality transition of your COR duties before redeployment or changing jobs.

Keep orderly paper (hard copy) and electronic files.

Introduce the incoming COR to key customers, partners, and stakeholders in the organization and to contractors.

Set your replacement up for success!

## Quick-Start Guide

### Know Your Limits: CORs do not . . .

- Promise or authorized more work
- Get involved with subcontractors
- Modify the contract (even inadvertently)
- Disclose source selection information
- Divulge budget information
- Grant deviations or waivers of contract terms and conditions (even inadvertently)
- Attempt to rescue suspected human trafficking victims

*See Chapters 2, 6, 7, 8, and 9. Also see Appendix D.*

### Know and Follow the Ethical Standards for CORs

*See Chapter 2.*

Never solicit gifts of any type, regardless of their nature or dollar value. Some contractors are willing to offer favors in exchange for business. A bribe occurs when someone “directly or indirectly give, 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.” Giving or accepting a bribe is a crime punishable by a fine, imprisonment, or both.

CORs must be familiar with the following:

- Gift Rule \$20/\$50 (bribery and gratuities)
- Procurement Integrity Act
- Conflicts of interest (transportation and travel)

### Know Where to Turn: Key Handbook Chapters

Chapter 6. Contract Administration

Chapter 7. Monitoring the Contractor

Chapter 8. Developing a Quality Assurance Surveillance Plan and Monitoring Services Contracts

Chapter 9. Monitoring Construction Contracts

### Know Your Challenges in a Contingency Environment

*See Chapter 11.*

- Different customs
- Corruption (and Chapter 2)
- Ethics issues (and Chapter 2)
- Language barriers



Chain of command and conflicting responsibilities  
Transition of COR duties when redeployed  
Personal security threats

## **Know the Contracting Officer's Remedies for Poor Performance**

*See Chapter 6 and Appendix D, Table D.1.*

Apply stop-work, cure notice, show-cause, liquidated damages, warranty, or termination clause  
Withhold or reduce fees  
Reject the noncompliant work or allow rework  
Suspend progress payments  
Choose not to exercise options  
Modify the contract  
Address claims or considerations  
Take legal recourse  
Use alternative dispute resolution (ADR)  
Document the issue in the past performance database

## **Know Where to Begin**

*See Chapters 5, 6, 7, 8, and 9.*

Kickoff meeting  
Progress reports  
Schedules  
Contract standards and specs

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# **CHAPTER 1: INTRODUCTION AND CONTRACTING OFFICER'S REPRESENTATIVES OVERVIEW**

## **1.1 INTRODUCTION**

This Contracting Officer's Representative (COR) Guidebook updates COR guidance and policy for all Department of Defense (DoD) and contingency CORs. This guidebook replaces the current DoD COR Handbook and is issued in accordance with Defense Pricing and Contracting's (DPC) procurement authority as assigned by the Under Secretary of Defense for Acquisition and Sustainment. Although the COR guidance can be used in contingency-type environments, this guidebook is not intended to replace the overall Defense Contingency COR Handbook (DCCORH).<sup>1</sup> The DCCORH supplements this Guidebook. This guidebook provides basic knowledge and tools for CORs to effectively perform their duties and responsibilities. The information in this guidebook is extracted from numerous sources including the Federal Acquisition Regulation (FAR);<sup>2</sup> Defense FAR Supplement (DFARS);<sup>3</sup> DFARS Procedures, Guidance and Information (PGI)<sup>3</sup> Defense Contingency Contracting Handbook;<sup>4</sup> Joint Ethics Regulation (JER);<sup>5</sup> Standards of Conduct; and other DoD directives, instructions, publications, and policies. All references to the FAR, DFARS, and DFARS PGI in this guidebook can be found at the footnotes at the end of this chapter. Throughout this guidebook all footnotes are highlighted in yellow for ease of identification.

Chapter 1 provides a general overview of contract surveillance, and the roles and responsibilities of the COR and the Contracting Officer. Chapter 2 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 3), COR responsibilities (Chapter 4) and an overview of contracts, including their categories, types, and structure (Chapter 5).

Chapter 6 provides general information on contract administration. Chapter 7 contains information on monitoring contractor performance, in general, while Chapters 8 and 9 address monitoring services contracts and construction contracts, respectively. Chapter 10 addresses foreign acquisition limitations and guidance. Chapter 11 addresses CORs in the contingency environment. Lastly, Chapter 12 addresses CORs supporting domestic emergency response operations. The appendices define common terms and abbreviations, and contain resources and references that CORs may find useful, including information on COR qualifications and training, pre-award functions and contractor surveillance.

This guidebook is intended to supplement, NOT replace, formal COR training. CORs should refer to their letters of appointment/designation for the specific duties and responsibilities assigned by the Contracting Officer. When in doubt, always contact the Contracting Officer for guidance. For information on COR training refer to the COR Community of Practice at DAU.<sup>6</sup>

## 1.2 COR OVERVIEW

The 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 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 FAR states 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 (see FAR 1.602-2). The FAR recognizes the Contracting Officer may need advice and assistance in areas of audit, law, engineering, information security, transportation, and other fields, as appropriate, and to accomplish contract administration.

The requiring organization, who defines the contract requirements, prescribes contract quality requirements and are often delegated specific authority from the Contracting Officer to conduct contract surveillance. Surveillance allows the government to verify the contractor is fulfilling contract delivery and quality requirements, and to document performance for the contract record. These individuals — (CORs) — function as the “eyes and ears” of the Contracting Officer and liaison between the government and contractor when executing specific technical and administrative functions and surveillance responsibilities (see FAR 2.101). However, these functions and contract surveillance are not solely the responsibility of the Contracting Officer and the COR; other individuals may have designated surveillance responsibilities. COR designation and assigned responsibilities shall be pursuant to the procedures at the DFARS PGI 201.602-2 and DoD Instruction (DoDI) 5000.72.<sup>7</sup>

DoDI 5000.72 establishes the minimum COR competencies, experience and training which are dependent on the dollar value, complexity of the requirement and contract performance risk. The DoD COR standards are:

- Type A: Fixed-price contracts without incentives, and low performance risk.
- Type B: Fixed-price contracts with incentives; fixed-price contracts with other than low performance risk, and other than fixed-price contracts. This includes everything other than Type A and C.
- Type C: Unique contract requirements that necessitate the COR have a higher education, or specialized training beyond the Type B requirements.

Note: There are often duties assigned to the COR by COR management – not the Contracting Officer – during the pre-award phase (Chapter 3 discusses the Acquisition Process) based on the COR's knowledge and subject matter expertise. The COR nominee may assist the contracting team in requirements development, preparing the Independent Government Cost Estimate (IGCE), developing the Performance Work Statement/Statement of Work/Statement of Objectives (PWS/SOW/SOO), developing quality assurance surveillance plans (QASPs), etc. Again, these responsibilities are prior to award of the contract.

The requiring activity or COR management nominates a COR as early as possible prior to contract award in the acquisition process. The Contracting Officer will designate the COR as early as practicable after the nomination is received (see FAR 7.104(e)). The Contracting Officer decides if the COR needs to file an Office of Government Ethics (OGE) Form 450, Confidential Financial Disclosure Report, based on the COR's designated duties and responsibilities as well as level of supervision and review. If the Contracting Officer determines the COR is required to file an OGE Form 450, the requirement to file will be documented in the COR designation letter and the Contracting Officer and the COR will ensure that a copy is promptly provided to ethics counsel for the COR's home organization. CORs who are designated as OGE Form 450 filers will submit a new entrant report within 30 days of designation and annually thereafter, as required by applicable ethics regulations. CORs designated as filers will submit OGE Form 450 reports using the applicable electronic financial disclosure system in accordance with the DoD Joint Ethics Regulation and provide a copy to the Contracting Officer within five business days of submission. If, upon review of the financial disclosure report, the Contracting Officer identifies potential conflicts of interest or other ethics issues, the Contracting Officer will consult with ethics counsel to determine appropriate remedies, if any.

The DoD COR Tracking (CORT) Tool was redesigned and renamed. All COR nominations, designations and terminations will be conducted in the Joint Appointment Module (JAM). All other contract surveillance actions will be conducted in the Surveillance and Performance Monitoring (SPM) module (e.g., submission of COR reports, Annual Inspection, contract surveillance). Both modules are located in the Procurement Integrated Enterprise Environment (PIEE).<sup>8</sup>

The JAM and SPM modules provide for the collection and reviewing of COR documentation to include training certificates and surveillance reports. These modules provide contracting personnel and requiring activities/COR management the means to track and manage COR assignments across multiple contracts. Additional information on the JAM, SPM, and PIEE can be found at the DPC, Contracting eBusiness website.<sup>8</sup> Details on the JAM and SPM are provided in DoDI 5000.72.

### **1.3 CHAPTER 1. KEY POINTS**

1. The COR is the eyes and ears of the Contracting Officer.
2. DoDI 5000.72 established the minimum COR competencies, experience and training standards which is dependent on the dollar value, complexity of the requirement and contract performance risk.
3. This guidebook is NOT to be used as a replacement for COR training.
4. This guidebook provides basic knowledge and the tools needed for CORs to effectively perform their duties and responsibilities. The information provided in this guidebook is only supplemental information and does not replace any information provided in the FAR, DFARS and agency regulations.

5. The COR Tool was renamed the SPM. CORs should use the SPM module for all contract surveillance actions. The JAM module should be used for all COR nominations, designations and terminations.
6. The new SPM module is now available in PIEE.

## **1.4 CHAPTER 1. FOOTNOTES**

1. The Defense Contingency COR Handbook (DCCORH) can found on the DPC Contingency Contracting website at <https://www.acq.osd.mil/asda/dpc/cp/cc/cor-handbook.html> .
2. The FAR can be found at <https://www.acquisition.gov/?q=browsefar>.
3. The DFARS and DFARS PGI can be found at <https://www.acq.osd.mil/dpap/dars/dfarspgi/current/index.html> .
4. Defense Contingency Contracting Handbook can be found at <https://www.acq.osd.mil/asda/dpc/cp/cc/ctr-handbook.html>.
5. Authority and guidance concerning ethics laws, regulations, and policy, to include the DoD Directive 5500.07, Standards of Conduct and DoD Joint Ethics Regulation, DoD 5500.07R, can be found at <https://dodsoco.ogc.osd.mil/Ethics-Program-Resources/Ethics-Laws-and-Regulations/>  
<https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodd/550007p.pdf>.
6. The COR Community of Practice website is located at <https://www.dau.edu/cop/cor/Pages/Default.aspx>.
7. DoDI 5000.72 can be found at <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/500072p.PDF>
8. The JAM and SPM modules in the PIEE are located at <https://piee.eb.mil/> . Additional information on the JAM, SPM and PIEE can be found at the DPC Contracting eBusiness website at <https://www.acq.osd.mil/asda/dpc/ce/cap/jam-spm-tool.html>.

# **CHAPTER 2: ETHICS AND INTEGRITY IN THE ACQUISITION PROCESS**

## **2.1 REVIEW OF STANDARDS**

U.S. government personnel engaged in contracting and related activities, including CORs, must be above reproach in their business dealings with industry. At the same time, they must protect the government's interests while maintaining its requirement for treating contractors fairly and with transparency.

There are several authorities governing ethics and integrity in the acquisition process, all of which work together to ensure the integrity of acquisition processes. Executive branch personnel are subject to Federal ethics statutes, some of which are criminal in nature, as well as regulations promulgated by the OGE. DoD personnel are also subject to the DoD Joint Ethics Regulation and any component supplements. Federal acquisition personnel must also comply with statutory and regulatory procurement integrity provisions.

COR letters of appointment/designation require CORs to certify they have read and understand the Joint Ethics Regulation.<sup>1</sup> In order to maintain public confidence in the government's conduct of business with the private sector, CORs must avoid even the appearance of a conflict of interest (COI).<sup>2</sup> There are two types of COIs: organizational (governed solely by acquisition laws and regulations) and personal conflicts of interest (governed by both Federal ethics and acquisition laws and regulations).

To avoid a COI or appearance of a COI, CORs should be familiar with the applicable ethics and procurement integrity statutes and regulations. Restrictions on Obtaining and Disclosing Certain Information (formerly the Procurement Integrity Act), § 41 United States Code (U.S.C.) Chapter 21, is implemented by regulation at FAR 3.104. This provision addresses both types of conflicts, as well as prohibiting certain actions relating to contractor information.

CORs who may have direct or indirect financial interests in an organization they are monitoring must advise their supervisor of any potential COI so that appropriate action may be taken in coordination with local ethics counsel. A COR may also be required to file an OGE Form 450, Confidential Financial Disclosure Report. The purpose of this report is to assist personnel, their supervisors and their agencies in avoiding conflicts between official duties and personal financial interests or affiliations.

## **2.2 ORGANIZATIONAL AND PERSONAL CONFLICTS OF INTEREST (COI)**

The government's increased reliance on contracted technical, business, and procurement expertise has increased the potential for personal and organizational conflicts of interest. Unlike government employees, contractor employees are often 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 for organizational conflicts increases when contractor employees are involved with subjective, judgmental work used by the government for decision making. DoD follows the PGI at FAR Subparts 7.5 to ensure inherently governmental functions are not performed by contractors and 9.5 to avoid, neutralize, or mitigate potential organizational conflicts of interest by contractors prior to contract award. Government decisions in the procurement process must be objective in both fact and appearance. Favoritism or other improper motives have no place in the award and/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.

### **2.2.1 ORGANIZATIONAL CONFLICTS OF INTEREST (OCI)**

An OCI is a circumstance in which a contractor may have unequal access to government information, the existence of conflicting roles that might bias a contractor's judgment to favor itself, or impaired objectivity where the contractor evaluates its own work or products for adequacy — either of these three different types of OCIs 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/or work statements; or acting in a capacity that gives them access to proprietary data. It is the government professional's duty and legal obligation to ensure the appearance of an OCI or an OCI is not permitted to occur.

The potential for OCIs 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 OCIs increase and the need for the government to avoid, mitigate, or neutralize the OCI.

## **2.3 WORKING WITH CONTRACTOR EMPLOYEES**

Contractors are an important component of the total DoD force, but they are not government employees. Challenges arise when contractor employees are performing the same or similar work as, or working side-by-side with government employees. Although professional relationships with contractor employees are not prohibited, favoritism and preferential treatment are and must be avoided. It is the COR's duty to avoid conflicts of interest and even the appearance of conflicts of interest.



In monitoring contractor performance, the COR should avoid interfering with contractor employee relations. Additionally, a COR must not tell a contractor 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.

## **2.4 TRANSPORTATION AND TRAVEL**

Official travel of a government employee is typically funded by the government. Therefore, as a general rule, sharing a vehicle with contractor employee(s) may pose a problem. Sharing transportation is acceptable when it is prescribed by a contract clause and is required to perform contract requirements. As an example, 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 – such assistance could include provision of transportation in areas where only contractor owned vehicles are permitted for safety or security reasons. Note: DoD service components and agencies often have regulations and/or instructions governing this topic.

## **2.5 AWARDS AND CERTIFICATES**

Award programs for military and civilian personnel are conducted pursuant to DoD and Military Department regulations. There is no authority to give awards to contractors; appropriated funds may not be used to purchase items such as Commander's *coins* or similar non-monetary incentive tokens to contractors; therefore, appropriated funds cannot be used to purchase items that will be given as awards to individuals other than government employees.

Using certificates or other methods to recognize a contractor or individual contractor employee is only allowed in very rare exceptions as this could complicate the source selection process on future contracts or undermine the Government's position in the event of a dispute (see DoDI 1400.25-Volume 451<sup>3</sup>). In no event shall a letter of appreciation or any other recognition be given to a contractor or contractor employee without first coordinating such letter or recognition with the Contracting Officer and legal office.

## **2.6 PROCUREMENT INTEGRITY**

The Restrictions on Obtaining and Disclosing Certain Information (formerly the Procurement Integrity Act), prohibits the government (e.g., COR) from disclosing:

- Source selection information; which may include technical evaluations, government cost and price estimates, etc. See FAR 2.101 for a full definition of source selection information.
- Contractor bid or proposal information (see FAR 3.104-3). This includes the following

types of information:

- Cost or pricing data;
- Indirect costs and direct labor rates; and
- Proprietary information about manufacturing processes, operations, or techniques marked as such by the contractor in accordance with applicable law and regulation.
- Disclosure restrictions placed on the contract.

## **2.6.1 COMPENSATION AFTER LEAVING FEDERAL EMPLOYMENT**

Procurement integrity restrictions on obtaining and disclosing certain information also 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(c)). For the specifics of the 1-year compensation ban, CORs should speak with an ethics counselor in their supporting legal office.

Procurement officials are required to report any employment contacts with contractors, as described below. 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 the federal employee:

- Promptly report the contact in writing to his or her supervisor and ethics counselor, and either;
  - Reject the offer, or
  - Disqualify him or herself from further involvement in the procurement (see FAR 3.104-3(c)).

Note that the procurement integrity employment and compensation restrictions are in addition to those set forth in Federal ethics regulations. Personnel should consult with their local ethics counsel concerning these additional restrictions BEFORE taking any action in a matter involving an entity with whom they have had any communication concerning potential employment.

## **2.6.2 PENALTIES**

Individuals who violate the procurement integrity provisions may be subject to criminal and civil penalties; and administrative remedies. The penalties are discussed under 41 U.S.C. Chapter 21<sup>4</sup> and FAR 3.104-8.

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

- Cancellation of the procurement,
- Disqualification of an offeror,
- Void/rescission of the contract,
- Referral of the matter to the agency suspension or debarment official,

- Implementation of 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.

## **2.7 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 offense.<sup>5</sup>

## **2.8 ANTI-KICKBACK ACT**

The Anti-Kickback Enforcement Act of 1986 (hereby referred to as the Anti-Kickback Act) (41 U.S.C. §§ 8701-8707) modernized and closed the loopholes of previous anti-kickback statutes applying to government contractors. The Anti-Kickback 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 that is provided to obtain reward of, or favorable treatment in connection with a prime government contract. 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.
- Defines kickbacks to include payments under any government contract.

As intended by Congress, the Anti-Kickback Act applies to all government acquisitions.

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.<sup>6</sup>”

A kickback is a bribe paid in connection with a government contract or subcontract under a government contract, for the purposes of obtaining a contract or subcontract award, or favorable treatment under a contract or subcontract. Never solicit favors, gifts, money, or kickbacks.

Never solicit favors, gifts, money, or kickbacks 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, or promises, anything of value to any public official, former public official, or persons selected to be CORs. CORs must understand that a bribe occurs when someone “directly or indirectly gives, offers 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 monetary). Giving or accepting a bribe is a crime punishable by a fine, imprisonment, or both.<sup>7</sup>

## **2.9 GRATUITIES**

Offering or receiving gratuities constitutes a crime when a gratuity is 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 corrupt intent. As a participant in the acquisition process, the COR must constantly keep himself or herself on guard to improper actions or those that could be construed as such.

## **2.10 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,” as stated in 5 C.F.R. 2635. 203(b).

Contractor personnel may offer CORs welcome gifts upon arrival or souvenirs to take home. This may be based on customary business courtesies or a possible attempt to gain favor. Both the FAR and Federal ethics regulations address gifts from contractors. FAR Subpart 3.101-2 provides basic guidance about accepting gifts from contractor personnel: do not accept any gratuity, gift, favor, loan, entertainment, or anything of value from a prospective or current contractor, unless a regulatory exception or exclusion applies. In government-contractor relationships, the COR must strictly avoid any appearance of impropriety.

Remember, a COR is prohibited by criminal statute from accepting a gift in return for being influenced to perform an official act or in return for performing their official duties. While ethics regulations may permit acceptance of a gift from a contractor in other circumstances,<sup>8</sup> personnel should always consult with ethics counsel and should not accept gifts so frequently that a reasonable person would think the COR is using the position for private gain.

Note: When in doubt, the COR should call an ethics official about accepting a gift. There are limitations on whether and to what extent a gift from a non-Federal entity may be accepted.

## **2.10.1 REPORTING GIFTS**

If a gift from a contractor is delivered to a COR in a manner that does not facilitate declination or prompt return (e.g., left on the COR's desk, mailed, etc.), the COR must either return it or consult with ethics counsel for proper remedial actions using one of the following steps:

- Attempt to persuade the contractor to take back the gift. Explain to the contractor your inability to accept gifts as a COR and the repercussions you, and the contractor, could face if you accept the gift.
- Pay the fair market value of the item, consult with the legal/ethics office and/or call contracting.
- If the gift is perishable (e.g., fresh food or flowers), share the gift within the office or dispose of it. (But, be cautious when consuming food from unknown sources.)
- As a last resort, if it is clear that an unacceptable gift cannot be returned or paid for or diplomacy dictates that failure to accept would negatively impact DoD interests, do the following:
  - Contact legal counsel immediately.
  - Safeguard the gift. If necessary, have the finance officer put the gift in a safe and obtain a receipt from the finance officer.
  - Write a memorandum for the record (MFR) that describes the circumstances and indicates the approximate value of the gift. Mention in the MFR that legal advice was obtained and the advice given by the legal office. Follow legal counsel advice in disposing of the gift, which may include turning the gift over to the proper officials for acceptance as a gift to the Government.

If there is any doubt about whether a gift should or should not be accepted, the COR must consult ethics counsel.

## **2.11 FRAUD, WASTE, AND ABUSE**

CORs are the government's eyes and ears in the field when it comes to contracting. The constant interaction CORs have with the contractor and subcontractors, as well as other Government personnel make the COR an excellent resource to identify fraud, waste and abuse.

FAR 3.101 reminds acquisition personnel that "government business shall be conducted in a manner above reproach and, except as authorized by statute or regulation, with complete impartiality and with preferential treatment for none." Meeting this requirement can be challenging in a deployed environment, where varying cultural, political, and economic conditions influence the expectations and business habits of local suppliers. Recent operations involving Contracting Officers, CORs, contractors, and others who made unethical decisions have resulted in hefty fines and lengthy prison sentences. These operations also showed that contracting officials and CORs witnessed fraud, waste, and abuse but were unsure how to report such activities. As a protector of government interests,

CORs must always remember their duty is to the government, DoD, the American taxpayer—and, ultimately, to the mission.

As a COR, you must disclose fraud, waste, abuse, and corruption to appropriate authorities. Below is a look at what fraud, waste, and abuse are, how to identify such activities, and what to do with such information.

### **2.11.1 FRAUD DEFINED**

Fraud is the misrepresentation of a material fact with the intent to deceive, designed to unlawfully deprive the United States of something of value or to secure from the United States for an individual a benefit, privilege, allowance, or consideration to which the person making the misrepresentation is not entitled. Fraud can be a single act or a combination of circumstances, can be the suppression of truth or the suggestion of what is false, or can occur by direct falsehood or through innuendo, speech, silence, word of mouth, or look or gesture. Fraud includes the following:

- Deliberate omission of material facts; and
- False or misleading representations.

Fraud is a criminal offense. Government personnel have faced prison sentences, fines, restitution, and criminal and civil settlement agreements due to fraudulent actions supporting DoD operations. CORs must never succumb to fraud and are responsible for identifying and preventing it.

### **2.11.2 IDENTIFICATION OF FRAUD INDICATORS**

As mentioned above, CORs play a vital role in the identification, prevention, and reporting of fraud or suspected fraud. CORs have an obligation to report any attempted or actual violation or wrongdoing. CORs should engage the Contracting Officer who will provide COR training on fraud awareness, identification, prevention, and reporting. Additional training on fraud awareness is oftentimes provided by deployed DoDIG (or Service IG) and other law enforcement representatives supporting the respective operation.

### **2.11.3 COMMON FRAUD OFFENSES**

Common fraud offenses include the following:

- Bribery, kickbacks, and gratuities;
- Making or use of a false statement;
- Falsifying a document or creating a false document;
- Making or presenting a false claim;
- Companies conducting business under several names;
- Collusive bidding (bid rigging);
- Conflicts of interest;
- Conspiracy to defraud;

- Disclosure of proprietary data or source-selection-sensitive information;
- Insufficient delivery of contracted items; and
- Intentional failure to meet contract terms and conditions (e.g. counterfeit parts).

#### **2.11.4 SITUATIONS THAT ENABLE FRAUD**

CORs must be advised that acts of fraud are enabled by many situations, such as the following:

- Failure to properly monitor contract performance;
- Lack of acquisition checks and balances, such as personnel who control both the ordering and receiving functions and can arrange for diversion of supplies or services for their own benefit;
- Lack of communication between CORs, Contracting Officers, end users, and law enforcement;
- Poorly defined specifications;
- Poor physical security; or
- Receipt of items that cannot be traced to a valid requisition and thus could have been ordered for personal use or resale, with the resulting paperwork destroyed.

#### **2.11.5 COMMON FRAUD INDICATORS**

Understanding common fraud indicators will help identify fraud. Indicators include:

- Frequent complaints by users of supplies or services;
- Government estimates and contract award prices that are consistently very close;
- Contractor complaints of late payment by the agency;
- An abnormal increase in consumption of fuel or supply items;
- Failure to deobligate cancelled purchase orders;
- An excessive number of photocopies of invoices in file, such as (1) approved invoices altered (which might indicate the invoice had been copied and the original destroyed in an attempt to manipulate the audit trail or commit fraud via the alteration), which require follow-up to secure external and internal copies for comparison; or (2) duplicate copies of supplier invoices, which could indicate the possibility of multiple payments of the same invoice and possibly diverted checks; or
- The sale or transfer of assets for apparently less than adequate consideration.

CORs should never hesitate to report suspected fraud. Lead investigators and contacts for reporting fraud include the DoD IG; Air Force Office of Special Investigations (AFOSI); Naval Criminal Investigation Service (NCIS); U.S. Army Criminal Investigation Command (CID); Major Procurement Fraud Unit (MPFU); Defense Contract Audit Agency (DCAA); Defense Contract Management Agency (DCMA); Defense Criminal Investigative Service (DCIS); and U.S. Army Audit Agency (USAAA).

You can contact these agencies at the following:

- AFOSI: <https://www.osi.af.mil/>
- NCIS: <https://www.ncis.navy.mil/>
- CID: <https://www.cid.army.mil/>
- DCAA: <https://www.dcaa.mil/>
- DCMA: <https://www.dcma.mil/>
- DCIS: <https://www.dodig.mil/>
- USAAA: <https://www.army.mil/aaa>
- DoD Hotline:  
<https://www.dodig.mil/Components/Administrative-Investigations/DoD-Hotline/>

CORs should work closely with these investigative agencies and the Contracting Officer to identify, act on, and prevent fraud.

### **2.11.6 WASTE AND ABUSE**

CORs often represent the requiring activity and have the responsibility to identify, and ultimately avoid, waste and abuse of resources and taxpayer dollars when conducting business on behalf of the U.S. government. In 2011, a Commission on Wartime Contracting (COWC) report to Congress defined waste as follows:

- “Requirements that were excessive when established and/or not adjusted in a timely fashion;
- Poor performance by contractors that required costly rework;
- Ill-conceived projects that did not fit the cultural, political, and economic mores of the society they were meant to serve;
- Security and other costs that were not anticipated due to lack of proper planning;
- Questionable and unsupported payments to contractors that take years to reconcile; ineffective government oversight; and
- Losses through lack of competition.”

According to the COWC, \$31 billion to \$60 billion in taxpayer dollars has been lost due to waste and fraud in contingency operations in Iraq and Afghanistan. Although the report focused on these nations, waste and abuse can happen in any environment. Waste and abuse can be subjective and often more difficult to define than contract fraud, but CORs should make every effort to assist in the prevention of, and ultimately the avoidance of, waste and abuse of federal funds and resources. Common practices that result in waste and abuse include the following:

- Duplicative efforts to satisfy the same objective (in other words, contracting for something without proper planning to make sure a contract is not already in place for similar work);
- Lack of interagency coordination in the pre-award stage to determine whether external agencies have contracts in place that could be leveraged;
- CORs not trained adequately for the contingency environment;



- Unsustainable projects or programs;
- Poor contract oversight and surveillance; and
- Lack of financial and requirements review boards.

Waste and abuse will undercut the mission. The following are some ways CORs can help minimize waste and abuse:

- Participate in joint requirements review boards (JRRBs) and other acquisition planning and oversight processes.
- Obtain ethics training from the Contracting Officer, ethics counselor, the DODIG, and law enforcement personnel.
- Establish strong lines of communication with the Contracting Officer.
- Perform contract oversight and surveillance with integrity.
- Follow local vendor-vetting procedures to ensure the government only contracts with responsible contractors.

## **2.12 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 the government will obtain its supplies and services at the best price available. Government personnel who are associated with the acquisition process have a responsibility to protect its integrity by maintaining fairness in the government's treatment of all firms.

There are numerous times 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. This is a type of OCI.
- **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 the government will ultimately pay a higher price.

## **2.13 CHAPTER 2. KEY POINTS**

1. When performing COR functions an individual must adhere to the highest of ethical standards.

2. Crucial acquisition ethics and integrity topic areas include:
  - a. Restrictions on Obtaining and Disclosing Certain Information;
  - b. Personal and Organizational Conflicts of Interest; and
  - c. Gratuities, Gifts, Anti-Kickback Act.
3. An organizational or personal COI is one in which an individual, because of other activities or relationships with other people, 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.
4. There may be post government employment restrictions that apply to a COR depending on their role in the acquisition process. Talk to your local ethics counselor.
5. This guidebook is NOT to be used as a replacement for ethics training.
6. Contact your Ethics counsel when you have any questions or concerns regarding conflicts of interest. The COR should contact the Contracting Officer on questions or concerns related to the contract.

## **2.14 CHAPTER 2. FOOTNOTES**

1. DoD 5500.7-R, "JER," is available at <https://dodsoco.ogc.osd.mil/Portals/102/550007r.pdf>. DoD Directive 5500.07, Standards of Conduct, can be found at <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodd/550007p.pdf>.
2. Information on Conflicts of Interest can be found at FAR Subpart 3.11 - Preventing Personal Conflicts of Interest for Contractor Employees Performing Acquisition Functions: [https://www.acquisition.gov/far/part-3#FAR\\_Subpart\\_3\\_11](https://www.acquisition.gov/far/part-3#FAR_Subpart_3_11).
3. DoDI 1400.25-Volume 451, DoD Civilian Personnel Management System: Awards. Information on DoDI 1400.25 Volume 451 can be found at [https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/140025/140025\\_vol451.pdf](https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/140025/140025_vol451.pdf).
4. Information on 41 U.S.C. chapter 21, Procurement Integrity, can be found at <https://www.gpo.gov/fdsys/granule/USCODE-2011-title41/USCODE-2011-title41-subtitleI-divsnB-chap21>.
5. See 18 U.S.C. § 201 on bribery. Additional information can be found at <https://www.gpo.gov/fdsys/granule/USCODE-2011-title18/USCODE-2011-title18-partI-chap11-sec201>.
6. See 41 U.S.C § 54 and Articles 92 and 134 of the Uniform Code of Military Justice.

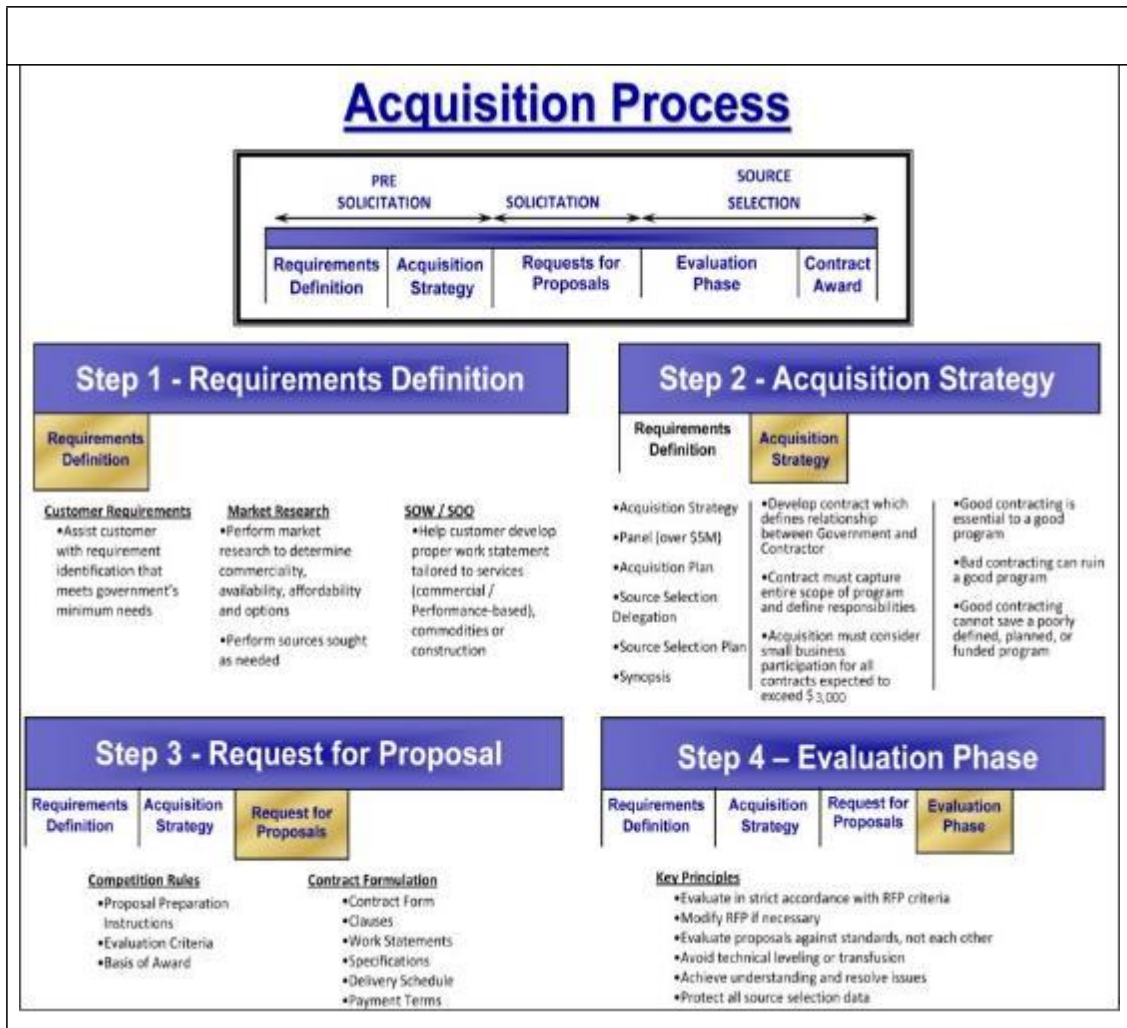
Additional information on 41 U.S.C. § 54, Criminal Penalties, can be found at <https://www.gpo.gov/fdsys/search/pagedetails.action?collectionCode=USCODE&browsePath=Title+41%2FChapter+1%2FSec.+54&granuleId=USCODE-2009-title41-chap1-sec54&packageId=USCODE-2009-title41&collapse=true&fromBrowse=true>.

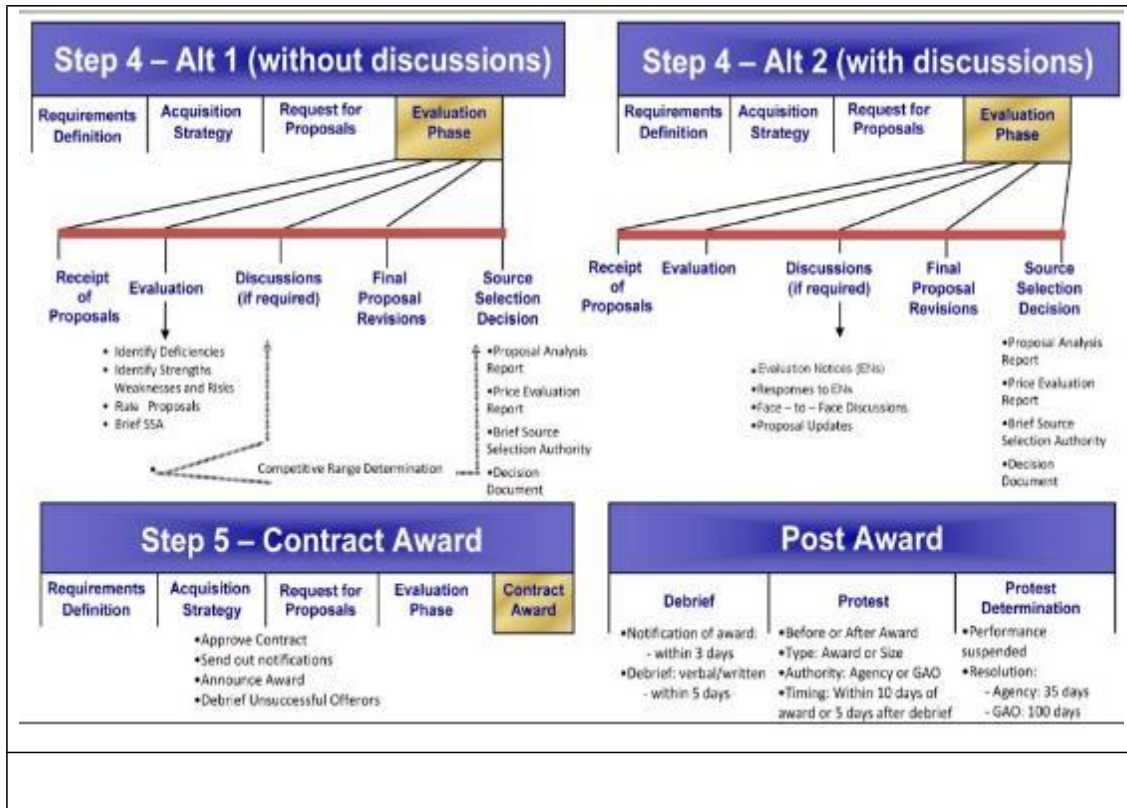
7. See 18 U.S.C. § 201 and Articles 92 and 134 of the Uniform Code of Military Justice. Additional information on 18 U.S.C. § 201, Bribery of Public Officials and Witnesses, can be found at <https://www.gpo.gov/fdsys/granule/USCODE-2011-title18/USCODE-2011-title18-partI-chap11-sec201>.
8. See 5 C.F.R. § 2635.204 for exceptions to the prohibition on accepting gifts. Additional information on 5 C.F.R. § 2635.204 can be found at <https://www.gpo.gov/fdsys/granule/CFR-2012-title5-vol3/CFR-2012-title5-vol3-sec2635-204>. In addition, see FAR 3.203, “Reporting Suspected Violations of the Gratuities Clause,” for reporting procedures at <https://www.acquisition.gov/far/3.203>.

# CHAPTER 3: THE ACQUISITION PROCESS

The acquisition process starts with planning for a requirement and the requirements documentation. The different phases of the acquisition process are shown below in Figure 3-1. CORs are involved in most and sometimes all phases of the acquisition process.

Figure 3-1. Acquisition Process and Activities





### 3.1 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. Follow-on steps focus on: forecasting, planning, defining acquisition requirements; conducting market research, developing and updating acquisition plans and strategies, preparing program plans, cost estimates, schedules, determining priorities; and supporting justifications and authorizations, if required. FAR 7.102(a) requires, “agencies shall perform acquisition planning and conduct market research for all acquisitions.” Contract planning helps anticipate problems, save time, save money, and stay on schedule.

### 3.2 MARKET RESEARCH

FAR Part 10 requires agencies to conduct market research. The results of the market research form the basis for developing new requirement documents and issuing solicitations. Market research is a process used to collect, identify, and analyze what’s available in the marketplace. The ultimate purpose is to determine the most suitable approach to acquire supplies and services, and maximize competition to the maximum extent practicable. The COR may be asked to assist with gathering market research information.

Market 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 for conducting cost analysis.

### **3.3 INDEPENDENT GOVERNMENT PRICE OR COST ESTIMATE (IGCE)**

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, and other direct costs; indirect costs such as labor overhead, material overhead, and general and administrative expenses; and profit or fee (amount above costs incurred to remunerate the contractor for the risks involved in undertaking the contract).

An IGCE is required for every procurement action in excess of the Simplified Acquisition Threshold (SAT) (see FAR 2.101). The IGCE is developed by the COR and/or requiring activity, and used to establish a realistic price/cost for budget and procurement planning 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 procurement.

Acquisition statutes require analysis of price/cost to determine either a reasonable price in the event of a fixed-price type contract or a realistic cost resulting from award of a cost-reimbursement type contract. The results of the 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 proposed price/cost 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 following addresses key elements of an IGCE; it is not intended to cover every possible acquisition. A simple estimate of current market prices or historical prices may be adequate for requirements up to the SAT. Large complicated acquisitions costing millions of dollars will require a more detailed IGCE with dozens of cost elements. 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.

Note: The IGCE is a procurement-sensitive document and should be handled accordingly. Access to the IGCE is on a need-to-know basis. When developing an IGCE, the COR should remember NOT to disclose any specific information on the planned procurement.

The key in developing a reasonable IGCE is to understand the commercial environment. The standards, practices, and procedures that are normally used by industry should be used as the basis for developing the IGCE.

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

- **Cost estimate.** A detailed estimate that requires a breakdown of costs anticipated in performance of the contract. Review of current or previous contract documents and the previous IGCE is usually an excellent place to start your research. These documents may be obtained from the contracting office's supporting contract files.
- **Price estimate.** 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 availability in the marketplace. The Contracting Officer or specialist may help with research for pricing information.

The following sections contain basics on developing an IGCE.

### **3.3.1 COST ESTIMATES**

Costs are generally divided into the following primary cost elements: labor, burden on labor costs, other direct costs, indirect costs (overhead), general and administrative expenses, 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 U.S. Department of Labor (DOL) 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 outside of the CONUS (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 DOL 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 calculated.<sup>1</sup> 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 DOL. 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 \$142,800 (as of 2021).
- **Federal unemployment taxes.** Federal unemployment taxes are paid on the first \$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) website at <https://www.irs.gov/forms-instruction/>.
- **State unemployment taxes.** State unemployment taxes are set by individual state



governments tax rate varies based on the type of business involved. Rates may be available from the states' workers compensation websites. However, if state unemployment tax rates are not available, the COR could use an average rate of 3.0 percent, multiplied by the state established base amount.

- **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 every \$100 of payroll times the state base rate. 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 and labor personnel, pricing experts 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 DCAA, DCMA, or local pricing personnel.

***OTHER DIRECT COSTS (ODCs).*** When estimating ODCs, the emphasis should be on the accuracy of type and quantity required to complete the contracted work. The following are general groupings of ODCs.

- **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 (for local, long distance and overseas), 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), Chapter 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, and are available at: <https://www.gsa.gov/travel/plan-book/per-diem-rates>. 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 websites (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 ODCs 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. These 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 (into "G&A" expenses as discussed below).

***GENERAL AND ADMINISTRATIVE EXPENSES (G&A).*** 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. Also, G&A expenses 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 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 either significant cost or performance risk to the contractor. However, 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. Consult with the Contracting Officer to obtain any historical information from similar purchases that are relevant to the current acquisition.

***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 <https://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 factors.<sup>2</sup> 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 government procurement planning, 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 it accurately identifies the contract 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 ODCs. 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 a 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 and DCAA/DCMA, 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 (quantity discounts), 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 <https://www.gsa.gov/buy-through-us/purchasing-programs/gsa-multiple-award-schedule>.
- **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 website, 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 those with a Government Purchase Card, 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.

### 3.4 THE ACQUISITION TEAM

The Acquisition Team consists of all participants in the acquisition process. No one person has all the necessary skills for successful contract management. It requires a team with each member having specialized expertise and responsibilities. At a minimum, the team will include the requiring activity, contractor, finance, Contracting Officer, legal counsel, COR, and resource manager. In some acquisitions, there may be involvement with quality assurance personnel DCMA,<sup>3</sup> DCAA<sup>4</sup> and others, as applicable.

This section identifies and defines the roles of key acquisition team members and the importance of team cohesion and cooperation to ensure the successful delivery of required supplies and services to meet the warfighter's needs. 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 3-2 shows major team functions during the acquisition process.

Figure 3-2. Acquisition Team Functions

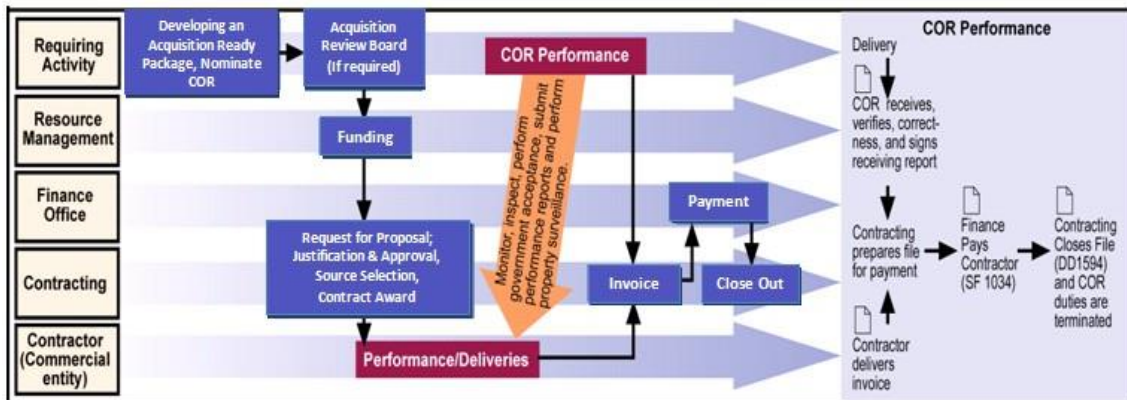


Figure 3-3 lists the acquisition team members involved in the successful completion of the acquisition process.

Figure 3-3. Acquisition Team Members

Program Manager/Requiring Activity/Funding/ Resource Manager
Contracting Officer
Legal Counsel
COR
Quality Administrator
Government Property Administrator
Contractor
DCMA and DCAA

### 3.4.1 PROGRAM MANAGER/REQUIRING ACTIVITY/FUNDING/RESOURCE MANAGER

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, developing the IGCE, managing funds, and tracking costs and obligations. CORs routinely interface between the requiring activity (which may be the COR’s organization), the contractor, and the Contracting Officer.

### 3.4.2 CONTRACTING OFFICER

The Contracting Officer is the only individual authorized to enter into, administer, change, and terminate contracts (see FAR 2.101). Contracting Officers are appointed/designated through a warrant with dollar limitations. Contracting Officers may bind the federal

government only to the extent of the authority delegated to them. The Contracting Officer is the only person authorized to designate/appoint CORs, and identify their roles and responsibilities.

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.

### **3.4.3 LEGAL COUNSEL**

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

### **3.4.4 COR**

As mentioned in Chapter 1, DoDI 5000.72<sup>5</sup> describes and mandates the process for COR nominations. It provides the minimum COR competencies, experience and training which are dependent on the dollar value, complexity of the requirement and contract performance risk. The DoD COR standards are Types A, B and C. The Contracting Officer shall provide the contractor notification of COR appointment. The COR, who has technical expertise related to the requirement, shall monitor the technical or performance aspects of the contract and perform other duties specified by the COR appointment/designation letter. Ideally, the COR participates in pre-award activities so they are familiar with all aspects of the contract.

### **3.4.5 QUALITY PERSONNEL**

Quality control personnel (e.g. quality assurance representative, quality assurance specialists, and quality assurance evaluators) may be assigned to assist with surveillance to ensure the contractor is in compliance with technical contractual requirements. They may be assigned as CORs or help the COR evaluate and document contractor performance, follow-up with the contractor on documented deficiencies, and provide input for performance evaluation reports. A Quality Assurance Representative (QAR) from DCMA may be assigned; especially when “in-process” or final inspections are required inside a contractor’s manufacturing facility.

### **3.4.6 GOVERNMENT PROPERTY ADMINISTRATOR**

Complex property management is performed by an Industrial Property Management Specialist or a Property Administrator in the GS-1103 Series. 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. In order for a COR to be delegated any property administration function that involves: a) reviewing the Contractor’s Property Management System, b) Certifying disposition records, or c) Evaluating contractor reports of theft, loss, etc., the COR must have a legacy DAWIA Level 1 or higher level certification in Industrial Contract Property Management, or a DoD Contracting Professional Certification.

### **3.4.7 CONTRACTOR**

Once the contract is awarded, the contractor becomes a member of the acquisition team.

### **3.4.8 DEFENSE CONTRACT MANAGEMENT AGENCY (DCMA) AND DEFENSE CONTRACT AUDIT AGENCY (DCAA)**

DCMA provides independent input while performing contract oversight when contract administration is delegated to them. Those contract functions that are delegated to DCMA can't be delegated to a COR (see DFARS PGI 201.602-2(d)(v)(B)). DCAA provides audit and financial advisory services to those in DoD who are responsible for acquisition and contract administration.

## **3.5 TYPES OF FUNDING**

There are many different types of funding. The following is not all inclusive.

### **3.5.1 PROCUREMENT APPROPRIATIONS**

Procurement appropriations have a three-year period of availability, and are typically used to finance non-construction investment items, such as the data, factory training, support equipment, end items for weapon systems. These funds are used when an item of equipment or a system has a unit cost of more than \$250,000, an amount known as the “investment-expense threshold.” Historically, this threshold is set in the annual DoD Appropriations Act (e.g., section 9010 of the DoD Appropriations Act, 2020 (division A, P.L. 116-93), and is therefore subject to change. Note, the annual appropriations act gives the Secretary of Defense the authority to raise this threshold to \$500,000 if the Secretary makes a determination that doing so is necessary to meet operational requirements of a Combatant Command engaged in contingency operations overseas.

### **3.5.2 RESEARCH, DEVELOPMENT, TEST AND EVALUATION APPROPRIATIONS (RDT&E)**

RDT&E appropriations have a two-year period of availability, and finance research, development, test and evaluation efforts performed by contractors and government installations to develop equipment, material, or computer application software; its Development Test and Evaluation (DT&E); and its Initial Operational Test and Evaluation (IOT&E). These efforts may include purchases of end items, weapons, equipment, components, and materials as well as performance of services – whatever is necessary to develop and test the system. This applies to automated information systems as well as weapon systems. RDT&E funds are also used to pay the operating costs of dedicated activities engaged in the conduct of Research and Development programs. RDT&E funds are used for both investment-type costs (e.g., sophisticated laboratory test equipment) and expense-type costs (e.g., salaries of civilian employees at R&D-dedicated facilities). There is an RDT&E appropriation for each service (Army, Navy, and Air Force) as well as one to



cover other Defense agencies as well as separate ones for both operational test and developmental test activities. RDT&E funds are not used for contingency operations.

### **3.5.3 OPERATION AND MAINTENANCE APPROPRIATIONS (O&M)**

O&M funds are appropriated annually and generally have a one-year period of availability. O&M funds are used for base operations support, expenses incurred during training exercises, deployments, minor construction projects, and the operation and maintenance of installations. O&M is the most common appropriation used during most contingency operations.

O&M — *not MILCON* — funds pay for maintenance and repair work. “Maintenance” is recurring work to prevent deterioration (to preserve or maintain a facility so that it is usable for its designated purpose). “Repair” is the restoration of a facility so that it can be used for its designated purpose by overhauling, reprocessing, or replacing parts or materials that have deteriorated because of the elements (or wear and tear) and have not been corrected through maintenance.

O&M funds may be used to purchase an item of equipment or a system has a unit cost of less than \$250,000, an amount known as the “investment-expense threshold.” Historically, this threshold is set in the annual DoD Appropriations Act (e.g., section 9010 of the DoD Appropriations Act, 2020 (division A, P.L. 116-93)), and is therefore subject to change. Note too, the annual appropriations act gives the Secretary of Defense the authority to raise this threshold to \$500,000 if the Secretary makes a determination that doing so is necessary to meet operational requirements of a Combatant Command engaged in contingency operations overseas.

### **3.5.4 MILITARY CONSTRUCTION (MILCON) APPROPRIATIONS**

This appropriation is available for five years. Congress appropriates MILCON funds for construction of permanent improvements and does so in annual appropriation acts separate from the annual DoD Appropriations Acts. The term “military construction” includes “any construction, development, conversion, or extension of any kind carried out with respect to a military installation whether to satisfy temporary or permanent requirements, or any acquisition of land or construction of a defense access road.” Construction projects that exceed \$2 million in value require notice to Congress (and the use of “unspecified minor military construction funds, a derivative of MILCON funding), and construction projects that exceed \$6 million in value require specific approval by Congress.

### **3.5.5 NONAPPROPRIATED FUNDS (NAF)**

NAF are derived from sources other than congressional appropriations and come primarily from the sale of goods and services to DoD military and civilian personnel and their family members. They are used to support or provide Moral, Welfare, and Recreation (MWR) programs. NAF are auditable and subject to controlled use (see, 10 U.S.C. § 2783). NAF contracts do not follow the FAR; and, as such, it is not mandatory that a COR be assigned;

however, it is considered a best practice. NAF is the least common appropriation a COR is likely to see in the contingency environment.

## **3.6 FISCAL LAW CONSTRAINTS**

Congress limits the authority of DoD and other Executive Agencies to use appropriated funds. Appropriated funds are subject to three basic fiscal constraints: time, purpose, and amount (detailed in the subsections that follow). Also, see the Financial Management Regulation (FMR) Volume 14, Chapter 2, “Violations of the Anti-Deficiency Act<sup>6</sup> (ADA),” for more information on funding constraints.

### **3.6.1 TIME**

The time constraint includes two major elements:

1. Appropriations have a specified period of availability.
2. Appropriations normally must be used for the needs that arise during the period of availability. The general rule is that current funds must be used for current needs.

#### **3.6.1.1 PERIOD OF AVAILABILITY**

Most appropriations are available for obligation purposes for a finite period. O&M funds are available for one year, RDT&E funds are available for two years, procurement funds for three years, and MILCON funds for five years. If funds are not obligated during their period of availability, they expire and are unavailable for new obligations (such as new contracts or changes outside the scope of an obligation that was made properly within the period of availability). Expired funds may be used to adjust obligations that were made properly within the original period of availability, such as paying for a price increase after an in-scope change to an existing contract, as noted in 31 U.S.C. 1552,<sup>7</sup> but obligation adjustment reporting (OAR) approval is required before executing such contracting action.

#### **3.6.1.2 BONA FIDE NEEDS RULE**

This rule (31 U.S.C. § 1502(a)<sup>8</sup>) is a fiscal law rule. Because appropriations are generally only available for limited periods of time, it becomes important to understand when an agency actually requires a good or service (31 U.S.C. §1552). Until that requirement (need) accrues, no authorization exists to obligate appropriated funds. Once the need accrues, an agency may only obligate appropriated funds that are current at that time.

#### **3.6.1.3 CONTRACTS CROSSING FISCAL YEARS**

The application of the bona fide needs rule may differ for supplies and services that cross fiscal years. DFARS 232.703-3 implements 10 U.S.C § 2410a and states the Contracting Officer may enter into a contract, exercise an option, or place an order under a contract for severable services for a period that begins in one fiscal year and ends in the next, if the period of the contract awarded, option exercised, or order placed does not exceed one year

(10 U.S.C. § 2410a<sup>9</sup>). This authority allows an agency to fund severable service contracts that cross fiscal years with funds that are current at the time of award. Also, FAR 32.703-3 allows for a contract for non-severable services to cross fiscal years when it calls for an end product that cannot feasibly be subdivided for separate performance in each fiscal year (consultant services or generation of a report, for example).

Using the option example, the Contracting Officer, pursuant to FAR 32.703-2, may initiate a contract action properly chargeable to funds of the new fiscal year before the funds are available, provided the contract includes the FAR clause 52.232-18, "Availability of Funds," and is for O&M and continuing services (*e.g.*, rentals, utilities, and supply items not financed by stock funds) necessary for normal operations and for which Congress previously had consistently appropriated funds, unless specific statutory authority exists permitting applicability to other requirements.

### **3.6.1.4 SERVICES**

The application of the bona fide needs rule differs when services cross fiscal years. The difference is based on whether the services are considered severable or non-severable and whether annual, multiple-year, or no-year funding is being used.

***Severable services*** are continuing and recurring in nature, such as lawn maintenance, janitorial services, or security services. Services are considered severable if they can be separated into components that independently provide value to meet customer needs. The benefits are realized when the services are provided, even if the contract is not performed to completion. Most base operations support services provided by a contractor supporting a deployed unit are considered severable. According to 10 U.S.C. § 2410a, funding is permitted for a contract (or other agreement) for severable services using an annual appropriation for a period of as much as 12 months when the contract is awarded, even if the period of performance begins in one fiscal year and continues into a subsequent one (see DFARS 232.703-3).

***Nonseverable services*** represent a single undertaking that cannot feasibly be subdivided. If the services produce a single or unified outcome, product, or report, they are considered nonseverable. In most cases, contracts or orders for nonseverable services must be funded in full at the time of award with a then-current appropriation. Examples include studies culminating in the delivery of a final report, an engine overhaul, and the painting of a building. The lead-time exception can apply to the start date of service-type contracts. In certain complex service contracts, there is a need for a transition period for the new contractor to ramp-up services while the previous contractor scales back so there is no lapse in critical support. This may result in the required award of the contract to be awarded and funded in the previous fiscal year. Another example could be where the requirements are not on a continuous need, but result from non-scheduled events such as accident responses or accident investigations requiring specialized personnel. This may require the awarding of a contract for these hard to fill skilled individuals to be retained in advance of the actual need, in order to have the capability when needed for the specified period.

### 3.6.1.5 SUPPLIES

The bona fide need for supplies normally arises when the government actually uses the items. Thus, a command can use a currently available appropriation to procure computers needed and purchased in the current fiscal year. Conversely, commands may not use current-year funds for computers not needed until the next fiscal year. Year-end spending for computers that will be delivered within a reasonable time after the start of the new fiscal year is proper so long as a current need is documented. There are lead-time and stock-level exceptions to the general rule governing the purchase of supplies. For example, a supply item, may have a long lead time to produce (several months to over a year) or may be in such high demand that the item must be purchased in the current fiscal year in order to have by the date needed in the next fiscal year. Another example, if the item is so rarely produced or in such low demand, a supplier may require multiple orders by separate customers to produce the item. This could require ordering the item well in advance of the required need date due to the long lead time of the item.

#### **Real-World Example:**

A Commander wanted to buy a dozen computers for an anticipated morale, welfare, and recreation (MWR) facility. Work on the facility would not start until the following fiscal year. The Commander pressed the Contracting Officer to use current fiscal year funds and begin the contracting process to obligate the funding by the September 30 fiscal year obligation deadline. The Commander told the Contracting Officer, "We could have Skype MWR facilities set up for next year, which will boost morale during the contingency operation. We have money for the computers now and we can have them within two weeks, so let's use it!"

#### **The Bottom Line:**

This is a common violation by well-meaning personnel at the end of any given fiscal year. This example does not meet the bona fide need rule because the computers would be purchased in one fiscal year for a need that arises much later in the following fiscal year, if not the year after. The lead time of the facility completion far exceeds that of the computers which can be delivered within two weeks of ordering.

### 3.6.1.6 CONSTRUCTION

Construction contracts obligated and awarded late in a fiscal year (in September, for example) must have a performance commencement date within 90 days of award. For example, if a contract was awarded on September 15 with funds from that fiscal year, performance must commence and invoices must be submitted by December 14 of the new fiscal year. Typically, commencement of work can take the form of the contractor's ordering materials and delivering them to the government and the government's

receiving/taking possession of materials that will remain in its possession rather than being stored by contractors at their business locations, land surveys, groundbreaking activities, and other such functions. The key to defining and identifying the performance of work is to include the elements of work on a progress schedule that will serve as the means of allocating a percentage of work performed and invoiced. DAU has a construction contracting course which is a good source of additional information.

### 3.6.2 PURPOSE

In 31 U.S.C. § 1301(a),<sup>11</sup> commonly referred to as the Purpose Statute, the expenditure of funds on objects other than those specified in the appropriations is prohibited. Funds must be expended for the purpose established by Congress. However, the Purpose Statute does not require every expenditure to be expressly specified in an appropriations act. That is not possible or feasible. Congress, by implication, authorizes an agency to incur expenses that are necessary and incident to the accomplishment of an appropriations purpose. A three-pronged test, known as the “Necessary Expense Doctrine,” states that expenditures must have the following characteristics:

- ***A logical relation to the appropriation.*** The expenditure must be for a particular statutory purpose or must be necessary and incident to proper execution of the general purpose of the appropriation. A necessary expense will contribute materially to the effective accomplishment of an authorized function. For example, you may not fund a vehicle lease contract with MILCON funds.
- ***No prohibition by law.*** A rationale for the necessity of a certain expenditure to carry out the mission of the agency is not enough to overcome a statutory prohibition. In addition, agencies may presume that restrictions in an appropriations act are effective only for the fiscal year covered unless the legislation clearly indicates that the restriction is permanent. For example, Section 2842(b) of the National Defense Authorization Act for FY 2014<sup>12</sup> prohibited the use of appropriated funds to design, procure, prepare, install, or maintain an authorized Navy diver’s memorial.
- ***No provision otherwise.*** Regardless of a logical relationship between the appropriation and the expense, if another specific appropriation applies to the given purpose of the expense, it must be used.

### 3.6.3 AMOUNT

Of paramount concern is ensuring that DoD complies with the ADA<sup>13</sup> which prohibits DoD entities from obligating or expending federal funds in advance of receiving an appropriation (or in amounts that exceed an appropriation or an apportionment). It is a criminal act to knowingly enter into or authorize government contracts in the absence of sufficient government funds to pay for them. In addition, 31 U.S.C. 1342<sup>14</sup> prohibits accepting voluntary services and employing personal services that exceed authorized amounts. A knowing and willful violation of 31 U.S.C. 1342 is punishable by a fine of up to \$5,000, two years in prison, or both.

Common problems that trigger ADA violations include the following:

- Without statutory authority, obligating current-year funds (awarding a contract) for the bona fide need of subsequent fiscal years (such as when activities stockpile supply items in excess of those required to maintain normal inventory levels).
- Exceeding a statutory limit (such as funding a construction project in excess of established thresholds).
- Obligating funds for purposes prohibited by annual or permanent legislation.
- Obligating funds for a purpose for which Congress has not appropriated funds (such as improper funding of personal expenses).

**Real-World Example:**

During Haiti relief operations, U.S. Army South (ARSOUTH) received humanitarian assistance funds to reimburse the O&M accounts of military units performing humanitarian relief activities. The Army reported that an ADA violation occurred when, on the basis of unsupported credit obligations, ARSOUTH exceeded its real allocation.

**The Bottom Line:**

Even when supporting contingency, humanitarian, peacekeeping, or other emergency acquisitions, Contracting Officers and supporting acquisition personnel must understand the importance of appropriation law. While Contracting Officers must remain flexible and often must find creative ways to meet mission objectives, they must always do so legally. Sometimes the best intentions are still not legal. "Battlefield constraints" in a contingency environment are no excuse for sidestepping legal requirements. Contracting Officers must use critical thinking skills to find legal ways to accomplish their mission.

### 3.7 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 (stakeholders, requiring activities, program managers, etc.);
- Informed decisions by source selection officials;
- Sound planning by the source selection team; and
- Efficient execution.

Note: The COR must bring all issues and performance problems to the attention of the Contracting Officer. The COR does NOT have the authority to negotiate changes to any part of the contract, including schedule and cost.

### 3.8 CHAPTER 3. KEY POINTS

1. 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. CORs are involved in most and sometimes all phases of the acquisition process.
2. The acquisition team consists of all participants in the acquisition process, including, but not limited to:
  - a. Contracting Officer;
  - b. Requiring activity;
  - c. Resource manager/Comptroller;
  - d. Legal counsel;
  - e. COR;
  - f. Quality personnel;
  - g. Property administrator; and
  - h. DCMA/DCAA for administration and auditing
3. Appropriated funds are subject to three basic fiscal constraints:
  - a. **Time.** Current fiscal year funds must be used for current needs.
  - b. **Purpose.** Funds must be expended for the purpose established by Congress.
  - c. **Amount.** The ADA prohibits obligating or spending money before it is appropriated, obligating or expending funds in excess of a specific appropriation, accepting voluntary services, and employing personal services in excess of authorized amounts.

### 3.9 CHAPTER 3. FOOTNOTES

1. The BLS publishes the Employer Cost of Employee Compensation (ECEC) at <https://www.bls.gov/ncs/ect/>. This website publishes current information and provides a statistical basis for the numbers.
2. IHS Global Insights escalation factors can be found at <https://ihsmarkit.com/industry/economics-country-risk.html>.
3. Information on DCMA can be found at <https://www.dcmamilitary.com/>.

4. Information on DCAA can be found at <https://www.dcaa.mil/>.
5. DoDI 5000.72, “DoD Standard for Contracting Officer’s Representative (COR) Certification,” can be found at <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/500072p.pdf>.
6. FMR, Volume 14, Chapter 2, “Violations of the Anti-Deficiency Act,” can be found at [https://comptroller.defense.gov/Portals/45/documents/fmr/current/14/14\\_02.pdf](https://comptroller.defense.gov/Portals/45/documents/fmr/current/14/14_02.pdf).
7. Information on the Period of Availability can be found at <https://www.govinfo.gov/app/details/USCODE-2010-title31/USCODE-2010-title31-subtitleII-chap15-subchapIV-sec1552>.
8. Information on the Bona Fide Needs rule can be found at <https://www.govinfo.gov/app/details/USCODE-2005-title31/USCODE-2005-title31-subtitleII-chap15-subchapI-sec1502>.
9. Information on Contracts Crossing Fiscal Years and Severable Services can be found at <https://www.gpo.gov/fdsys/granule/USCODE-2011-title10/USCODE-2011-title10-subtitleA-partIV-chap141-sec2410a/content-detail.html>.
10. Information on 31 U.S.C. § 1301 can be found at <https://www.govinfo.gov/app/details/USCODE-2010-title31/USCODE-2010-title31-subtitleII-chap13-subchapI-sec1301>.
11. Information on Section 2842(b) of the FY14 National Defense Authorization Act can be found at <https://www.congress.gov/bill/113th-congress/house-bill/1960/text>.
12. Information on the ADA can be found in the DoD 7000.14-R Financial Management Regulation Volume 14, Chapter 2. See: [https://comptroller.defense.gov/Portals/45/documents/fmr/current/14/14\\_02.pdf](https://comptroller.defense.gov/Portals/45/documents/fmr/current/14/14_02.pdf).
13. Information on 31 U.S.C. § 1342 can be found at <https://www.gpo.gov/fdsys/granule/USCODE-2011-title31/USCODE-2011-title31-subtitleII-chap13-subchapIII-sec1342>.



# CHAPTER 4: COR RESPONSIBILITIES

General information about COR responsibilities are provided in:

- FAR 1.602, Contracting Officers
- DFARS 201.602, Contracting Officers
- DFARS PGI 201.602-2, Responsibilities

For DoD, a more comprehensive list of potential COR duties and responsibilities is found at:

- DoDI 5000.72, Enclosure 6<sup>1</sup>

The Contracting Officer specifies the COR’s duties and responsibilities in the letter of COR appointment/designation. If the Contracting Officer determines a COR must file an OGE Form 450, a copy of the appointment letter must be sent to the serving ethics counselor’s office to ensure the COR completes the OGE Form 450 within the required timeline. 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 responsibilities and contact the Contracting Officer about any doubts as to the correct course of action to be taken. Bottom line, there should be open communication between the Contracting Officer and the COR. When in doubt, the COR should always contact the Contracting Officer for guidance and direction. This guidebook does NOT replace the COR’s communication with the Contracting Officer.

The COR must understand the limits of their authority. Although the Contracting Officer delegates certain responsibilities to the COR, authority to legally bind the government remains with the Contracting Officer. A list of general COR, requiring activity and Contracting Officer responsibilities is provided in table 4-1 below. Remember, CORs do not have the authority to:

<b>CORS DO NOT HAVE THE AUTHORITY TO:</b>
• 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.
• Negotiate ANY change to the terms of the contract. Any change to price, quantity or delivery schedule or location MUST be provided to the Contracting Officer.

*Table 4-1. 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 input	Responsible/Assist	Responsible

## 4.1 PRE-AWARD DUTIES

One of the key pre-award duties in which the COR may be involved is documenting requirements. The requirements package (or purchase request (PR) package) is critical to the success of an acquisition. A key element of the requirements package is the PR document. This document:

- Is an official request for action,
- Authorizes the contracting process to begin,

- Provides the core information of the solicitation document and resulting contract, and
- Provides funding and financial officer certification as to the availability of funds.

The requirements package **MAY** also 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 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 items.<sup>2</sup>
- Do not split requirements in order to fall under dollar thresholds (i.e., dividing a known quantity or failing to consolidate a known quantity of an acquisition for the purpose of evading competitive bidding requirements.)

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

- Conducting market research (see Chapter 3).
- 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 (see Chapter 3).
- Advising the Contracting Officer if the item required is foreign made.

- Preparing and submitting purchase requests.
- Drafting a QASP and checklist.
- Evaluating proposals from vendors/contractors.

## **4.2 POST-AWARD DUTIES**

The COR's responsibilities begin with understanding their letter of designation/appointment, the contract and establishing and maintaining the COR surveillance file in SPM. Monitoring the contract includes such activities as evaluating and maintaining data, documenting performance, documenting inspection and acceptance, and reviewing/verification of invoices. The COR responsibilities end at contract close-out or when the Contracting Officer terminates the COR delegation. All of these are discussed in more detail in later chapters.

## **4.3 UNDERSTANDING THE CONTRACT**

The COR must:

- Understand the requirements of the contract — know the government and contractor's responsibilities. Questions about content or interpretation of the contract terms and conditions must be directed to the Contracting Officer.
- Attend 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 both parties.
- Develop quality assurance surveillance records, including surveillance checklists and schedules, and related files.
- Have ready access to the contract and modifications, and all technical publications and regulations referenced in the contract.

A more detailed discussion on understanding how to read and understand your contract is found in Chapter 5.

The COR should maintain good records not only for the next COR, but also to document contractor performance under the contract. Details on COR files are found in Chapter 7.

## **4.4 MONITORING CONTRACT PERFORMANCE**

Roles, responsibilities, tips and best practices for monitoring contractor performance are found in chapters 7, 8, 9 and 10.

## **4.5 INSPECT AND ACCEPT/REJECT DELIVERABLES**

Roles, responsibilities, tips and best practices for conducting inspection and acceptance are found in chapters 7, 8, 9 and 10.

## **4.6 PROPRIETARY AND CLASSIFIED INFORMATION**

The COR may be tasked to:

- Protect contractor proprietary information (e.g., information relating to designs, toolings, schematics, circuits, techniques, processes, methods used in production).
- Ensure 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 restriction on the data 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.

## **4.7 PROTECTING SENSITIVE OR GOVERNMENT INFORMATION**

The COR should take care not to discuss acquisition or sensitive information (e.g. , personally identifiable information or controlled unclassified information) in areas that are not secure (e.g., hallways, elevators, workspaces with contractors) 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.

## **4.8 CHAPTER 4. KEY POINTS**

1. CORs roles and responsibilities are provided in their COR designation/appointment memo. All CORs must understand the limitations on their authority.
2. CORs need to understand the contract they are overseeing.
3. Monitoring contractor performance is key to successful contract execution.
4. CORs need to be careful in performing their duties in order to ensure there is not the appearance of preference for one contractor that may result in harming another contractor.
5. 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.
6. There should always be open communication between the Contracting Officer and the COR. If the contractor questions any part of the contract, and the item isn't provided in the terms of the contract, the COR MUST notify the Contracting Officer.

## **4.9 CHAPTER 4. FOOTNOTES**

1. DoDI 5000.72, “DoD Standard for Contracting Officer’s Representative (COR) Certification,” can be found at <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/500072p.pdf>.
2. DoDI 5000.64, “Accountability and Management of DoD Equipment & Other Accountable Property,” can be found at <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/500064p.pdf>.

# CHAPTER 5: CONTRACT STRUCTURE AND TYPES

## 5.1 CONTRACT STRUCTURES

Federal 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 arranged (see Figure 5-1 below).

*Figure 5-1. UCF Contract Structure*

UNIFORM CONTRACT FORMAT (See FAR 15.204-1 – Table 15-1 and 14.201-1 – Table 14-1)	
<b>Part I -- The Schedule</b> A - Solicitation/contract form B - Supplies or services and prices/costs C - Description/specifications/statement of work D - Packaging and marking	<b>Part I -- The Schedule Continued</b> E - Inspection and acceptance F - Deliveries or performance. G - Contract administration data H - Special contract requirements.
<b>Part II -- Contract Clauses</b> I - Contract clauses.	
<b>Part III -- List of Documents, Exhibits, and Other Attachments</b> J - List of attachments.	
<b>Part IV -- Representations and Instructions.</b> K - Representations, certifications, and other statements of offerors or respondents/Bidders. L - Instructions, conditions, and notices to offerors or respondents/Bidders. M - Evaluation factors for award.	

### 5.1.1 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 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 before acceptance by the Government. 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 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.

### **5.1.2 UCF PART II — CONTRACT CLAUSES**

Although it is commonly viewed as standard information, Part II, **Section I**, of the contract contains FAR and DFARS 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.



### **5.1.3 UCF PART III — LIST OF DOCUMENTS, EXHIBITS, AND OTHER ATTACHMENTS**

*Section J*, “List of Documents, Exhibits, and Other Attachments.” The following are the most common exhibits and attachments:

- SOO/SOW/PWS, if not under Section C;
- GFP inventory;
- Quality Assurance Surveillance Plan (QASP);
- Contract Data Requirements List (CDRLs, DD Form 1423s);
- Security requirements (DD Form 254);
- Ordering provisions/plan; and
- Award/incentive fee plan.

### **5.1.4 UCF PART IV — REPRESENTATIONS AND INSTRUCTIONS**

Part IV, which appears only in the solicitation document 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.

### **5.1.5 CONTRACT STRUCTURE — SOLICITATIONS/CONTRACTS FOR COMMERCIAL ITEMS**

Solicitations/contracts for commercial items are more streamlined than those for non-commercial items. The commercial item solicitation/contract format consists of the sections provided in Figure 5-2 below.

Figure 5-2. Commercial Contract Structure

12.303 – CONTRACT FORMAT (COMMERCIAL)
(a) Standard Form (SF) 1449;
(b) Continuation of any block from SF 1449, such as -- (1) Block 10 if a price evaluation adjustment for small disadvantaged business concerns is applicable (the contracting officer shall indicate the percentage(s) and applicable line item(s)), if an incentive subcontracting clause is used (the contracting officer shall indicate the applicable percentage), or if set-aside for emerging small businesses; (2) Block 18B for remittance address; (3) Block 19 for contract line item numbers; (4) Block 20 - 24 for schedule of supplies/services; or (5) Block 25 for accounting data; (should include invoicing and acceptance information/COR name)
(c) Contract clauses -- (1) <a href="#">52.212-4</a> , Contract Terms and Conditions -- Commercial Items, by reference (see SF 1449 block 27a); (2) Any addendum to <a href="#">52.212-4</a> ; and (3) <a href="#">52.212-5</a> , Contract Terms and Conditions Required to Implement Statutes and Executive orders;
(d) Any contract documents, exhibits or attachments; and
(e) Solicitation provisions -- (1) <a href="#">52.212-1</a> , Instructions to Offerors -- Commercial Items, by reference (see SF 1449, Block 27a); (2) Any addendum to <a href="#">52.212-1</a> ; (3) <a href="#">52.212-2</a> , Evaluation -- Commercial Items, or other description of evaluation factors for award, if used; and (4) <a href="#">52.212-3</a> , Offeror Representations and Certifications -- Commercial Items.

Note: For many CORs, the Commercial Item Contract Format may be the most common structure you will see. If you know how to read the UCF, you will know how to read a commercial contract. Many contract writing systems in use in DoD have merged the two formats.

## 5.2 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.

Note: Task and Delivery Orders will be issued/awarded using the SF 1449 or DD Form 1155.

### 5.3 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.

### 5.4 CONTRACT NUMBERING

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 (PIID)). FAR 4.1603(a) and DFARS 204.1601 provides guidance on contract numbers. A contract number consists of 13 alphanumeric characters grouped to convey certain information as discussed under the PIIN section below.

#### 5.4.1 PROCUREMENT INSTRUMENT IDENTIFICATION NUMBERS (PIIN)

DFARS PGI Subpart 204.16 prescribes the policies and procedures for assigning numbers to all solicitations, contracts, and related instruments. The purpose of this number is to aid in tracking all actions (See Figure 5-3 for an example of a PIIN).

N00062	09	D	0001
DoDACC	Last two digits of FY	Instrument Type	Serial #

Figure 5-3. Sample PIIN

- **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.
- **Positions 7 through 8.** The seventh and eighth positions are the last two digits of the fiscal year in which the PIIN 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, or “F”— task / delivery orders issued under indefinite-delivery contracts (e.g., indefinite-

delivery definite-quantity (IDIQ) contracts, Federal Supply Schedules (FSS), Governmentwide Acquisition Contracts (GWACs)).

- **Positions 10 through 13.** Four-digit serial number assigned by the contracting activity. Numbers are assigned sequentially.

## 5.5 CATEGORIES OF CONTRACTS

CORs deal with contracts for supplies, services, and construction. 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 or weapon systems).
- **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 8 and 9 address COR duties specific to service and construction contracts, respectively.

## 5.6 CONTRACT TYPES

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.

A wide selection of contract types is available to the government and contractors to provide needed flexibility in acquiring the large variety and volume of supplies and services required by agencies. Table 5-3 highlights the two main types of contracts: fixed-price and cost-reimbursement.

Table 5-3. Contract Type Families

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
Fixed Price Award Fee	Time and material
	Labor hour

### 5.6.1 FIXED PRICE CONTRACTS

When the government has a specific, well-defined requirement (e.g., 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.

### 5.6.2 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 5-4 compares the contract type characteristics.

Figure 5-4. Firm-Fixed-Price versus Cost-Reimbursable Contracts

	<b>Cost Reimbursable</b>	<b>Fixed Price</b>
<b>Promise Risk</b>	Best Effort	Shall Deliver
<b>Contractor Cost Risk</b>	Low	High
<b>Government Cost Risk</b>	High	Low
<b>Cash Flow Risk</b>	As incurred	Upon Delivery
<b>Performance Payment</b>	Only if incentives	Milestone Met
<b>Gov't Surveillance effort</b>	Maximum	Minimum
<b>Fee Profit</b>	Fee Limits	No Limits

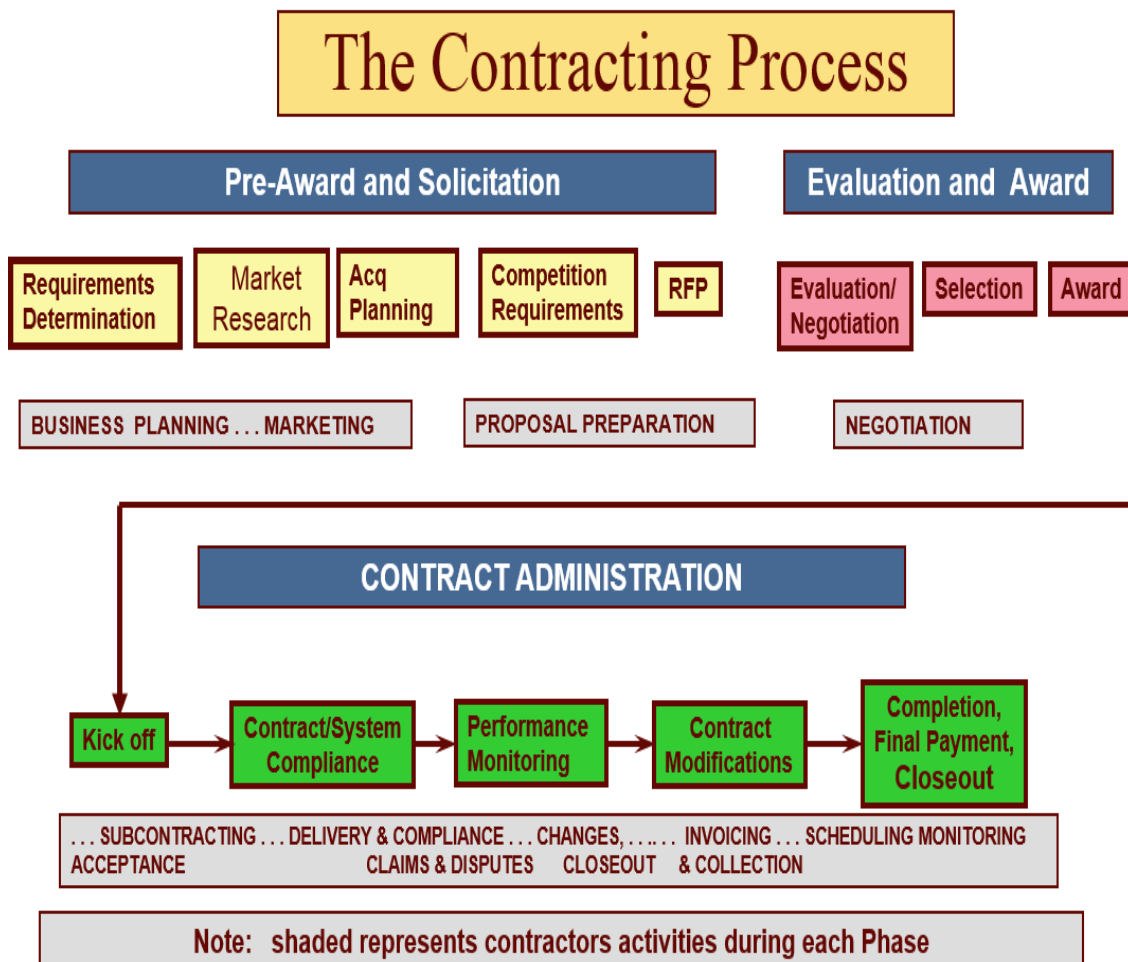
## 5.7 CHAPTER 5. KEY POINTS

1. 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.
2. Commercial contract format is also very prevalent in DoD. It is a more streamlined format than the UCF.
3. Government uses different contract types depending on risk allocation.
4. Performance risk is higher for the contractor under a firm-fixed price contract, while cost reimbursable contracts place a higher cost risk to the government.

# CHAPTER 6: COMMON CONTRACT ADMINISTRATION ACTIVITIES

As covered in Chapter 3, government contracting is carried out in three stages or phases: 1) Contract Planning (Pre-Award and Solicitation), 2) Contract Formation (Evaluation and Award), and 3) Contract Management (Contract Administration). Figure 6-1 shows the major phases of this 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 COR appointment/designation letter, a nominee may be asked by their management to provide technical expertise in the first phase (pre-award/solicitation), and the second phase (evaluation/award). The third phase, contract administration, begins the official duties of a COR and is the focus of this chapter.

Figure 6-1. 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, final payment is made, any disputes are resolved, and the contract is closed out.

The focus of contract administration is on obtaining supplies and/or services that meet the contract specified quantity, quality, schedule, and price/cost requirements. Trained CORs are critical. CORs ensure contractors comply with all contract requirements and that overall performance is commensurate with the level of payments made throughout the life of the contract.

In this chapter, we will focus on the most common contract administration tasks or responsibilities likely to be delegated to the COR. These include:

- Getting started (post award kick-off);
- Inspection;
- Acceptance;
- Payment Process;
- Documenting Past Performance; and
- Contract Closeout.

The chapter will conclude with a brief description of contract modifications and the COR's role in certain contract modification scenarios.

## **6.1 POST-AWARD ORIENTATION (KICK-OFF)**

Long considered a best practice for complex contracts or those with extended periods of performance, the government will often conduct a post award orientation, or kick-off meeting with the contractor. The goal is to ensure both the contractor and the government understand the following:

- Contract terms and conditions;
- Security requirements;
- Inspection, acceptance, and invoicing procedures;
- Authority, responsibilities, and limitations of the COR; and
- Any other topic(s) or requirement(s) (e.g. risk mitigation and communications), as appropriate.

The goal of this meeting is for all interested parties, including the COR, to 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. Remember, however, the post-award orientation is no substitute for the contractor to either fully understand the requirement, or is to be used to alter the final agreement arrived at in any negotiations leading to contract award.



The orientation should be held as soon as possible after contract award; and, if possible, prior to commencement of work. Attendees should include anyone who has a vested interest in the successful completion of the contract. It's a good idea to include the entire acquisition team, including DCMA and DCAA. It 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. The 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 the Contracting Officer is the only individual authorized to make changes to the contract.

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 meeting. Such a letter should identify the government representative responsible for administering the contract and cite any unusual or significant contract requirements.

## **6.2 INSPECTION**

The definition of inspection is the “examining and testing supplies or services (including, when appropriate, raw materials, components, and intermediate assemblies, quality of work in progress, etc.) to determine whether they conform to contract requirements.”

Conducting inspection is where things can be complex, the methods vary considerably depending on what the purpose of the contract is. A more detailed discussion on inspection and performance monitoring, including tips and techniques, is found in Chapters 7, 8 and 9.

The contractor is expected to deliver supplies and services meeting all contractual requirements. The government has the right to inspect all materials and workmanship at any time or place where work on the contract is being performed -- that is the basis of the contract inspection clauses which state that inspections may:

- Occur at any time prior to acceptance;
- Be announced or unannounced;
- Not unduly delay work; and
- Not include directions that would change the contract.

The government's role in inspection is communicated by the quality assurance requirements incorporated into the contract. Figure 6.2 below shows the different inspection clauses.

Figure 6.2 Contract Inspection/Quality Assurance Clauses

Commercial Items 52.212-4(a)	Inspection by Contractor 52.246-1	Standard inspection requirements	Higher level contract quality requirements – 52.246-11
<ul style="list-style-type: none"> <li>Gov't reserves the right to inspect items tendered</li> <li>Post acceptance rights</li> </ul>	<ul style="list-style-type: none"> <li>At or below the SAT</li> <li>Gov't does not approve inspection system or review records</li> </ul>	<ul style="list-style-type: none"> <li>Gov't approves contractor inspection system and record access</li> <li>Provisions/Clauses: 52.246-2 through 52.246-9</li> </ul>	<ul style="list-style-type: none"> <li>Gov't involved in inspection throughout contract</li> <li>ISO, ANSI, ASME, MIL-Q etc.</li> <li>See 46.202-4(b)</li> </ul>

### 6.3 ACCEPTANCE

Acceptance is defined as the “acknowledgement that the supplies and/or services conform to the contract quality and quantity requirements.” It signifies the government has done a reasonable inspection of the supplies or services, and is ready to accept the supplies or services.

Acceptance is done by an *authorized representative* of the government. Upon acceptance, the government assumes ownership of supplies tendered or approves specific services rendered as partial or complete performance of the contract.

Acceptance is the responsibility of the Contracting Officer and is an inherently governmental function. This responsibility may be, and often is, delegated to the COR. Acceptance can take place before, at the time of, or after delivery. Final acceptance by the Contracting Officer of supplies received or services rendered concludes contractor performance, 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: 1) execution of an acceptance certificate on an inspection or receiving report form (i.e. DD Form 250); or 2) on a commercial shipping document/packing list. Another common way acceptance is accomplished in DoD is in the Wide Area WorkFlow (WAWF) module in PIEE, which is discussed below.

There may be exceptions to final acceptance, which include:

- Use of the commercial contract format;
- Latent defects;\* and

- Fraud, or 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 or non-conformance.

## **6.4 DOCUMENTING ACCEPTANCE**

CORs are often the designated officials authorized to accept supplies or services for the government. Acceptance is important because this is what authorizes the contractor to be paid. Acceptance may be accomplished in one of four ways:

- COR electronic signature in the WAWF system;
- COR signature on the DD Form 250;\*
- COR signature on the DD Form 1155; or
- COR signature on the SF 1449.

\* Note: WAWF is the electronic/virtual process version of the DD Form 250.

## **6.5 WIDE AREA WORKFLOW (WAWF)**

The PIEE, as discussed in Chapter 1, is an information technology platform of enterprise services, capabilities, and systems grouped into modules with the objective of seamlessly supporting the end-to-end Procure-to-Pay (P2P) business processes for the DoD. PIEE provides users with the access to many of the critical enterprise capabilities used every day by hundreds of thousands of DoD users spanning all Services, Defense Agencies, and Industry such as the Department's e-Invoicing, contracts repository, and contract surveillance tools.

PIEE's Account Management and Access capability allows users to seamlessly access modules that are hosted both internal and external to the environment. The Modules enable the users to perform specific tasks required by the P2P process such as electronic invoicing. PIEE creates a centralized location for all DoD and industry users to access enterprise capabilities required to operate the DoD's P2P lifecycle.

With few exceptions, all contract invoicing must be done electronically to the maximum extent practicable. The WAWF module in PIEE<sup>1</sup> is found at <https://piee.eb.mil/> and is a secure, web-based system for contractors and authorized DoD users to generate, capture, and process receipt and payment documents. It enables electronic submission of contractor invoices as well as documentation of government inspection and acceptance.

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 training may be required as part of the COR appointment. This training will cover use of WAWF.

## 6.6 INVOICE AND PAYMENT

Cash flow is the lifeblood of any company, especially small businesses. Contractors need to be paid for the supplies and services they have provided so they can pay their own bills and employees. It also encourages them to do business with the federal government. Congress, recognizing the importance of timely payments, passed the Prompt Payment Act. The Act specifies that, if the federal 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. Inaccurate/invalid invoices must be returned within seven (7) days from receipt.

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.

In reviewing a 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;
- Inspection/acceptance;
- SOO/SOW/PWS; and
- Period of performance/delivery dates.

## 6.7 CONTENTS OF A VALID INVOICE

According to the FAR (see FAR 32.905), the following are the minimum requirements for an invoice to be valid:

- Complete contract number, including delivery/task order number (if applicable);
- Name and address of contractor;
- Invoice date;
- Invoice number;
- CLIN(s) Information;
  - Description of services/supplies provided;
  - Quantity of services/supplies provided;
  - Unit of measure – as specified in the “Schedule of Supplies”;
  - Manufacturer’s part number (as applicable), as specified in the contract; and
  - Unit price and extended total price, for each CLIN;
- Invoice total;
- Shipment number and date of shipment (as applicable);
- Payment terms – Discount for prompt payment terms (as applicable);
- Bill of lading number and weight of shipment will be shown for shipments on government bills of lading (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, Administrative Contracting Officer’s (ACO) approval, etc.;
- Registration in the System for Award Management (SAM), when applicable;
- Taxpayer Identification Number (TIN), if not required to be registered in the SAM (TIN only if required by agency procedures);
- Electronic funds transfer (EFT)/banking or remittance information only if required by agency procedures, and if EFT banking information is not required on the invoice then correct EFT banking information;
- Name and address of contractor official whom payment is to be sent (must be the same as the contract or proper notice of assignment);
- Name (where practicable), title, phone number and mailing address of the person to notify for a defective invoice (as applicable); and
- Any other contract directed requirements.

The System for Award Management (SAM – at <https://sam.gov/content/home>) is a federal government run site that serves as a central registration point for government contractors.

## 6.7.1 VOUCHER AND INVOICE REVIEW

The Contracting Officer is responsible for monitoring invoice payments according to the terms and conditions of the contract as well as local policies and guidance. CORs can assist the Contracting Officer by performing detailed reviews of contractor invoices to ensure the work performed by the contractor was billed corrected and accepted by the government in line with contract requirements. Additionally, CORs may be given the responsibility to **approve** invoices on fixed-price contracts. However, for cost-reimbursement, time-and-materials, and labor-hour contracts, CORs can review - but **not\*** approve - vouchers or invoices (see DoDI 5000.72). For other than fixed-price contracts, DCAA has the sole authority for verifying claimed costs and approving interim payment requests. In these instances, only the ACO can approve final payment requests.

\* When using WAWF, it often looks and feels like the COR is “approving” a voucher or invoice on other than fixed-price type contracts. This is because the e-mail notifications and screen shots are almost identical to that for a fixed-price contract invoice review. Contracting Officers and CORs should verify the WAWF set-up is correct for the contract or task order.

Note: CORs must understand local finance office procedures and requirements for proper invoicing. Ask the contracting office for additional details. When in doubt, contact your Contracting Officer.

COR approval of an 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.

The following are examples of problems which may be found during invoice or voucher review:

<b>Potential Problems Found During Invoice/Voucher Review:</b>
• 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;
• Prompt pay discounts not offered;
• Inflated/unrealistic labor hours;

<ul style="list-style-type: none"> <li>• Unsupported ODCs, e.g., poor descriptions that cannot be tied to specific tasks;</li> </ul>
<ul style="list-style-type: none"> <li>• Unauthorized overtime charges;</li> </ul>
<ul style="list-style-type: none"> <li>• Incorrect/unrealistic labor category; and/or</li> </ul>
<ul style="list-style-type: none"> <li>• Management hours disproportionate to worker hours.</li> </ul>

Note: Should a COR find an error during their invoice review, REJECT the invoice. The contractor is responsible for submitting invoices without errors. You should notify the Contracting Officer if the contractor is consistently submitting invoices with errors. Keep in mind that a COR can request additional information to support an invoice/voucher. You shouldn't be guessing on what is provided in an invoice/voucher.

**Interim Payments.** Interim payment requests on complex contracts such as the contingency Logistics Civil Augmentation Program (LOGCAP) and the Air Force Contract Augmentation Program (AFCAP) contracts can be especially challenging to review, and may require a team approach. In contingency environments, in-country oversight personnel are in the best position to augment prepayment reviews. The DCAA has the sole authority for verifying claimed costs and approving interim payment requests. Only the Contracting Officer can approve final payment requests. It is imperative the COR establish strong working relationships with the Contracting Officer and DCAA to assist in their review.

**Interim Vouchers.** The COR's review of interim vouchers must be in accordance with the contract/task or delivery order, and their COR letter of appointment/designation, and does not replace the voucher review/approval performed by DCAA. Best practices of a COR review include (but are not limited to):

- Ensuring costs in the voucher/invoice are consistent with the COR's records of monitoring contract performance. If not, the COR should request supporting information from the contractor (e.g. Contracting Officer written approvals prior to incurring travel or overtime).
- Ensuring labor hours worked equal labor hours billed/invoiced. This may be done by reviewing time cards or sign-in/out sheets. If you don't get any additional information with the invoice/voucher, contact the Contracting Officer.
- Verifying materials and services were required by the contract and delivered to/accepted by the government. This may be done by obtaining copies of invoices, if not included in the voucher.
- If vouchering problems are noted, communicating the issues to DCAA through the Contracting Officer so the issues can be considered during the auditor's voucher approval process.

CORs should ensure the **Payment Approval/Recommendation Checklist** in Appendix D.10 is completed prior to DCAA and the Contracting Officer's approval/rejection of the

voucher/invoice. This checklist should be filed with the COR's invoice/voucher supporting documentation in their contract file.

The Appendix D.10 checklist should be used to ensure that a voucher/invoice is approved only after the consideration of all relevant factors. The checklist is annotated for use with cost or fixed-price type contracts, and for use when WAWF is/is not available.

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 that work is progressing according to the contract. Therefore, CORs must ensure that the government is receiving the services or supplies for which it is paying. CORs must monitor contractor performance by reviewing monthly reports, making onsite visits, and performing 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 during the COR's review of vouchers, the COR must communicate the issues to the DCAA through the Contracting Officer so that the issues can be appropriately considered during the auditor's voucher approval process.

COR approval of a voucher/invoice implies that, to the best of the COR's knowledge, the nature, type and quality of effort (or the materials being expended) are in accordance 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.

Typical problems that can be found on vouchers/invoices include the following:

- Inflated or unrealistic labor hours,
- Unsupported ODCs (e.g., poor descriptions that cannot be tied to specific tasks),
- Unauthorized overtime charges,
- Incorrect or unrealistic labor category,
- Management hours that are disproportionate to the hours of the personnel performing the work,
- Duplicate invoice or wrong invoice,



- Mathematical errors,
- Wrong contract number or task order number,
- Wrong price (e.g., proposed versus negotiated),
- Wrong CLIN or sub-CLIN,
- No POC for defective invoices,
- No date,
- Incorrect or missing shipment information,
- No remittance address, and
- Prompt pay discounts that are not offered.

## **6.7.2 FINAL THOUGHTS ON INVOICE/VOUCHER REVIEW AND PAYMENT**

**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 **must** consider whether or not OT was authorized by the contract.

**Interest Penalties.** When delegated, 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) the 30th day after government acceptance of supplies delivered or services performed. Specific due dates may be stated in each individual contract.

## **6.8 CONTRACT NONCONFORMANCE**

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

### **6.8.1 ACCEPTANCE OF NONCONFORMING SUPPLIES OR SERVICES**

Only the Contracting Officer can authorize acceptance of nonconforming supplies or services. The government may deal with nonconformance 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 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. The COR may have to provide the Contracting Officer a recommendation to accept the work.
- The third potential action for the Contracting Officer is to reject the noncompliant supplies and services, and terminate the contract.

## **6.8.2 REMEDIES FOR NONCONFORMANCE**

Common remedies for nonconformance include the following:

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

The COR's key role with regard to remedies is monitoring contractor performance. 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 potential remedies to the Contracting Officer.

## **6.9 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 other unanticipated events may occur. A contract modification is a written change in the terms of the contract. Only a Contracting Officer, acting within the scope of his or her authority, can execute contract modifications on behalf of the government.

### **6.9.1 REASONS FOR CONTRACT MODIFICATIONS**

A contract may need to be modified to accomplish the following:

- Correct a mistake,
- Add or remove funding,
- Exercise an option,
- Change a delivery date or period of performance (POP),
- 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.

## 6.9.2 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.
- **Bilateral modification.** A bilateral contract modification is signed by both parties to the contract, i.e., 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 reflects other agreements of both of the parties that modify the terms and conditions of contracts.

## 6.9.3 CONTRACT CHANGES CLAUSES – THE “CHANGE ORDER”

Another authority the Contracting Officer may use to modify (change) the contract is through the changes clause (FAR clauses 52.243-1 through 52.243-4). The changes clause distinguishes government contracts from contracts in the private and commercial sector. 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). Note, this authority does not exist when the government is using the commercial contract format (SF 1449), which is subject to the changes revisions contained in FAR 52.212-4, “Contract Terms and Conditions – Commercial Items.”

## 6.9.4 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 there is a defined quantity, quantity range, or additional requirement for the supplies or services beyond what is being purchased on the basic contract. The Contracting Officer can exercise options either unilaterally or bilaterally. If bilaterally, the Contracting Officer needs to establish option prices for the option items, and then exercise those options bilaterally (via negotiation). Contract options may be exercised unilaterally in the following circumstances:

- After the contractor is notified of the government's intent to exercise the option;
- Only by the Contracting Officer;
- When the option fulfills an existing need and 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.

Typically, the COR's role with options is:

- Make the need for them known prior to developing the solicitation.
- Inform the Contracting Officer of the government's desire to exercise an option.
- Assist the Contracting Officer by assessing the available options, determining the continuing need, determining whether exercising the option is in the government's best interests, and conducting market research on current pricing.

### **6.9.5 TECHNICAL EVALUATION**

Many contract modifications require analysis and negotiations before they can be executed. Upon receipt of a contractor's proposal for the modification, 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. It is not uncommon for the author(s) of the technical evaluation to support the Contracting Officer during negotiations.

When performing and preparing a technical evaluation, the following should be considered:

- Determine the technical validity of the change;
- Determine if the contractor's proposed solution is appropriate and necessary;
- Assess cost and delivery implications versus technical merit (impact);
- Review the proposed basis of estimate;
- Review labor type, profile, and amount proposed; and
- Analyze ODCs (travel, bill of materials estimates etc.) for adequacy.

### **6.10 CONSTRUCTIVE CHANGES AND UNAUTHORIZED COMMITMENTS**

Sometimes a contract is changed improperly or incorrectly. This can happen in one of two ways — by a constructive change or by an unauthorized commitment.

***CONSTRUCTIVE CHANGE.*** A constructive change is an oral or written act, or failure to act, by a government official (in position of authority) that is construed by the contractor as having the same effect as a written change order. These acts can contractually bind the government if the result is that the contractor performs work beyond that which is required by the contract. For there to be a constructive change, there has to be an existing contract. 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 or overzealous inspection,
- Failure to recognize government-caused delays,
- Improper technical direction, or
- Acceleration of contract performance.

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 in contract performance that have occurred;
- Preparing a technical analysis/evaluation, if the contractor submits a proposal based on the change; and
- Assisting the Contracting Officer with negotiations.

***UNAUTHORIZED COMMITMENTS.*** In federal procurement, the government may be legally bound only by the actions of personnel with actual authority — the Contracting Officer. Government employees who are not Contracting Officers DO NOT have the authority to bind the government contractually or authorize changes to the contract.

The FAR 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 U.S. government” (FAR 1.602-3). Unauthorized commitments violate federal law, federal regulations, and the government-wide standards of conduct for federal employees.

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.

### **6.10.1 RATIFICATION OF UNAUTHORIZED COMMITMENTS**

In some cases, an unauthorized commitment may be subsequently adopted, or “ratified.” Ratification is a time-consuming process, which, among other things, involves 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. An unauthorized commitment could potentially be a violation of the ADA and subject to fines and other penalties. If the price is determined not to be fair and reasonable, then the price must be renegotiated.

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.

## **6.10.2 RATIFICATION PROCESS**

The Ratification process is clearly spelled out in the FAR (see FAR 1.602-3). Many agencies have additional guidance and requirements as do individual installations. The first step in the ratification process involves the individual responsible for making the unauthorized commitment drafting 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:

- Supplies or services have been accepted by the government,
- The government received benefit from performance of the unauthorized commitment,
- 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 resulting contract would otherwise be proper (e.g., funds were available at the time of the unauthorized commitment, are still available at the time of ratification, and the requirement is legitimate) if made by an appropriate Contracting Officer,
- The Contracting Officer reviewing the unauthorized commitment determines the price to be fair and reasonable, and
- The Contracting Officer recommends payment of the unauthorized commitment and legal counsel concurs in the recommendation.

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); and
- The contract price will be fair and reasonable.

The ratifying official (i.e., the head of the contracting activity unless a higher level official is designated by the agency) shall review the file, and if ratification is proper, sign the determination and findings authorizing the Contracting Officer to ratify the unauthorized commitment.

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.

## 6.11 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.

In many situations, a certified property administrator (PA), industrial property management specialist (IPMS), or plant clearance officer (PLCO) acts on behalf of the Contracting Officer to oversee government property in the possession of a contractor. In these instances, a COR may be assigned to assist with managing GFP used by the contractor and in this role, the COR often acts as a communication conduit between the Contracting Officer, government property personnel and the contractor. This does not mean that all contracts with government property and no property administrator requires the COR to fulfill that function as the function may be accomplished by the Contracting Officer or cognizant ACO.

If a certified property administrator is **not** assigned, a COR may be assigned to assist the Contracting Officer with managing GFP used by the contractor. This is often the case for post, camps and station or related base support contracts. In this instance, the COR’s duties include the following functions:

- Ensuring the contractor is provided GFP identified in the GFP Attachment (found in the PIEE GFP Module) to the contract;
- Alerting the Contracting Officer of any delays of GFP being provided to the contractor or other instances where GFP related issues may impact contractor performance or delivery schedule;
- Following up on government direction for the contractor to use the PIEE GFP Module to report receipt, transfer, loss, theft, or damage of GFP during contract performance to

the Contracting Officer; and,

- Seek confirmation that the contractor utilized the PIEE GFP Module's Plant Clearance functionality to request disposition instructions and complied with the instructions given by the Contracting Officer via the GFP Module for the disposal of government property.

In the event a COR is assigned GFP management functions that involve property in the possession of the contractor outside of a government installation, including at the contractor's plant, the COR must have a Contracting Professional Certification, a legacy DAWIA Level I or higher level certification in Industrial Contract Property Management, the DoD Industrial Contract Property Management credential (CIND 001), or a combination of DAU training courses such as Contracting for the Rest of Us (CLC 011), Physical Inventories (CLM 037), Managing Government Property in the Possession of Contractors (CON 0510), Contract Property Fundamentals (IND 105), or other training in order to perform specific functions of property administration as specified by the Contracting Officer. . Specific functions may include:

- Reviewing the contractor property management procedures and advising the Contracting Officer of deficiencies and recommendations;
- Ensuring the contractor uses the PIEE GFP Module to report receipt, transfer, loss, theft, or damage of GFP during contract performance to the Contracting Officer; and
- Ensuring the contractor utilized the PIEE GFP Module's Plant Clearance functionality to request disposition instructions and complied with the instructions given by the Contracting Officer via the GFP Module for the disposal of government property.

### **6.11.1 GOVERNMENT PROPERTY RESPONSIBILITIES**

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

### **6.11.2 REPORTING, REUTILIZATION, AND DISPOSAL OF GOVERNMENT PROPERTY (ALSO KNOWN AS PLANT CLEARANCE)**

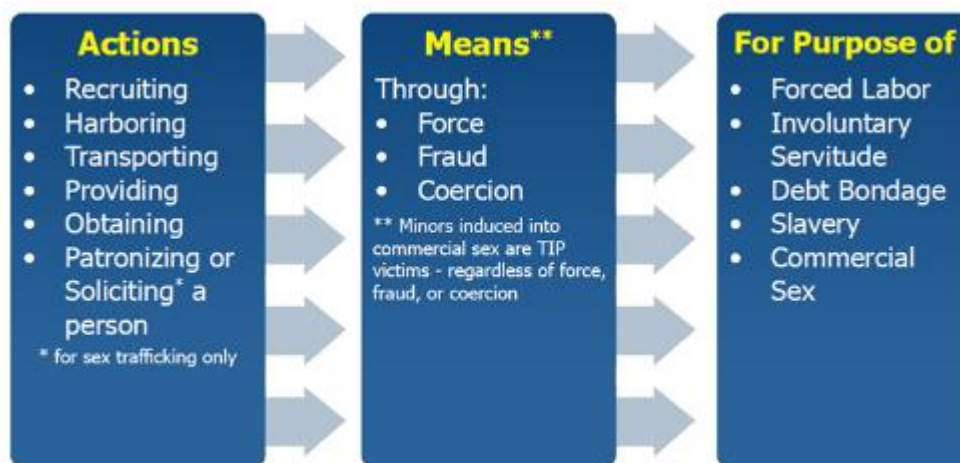
Typically, upon contract closeout, government property is transferred, abandoned, destroyed, donated or sold to relieve the contractor of stewardship responsibility. Determining the correct disposition procedures for government property that will not be transferred to a follow on contract takes a great 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.



## 6.12 COMBATING TRAFFICKING IN PERSONS (CTIP)

Trafficking in persons (TIP), also called human trafficking, is a crime and a human rights abuse in the United States and in most countries. Human trafficking involves the exploitation of men, women, and children for sex and/or labor through force, fraud, and coercion. For example, in labor trafficking, traffickers control victims' freedom of movement, when and where they will work, and what pay, if any, they will receive. Similarly, in sex trafficking, victims are compelled to provide commercial sex acts. One important difference in sex trafficking is that minors induced to provide commercial sex are *per se* victims of trafficking – no force, fraud, or coercion is required.

Below is a visual depiction of the elements of trafficking in persons as defined in the Trafficking Victims Protection Act (TVPA) of 2000 (22 U.S.C. §7102 (11) and (12)):



The Department of Defense (DoD) supports the United States Government's zero-tolerance policy regarding United States Government (USG) employees and contractor personnel engaging in any form of this criminal behavior. DoD has a particular duty to act, because human trafficking is a direct threat to our national security. [Federal Acquisition Regulation \(FAR\) 52.222-50](#) – Combating Trafficking in Persons is a mandatory clause on all contracts. As the largest single purchaser of goods and services in the world, the USG bears a responsibility to ensure that taxpayer dollars do not contribute to TIP. Title 17 of the National Defense Authorization Act (NDAA) for FY 2013 (codified in Chapter 78 of Title 22 in the United States Code) and [FAR Subpart 22.17](#) require Federal contractors to take action to prevent human trafficking in their supply chains and take remedial steps if TIP is identified.

CORs are a first line of defense in the battle against human trafficking. CORs must be aware of how contractors treat their employees, including understanding the following **prohibited activities** outlined in [FAR Subpart 22.17](#):

- Destroying, concealing, confiscating, or otherwise denying access by an employee to his or her identity or immigration documents;
- Charging employees recruitment fees;

- Using misleading or fraudulent recruitment practices;
- Providing or arranging housing that fails to meet the host country housing and safety standards, if housing is provided;
- Failing to provide return transportation costs upon the end of employment, except in special cases;
- Using recruiters that do not comply with local labor laws in the country where the recruitment takes place; and
- Failing to provide an employment contract, recruitment agreement, or other required work document in writing, if required by law or contract. Such a written document must be in a language the employee understands.

**Remedies.** If a contractor fails to comply with the TIP clause in the contract, that contractor can be subject to one or more of the following disciplinary actions, as determined by the contracting officer:

- Requiring the contractor to remove a contractor employee (or employees) from the performance of the contract
- Requiring the Contractor to terminate a subcontract
- Suspension of contract payments until the Contractor has taken appropriate remedial action
- Loss of award fee for the performance period in which the Government identified contractor noncompliance
- Declining to exercise available options under the contract
- Termination of the contract for default, in accordance with the termination clause of the contract
- Suspension or debarment

The following four-tier approach helps to combat human trafficking:

- **Education and awareness.** Every COR must complete the specialized training on Combating Trafficking in Persons (CTIP) for Acquisition Personnel upon appointment as a COR and then once every three years thereafter. Note: Section 3.4.b of the CTIP DoDI (2200.01) states: “the CTIP acquisition training utilizes the term “Defense acquisition professionals” to represent all DoD employees who are responsible for monitoring contracts, grants, and cooperative agreements and includes, but is not limited to, those employees who align to these 16 functional areas listed” who may perform the COR function. The training can be accessed at <https://ctip.defense.gov/Training/>.
- **Policy and enforcement.** DoD CTIP policy is provided in [DoDI 2200.01](#). The contracting officer must ensure that all contracts contain FAR Clause 52.222-50 and that the contractor, contractor personnel, subcontractor, and subcontractor personnel comply with the clause requirements.
- **Inspection.** The COR must report any suspected violations of FAR Subpart 22.17 or DFARS Subpart 222.17 to the contracting officer. A CTIP Checklist example is provided in Appendix D.7.

- **Reporting.** The contracting officer must promptly notify the DoD Office of Inspector General (OIG), advise command channels of the allegations and, if appropriate, involve law enforcement officials with jurisdiction over the alleged offense, of any credible information (as defined in 22 U.S.C. § 7102 (6)) received regarding a TIP violation. If the allegations are substantiated in a final determination by an authorized agency official, the contracting officer must enter the violation in the Federal Awardee Performance and Integrity Information System (FAPIIS), as required by FAR 42.1503(b)(2)(vi).

After notifying the DoD OIG and command channels, contracting officers can also subsequently report CTIP violations either:

- Online at the [CTIP PMO website](#) or email at [dodctip@mail.mil](mailto:dodctip@mail.mil)
- [Online at the Defense Pricing and Contracting /Contract Policy \(DPC/CP\) e-mail address: osd.pentagon.ousd-a-s.mbx.asda-dp-c-contractpolicy@mail.mil](#)
- Online via the [National Human Trafficking Hotline website](#).
- By telephone to the National Human Trafficking Hotline at 888-373-7888.

Notes:

- The United States Government has a zero tolerance policy for human trafficking.
- The COR must report any suspected violations to the Contracting Officer (see FAR Subpart 22.17 and DFARS Subpart 222.17).
- If a COR finds suspected incidents of trafficking in persons during any phase of the contract (pre award; post award; during contract performance; or contract closeout), they should forward all reported or suspected violations to the Contracting Officer immediately.
- CORs must take the CTIP Acquisition Personnel Training upon their appointment and once every three years thereafter.

## 6.13 CONTRACT TERMINATIONS

There are two types of contract termination — termination for convenience of the government and termination for cause/default.

### 6.13.1 TERMINATION FOR CONVENIENCE OF THE GOVERNMENT

Under the Termination for Convenience clause, the government has the right to terminate (end) 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:

1. If the supply or service is no longer needed;
2. The contract is no longer affordable;
3. It is impossible for the contractor to perform as specified in the contract (through no fault of the contractor); or
4. 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 costs 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 the allowable and allocable costs for work completed.

### **6.13.2 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.

A termination for cause/default is improper if the required notice and opportunity to "cure" the situation is not given to the contractor. 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 following are examples of an excusable failure to perform:

- Acts of God;
- Acts of a public enemy;
- Acts of government in either its sovereign or contractual capacity;
- Natural disasters such as fires, floods, and earthquakes;
- Epidemics;
- Quarantine restrictions; or
- Strikes, freight embargoes, or similar work stoppages.

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.

## **6.14 FORMAL PAST PERFORMANCE DOCUMENTATION**

The government relies on past performance data to assist with making contract award decisions. The COR may be tasked with collecting and reporting contractor performance information. The COR should be fair in assigning a performance rating and should provide a narrative explaining the reasons for the rating. Contractor performance information is

entered into the Contractor Performance Assessment Reporting System (CPARS),<sup>2</sup> at specified intervals, when contractor performance warrants reporting, and at the end of the contract.

The government's CPARS assessment should reflect the contractor's performance as documented during the monitoring process. Chapter 7, under "Assessing Contractor Performance" identifies and defines the formal categories for which the contractor's performance is assessed.

## **6.15 CONTRACT CLOSEOUT**

A contract is not completed until it has been closed. 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. The Contracting Officer, with the assistance of the COR, must ensure the following actions are accomplished:

- Services have been rendered.
- Items of supply 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.
- COR surveillance file is accurate and complete in SPM before establishing the close out date.

## 6.16 DOS AND DON'TS: CONTRACT ADMINISTRATION

CONTRACT ADMINISTRATION	
DOS	DON'TS
<ul style="list-style-type: none"> <li>• Remember the COR is an agent of the U.S. government, with only the authority delegated by the Contracting Officer.</li> <li>• Know what the COR's specific contract administration responsibilities and duties are (e.g. inspection, acceptance, invoice approval)</li> <li>• Get the names of contractor personnel authorized to represent the contractor.</li> <li>• Find out the specific authority of contractor personnel. Does the person you are dealing with have the authority to obligate the contractor?</li> <li>• See that all government approvals or consents are timely.</li> </ul>	<ul style="list-style-type: none"> <li>• Accept less than what is required by the contract.</li> <li>• 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.</li> <li>• Hold up payment unless performance is deficient or defective.</li> <li>• Accept nonconforming supplies or services.</li> <li>• Make any change, modification, deletions, or additions to the contract requirements.</li> <li>• Automatically consider all contractor claims unreasonable. Be fair and impartial.</li> </ul>

## 6.17 CHAPTER 6. KEY POINTS

1. Contract administration is the primary focus area where a COR will generally spend most of their time.
2. The three (3) most common contract administration activities delegated to a COR are inspection, acceptance, and invoice/voucher review.
3. After contract award, a best practice is to conduct a post-award orientation (kick-off) meeting. The meeting will highlight roles, responsibilities and expectations of all the interested parties, including the COR(s). A kick-off meeting is often instrumental in contract success.
4. Monitoring contractor performance is a critical element of contract oversight and ensuring compliance with the contract terms and conditions.
5. Clear and concise communications with the contractor and the Contracting Officer is critical. Key concepts a COR should be familiar with:
  - a. **Inspection.** The government reserves the right to inspect contractor deliverables and performance. The manner in which inspection occurs depends on many variables including what is being procured.

- b. **Acceptance.** Acceptance is an inherently governmental function and signifies the government has conducted a reasonable inspection and that goods and services conform to contract requirements. Acceptance allows the contractor to be paid.
  - c. **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.
  - d. WAWF is used by DoD for the inspection/acceptance and payment process.
  - e. Contract Modifications.
    - i. Unilateral change – Many FAR/DFARS clauses (including the Changes clause) allow the Contracting Officer to issue a modification without first requesting a proposal from the contractor. This change is ONLY signed by the government.
    - ii. Bilateral changes – When a unilateral change is not possible or not authorized, the government will request a proposal from the contractor so a supplemental agreement can be negotiated and signed by the contractor and the government.
  - f. The Option Clause – Many contracts for recurring requirements may contain an option clause which allows the government the ability to order additional quantities of supplies or additional period of services beyond those in the initial contract.
  - g. Technical Evaluation – The COR may be requested to assist in validating proposed contract changes, assist in developing an IGCE, and evaluating the contractor’s proposed prices/costs for reasonableness.
6. A COR needs to be careful that contracts are not changed incorrectly.
- a. 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.
  - b. Unauthorized Commitments – Where a government representative who does not have the authority binds the government to a commitment.
  - c. Ratification – The process of correcting an unauthorized commitment.
7. Contract Closeout – Although a Contracting Officer’s responsibility, COR assistance is often required. The COR’s role may involve determining if excess funds need to be de-obligated, ensuring performance is complete, and that all property and sensitive/classified information is accounted for.
8. The COR may report on contractor performance so it can be captured in the CPARS.

## 6.18 CHAPTER 6. FOOTNOTES

1. The WAWF module in PIEE is found at <https://piee.eb.mil/>.

2. Information on CPARS can be found at <https://www.cpars.gov/>.



# **CHAPTER 7:**

## **MONITORING AND DOCUMENTING CONTRACTOR PERFORMANCE**

To properly monitor contractor performance, the COR must know and understand the requirements of the contract, as specified in the PWS/SOW/SOO of the contract. The COR should have a copy of the PWS/SOW/SOO readily available to check the contractor is verifying and enforcing contract requirements. Interpreting contract requirements can be difficult if the PWS/SOW/SOO is poorly written or vague. With the proper PWS/SOW/SOO and performance-based metrics (see Chapter 8), 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 in accordance with contract requirements. The requiring activity should not attempt to interpret the PWS/SOW/SOO 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.

### **7.1 ASSESSING CONTRACTOR PROGRESS**

The contract may require the contractor to provide Progress Reports. Contractor progress reports often provide the first early warning of potential changes, delays, or other problems in contractor performance. These reports summarize progress since the preceding 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.

The COR should verify the progress report is factually accurate and complete and should check the 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, etc.) 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 their COR file.

Note: A COR should not always expect a one-on-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.

## **7.2 IDENTIFYING AND VERIFYING DELAYS OR FAILURE TO MAKE PROGRESS**

A delay has occurred if the contractor fails to meet the delivery or performance schedule identified 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 the performance or delivery schedule was not previously extended by the Contracting Officer. The COR may be able to confirm a suspected delay by doing the following:

- Obtaining feedback from other government personnel who may be responsible for schedule monitoring.
- Reviewing the notice and supporting documents from the contractor regarding the delay.
- Asking the Contracting Officer if they approved any type of schedule delay or extended period of performance.
- Asking the contractor why the schedule delay or extended period of performance is not contradictory with what the contract stipulates.

### **7.3 NOTIFYING THE CONTRACTING OFFICER OF THE TECHNICAL IMPACT OF THE 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 if/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).

### **7.4 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 the delay was unreasonable; or
- Demonstrate 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.

### **7.5 ASSESSING AND DOCUMENTING CONTRACTOR PERFORMANCE**

Just like schedule and timeliness, the contractor has the primary responsibility for the quantity and quality of supplies or services rendered. However, the COR must assess the contractor's performance to ensure 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 routinely monitor the contractor's performance, both formally and informally, throughout the contract. The amount and frequency of COR monitoring will depend on:

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

The following are key assessment factors:

- ***Invoicing/Cost Control.*** Is the contractor effective in forecasting, managing, and controlling contract/order cost and keep within the total estimated cost? Were billings current, accurate and complete?
- ***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 of performance and deliverables.*** Do the supplies or services meet the requirements? Do they conform to the contract specifications, standards, PWS/SOW/SOO, 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?
- ***Customer 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?

Note: The key assessment factors above are the same factors used in the Contractor Performance Assessment Reporting System (CPARS) – <https://www.cpars.gov>.

Documenting how well a contractor performs on a contract is an important part of the performance assessment process. Most CORs will have to submit routine and recurring

reports on contractor performance status to the Contracting Officer using the SPM module. 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 reporting period;
- performance based;
- specific, fully detailed, and stand alone;
- based on information gathered during audits, when possible; and
- supported by facts and observations.

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.

The 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 16 at 2130 hours, 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 2016, 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 2016, an audit revealed that three employees operating 9K forklifts did not have a forklift driver’s 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.

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

## **7.6 ACCEPTABLE INSPECTION METHODS**

The government has the right to inspect all contract deliverables and services 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 services, the COR can monitor contractor performance using a variety of inspection and surveillance 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 the inspection methods do not interfere with the contractor’s progress. The following briefly describe the most common inspection/surveillance methods and their use.

### **7.6.1 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 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 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 or service outcome. 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 the results can be projected to the lot, without inspecting the entire lot.

## **7.6.2 100 PERCENT INSPECTION**

This inspection method is often too expensive and time consuming for most recurring contracts. As the name implies, all outputs 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, safety, and sometimes security.

## **7.6.3 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 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.

## **7.6.4 CUSTOMER/USER FEEDBACK**

This method requires documentation and is not usually a primary surveillance method. However, customer/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 and/or the customer. Once the COR receives a complaint, they should investigate and, if valid, will document it as a contractor performance deficiency.

## **7.7 REMEDIES FOR INADEQUATE CONTRACT PERFORMANCE**

The COR should promptly notify the Contracting Officer whenever unsatisfactory contract performance is identified (i.e. supplies or services do not meet requirements) so remedial steps can be taken. The COR 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.

The COR may approve a contractor's proposed course of action to repair or correct deficiencies if authorized by the Contracting Officer to reject supplies or services. However, only the Contracting Officer may approve a course of action that changes 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.

As discussed in Chapter 6, the Contracting Officer has several remedies available to address items, services or unsatisfactory performance that does 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. 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 supplies and services, and the validity of the contractor's rebuttal.

## **7.8 DISPUTES**

Disagreements 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. Disagreements may also occur when there is a significant difference of opinion in the progress or quality of the contractor's performance between the government and the contractor.

When these disagreements, or issues, cannot be resolved, they may turn into a formal dispute. All contracts contain a Disputes clause (FAR 52.233-1) that presents the procedures to be followed in cases of unresolved disagreements between the contractor 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.

CORs should be prepared to submit various forms of documentation and correspondence developed during the course of a contract. 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.

## **7.9 COR SURVEILLANCE FILE IN SURVEILLANCE AND PERFORMANCE MONITORING (SPM)**

Almost all CORs are required to maintain a surveillance file, as previously described in Chapter 4. The SPM module provides DoD CORs with an electronic, enterprise capability for the COR surveillance file. They contain records relating to the COR's duties during the life of the contract, especially the monitoring and surveillance of contractor performance. The contents of the COR surveillance file will vary according to the size and complexity of the contract.

**Note: The COR surveillance file in SPM 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 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. The following are key procedures related to the COR file:

- As a matter of practice, prepare a memorandum for record as soon as possible after significant meetings or discussions with the contractor or the Contracting Officer, including telephone conversations and trip reports using the SPM module.
- Clearly index all documents and file them by category and order in a suitable folder within SPM. Examples of document categories are memoranda for record, inspections, trip reports, minutes of meetings, and conferences.
- Using the Contracting Officer Communication Module (CCM) or SPM within PIEE, forward any correspondence received from the contractor to the Contracting Officer, and retain a copy in the COR surveillance file within SPM.
- Send copies of all correspondence the COR prepares to the Contracting Officer using either CCM or SPM.
- Mark the contract number clearly on all documents and file folders.
- Make the COR surveillance 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 surveillance file. At a minimum, the Contracting Officer should review the COR surveillance file on a yearly basis and annotate the file with the results of the review to include findings 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), ensure the COR surveillance file is captured by the Contracting Officer for retention in the official contract file.
- Upon termination of a COR appointment/designation, promptly transfer the COR surveillance files to the successor COR, or forward them to the Contracting Officer, as instructed by the Contracting Officer.

Note: CORs may be required to maintain their documents and reports in the COR surveillance file within SPM.

## 7.10 DOS AND DON'TS: CONTRACT MONITORING

CONTRACT MONITORING	
DO	DON'T
<ul style="list-style-type: none"> <li>• 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.</li> <li>• Read progress reports and immediately act on problems they reveal.</li> <li>• See that the contractor complies with requirements of the contract.</li> <li>• Immediately contact the Contracting Officer when deficiencies or delinquencies are noted.</li> <li>• Use the contractor's invoices to help monitor technical progress.</li> </ul>	<ul style="list-style-type: none"> <li>• Assume that "no news is good news."</li> <li>• Wait until delivery is due or overdue to check progress.</li> <li>• Take action against a delinquent contractor on your own. Work through the Contracting Officer.</li> <li>• Order, request, or even suggest the contractor do work that is not called for by the contract.</li> <li>• Act as if you are the contractor's personnel manager. The COR reviews and approves or disapproves; the contractor supervises contractor personnel.</li> <li>• Assume the contractor billings are correct. Errors are made. Once you find an error, immediately reject the invoice so the contractor can make the necessary corrections.</li> </ul>

## 7.11 CHAPTER 7. KEY POINTS

1. To properly monitor the contractor, the COR must know and understand the contract requirements, as specified in the SOO/SOW/PWS. The COR monitors the contractor based on these contract requirements and according to the COR designation letter from the Contracting Officer. If there is a QASP, use it.

2. The Contracting Officer — and only the Contracting Officer — has authority to change the contract.
3. When monitoring performance, progress is one primary area to evaluate. Progress reports, when applicable to a contract, can be instrumental in monitoring contractor performance, especially as a way to gauge early warning of potential changes, delays, or other problems in contractor performance.
4. A COR can monitor contractor performance using a variety of inspection methods:
  - a. Random sampling or stratified sampling.
  - b. 100 percent inspection for stringent performance requirements concerning health and safety.
  - c. Periodic inspection or planned sampling to evaluate tasks selected on other than a 100 percent inspection or random basis.
  - d. In some instances, user or customer feedback may be a valuable supplement to more systematic surveillance methods.
5. The COR is required to notify the Contracting Officer about **any** delay in the delivery or performance schedule and in instances where quality of performance is in question.
6. Documenting how well a contractor performs on a contract is an important part of the performance assessment process. Using CPARS evaluation categories is considered a best practice during normal, recurring contract surveillance and monitoring by the COR.
7. The Contracting Officer has several remedies available to address supplies 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.
8. 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.
9. The DoD promotes the U.S. government’s “zero-tolerance” policy on human trafficking. A COR’s surveillance may be instrumental in ensuring contractors and contractor personnel are not engaging in trafficking in persons.

10. CORs are required to maintain a working file — in hard copy, electronically, or both — containing records relating to their 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.

# CHAPTER 8:

## MONITORING SERVICE CONTRACTS

### 8.1 OVERVIEW OF SERVICE CONTRACTS

“Service contract” means a contract that directly engages the time and effort of a contractor whose primary purpose is to perform an identifiable task rather than to furnish an end item of supply. A service contract may be either a non-personal or personal service contract. It can also cover services performed by either professional or nonprofessional personnel. Common service contracts include the following:

- Maintenance, overhaul, repair, servicing, rehabilitation, salvage, modernization or modification of supplies, systems, or equipment.
- Routine recurring maintenance of real property.
- Housekeeping and base services.
- Advisory and assistance services.
- Operation of government-owned equipment, real property, and systems.
- Communications services.
- Architect-Engineering.
- Transportation and related services.
- Research and development.

Performance-based acquisitions are the preferred method for acquiring services. A performance-based contract is one with measurable performance standards (i.e., in terms of quality, timeliness, quantity, etc.) and a method of assessing contractor performance against those performance standards. The essence of a performance-based service contract is that the government does not tell the contractor “how” to accomplish tasks, but rather what we want accomplished. It is up to the contractor to determine the most appropriate manner to accomplish the work.

Performance-based service contracts include a performance work statement (PWS) and performance incentives, where appropriate. Performance based acquisitions should be used to the maximum extent practicable, *except* for: architect-engineer services, construction, utility services, or services that are incidental to supply purchases.

#### 8.1.1 DoD SERVICE CONTRACT REGULATIONS AND GUIDANCE

**DoDI 5000.74 – DEFENSE ACQUISITION OF SERVICES.**<sup>1</sup> DoDI 5000.74 establishes policy, assigns responsibilities, and provides direction for the acquisition of contracted services. It also establishes and implements a management structure for the acquisition of contracted services. In DoD, when acquiring services, acquisitions are categorized by the DoD portfolio management structure; there are currently 9 portfolio groups assigned for the

acquisition of services. DFARS PGI 237.1 also provides guidance and mandatory procedures depending on your services acquisition.

## **8.2 PERSONAL AND NON PERSONAL SERVICES**

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. Agencies may *not* award personal service contracts unless specifically authorized by statute (e.g., 5 U.S.C. § 3109). In DoD there is another statutory authorization to acquire the personal services of experts and consultants (10 U.S.C. § 129b). Both statutes limit the scope and duration for personal service contracts and often require higher level approval prior to the start of the acquisition process. The chances are you will know if your acquisition is an authorized personal service contract.

As a COR overseeing a services contract, you want to ensure the contract does not become, or *morph into*, an “improper personal service contract.” This occurs when, as a result of the contract’s terms or the manner of its administration during performance, contractor personnel become subject to the relatively continuous supervision and control of a government officer or employee. The following are some of the scenarios which increase the odds of morphing into an improper personal services contract:

- Performance is in the government work space.
- 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.
- 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, or granting “leave” requests.

Again, the COR must be vigilant — this is a critical area and one that could expose the government to liability. The contractor is responsible for supervising and managing their employees. Using a performance-based acquisition is another way to mitigate the chance of this occurring.

## **8.3 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 PWS should, to the maximum extent practicable, describe work in terms of required results rather than “how” the work is to be done or the number of hours to be provided.

The DAU Services Acquisition Mall and the Acquisition Requirements Roadmap Tool (ARRT) are excellent resources for the requiring activity and COR to use when assigned as the team responsible for developing the PWS and QASP. The DAU Services Acquisition Mall website is located at <https://www.dau.edu/tools/Documents/SAM/home.html> In addition to the ARRT, this site contains many templates, samples, guides and best practices.

## **8.4 CONTRACTOR INSPECTION CLAUSES FOR SERVICE CONTRACTS**

FAR clause 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.

As discussed in Chapter 7, this does not replace the government’s requirement to ensure services conform to contract requirements. Your contract or task order will have an inspection clause specific to the services you are receiving. The clause will vary depending on the contract type and/or subject matter of the contract. These are the inspection FAR clauses for service contracts:

- FAR 52.246-4 -- Inspection of Services — Fixed-Price
- FAR 52.246-5 -- Inspection of Services — Cost-Reimbursement
- FAR 52.246-6 -- Inspection — Time-and-Material and Labor-Hour
- FAR 52.246-7 -- Inspection of Research and Development — Fixed-Price.
- FAR 52.246-8 -- Inspection of Research and Development — Cost-Reimbursement
- FAR 52.246-9 -- Inspection of Research and Development (Short Form)
- FAR 52.246-13 -- Inspection — Dismantling, Demolition, or Removal of Improvements
- FAR 52.246-14 -- Inspection of Transportation

It is considered a best practice for the COR to read and understand the inspection clause of their contract(s) or task order(s) even if they have not been delegated inspection responsibility. The inspection clauses are typically no more than one and a half pages and only take a few minutes to read. Unfortunately, the clause will not tell or explain “how” inspection is to be done. Instead it will identify the responsibilities, rights and remedies for the contractor and the government. An example of clause language includes:

“... requires 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...”

## **8.5 QUALITY ASSURANCE SURVEILLANCE PLANS (QASP) FOR SERVICE CONTRACTS**

A QASP is an indispensable tool the COR uses as a guide for systematically and effectively monitoring the quality of the services received. It is a government developed document used to determine (inspect) if the contractor is meeting the performance standards contained in the contract.

The QASP establishes procedures on how this assessment, or inspection, process will be conducted. It provides the process for continuous oversight detailing:

- What will be inspected?
- How it will take place?
- Who will conduct it?
- How will it be documented?

The QASP serves as your checklist for tracking contractor performance. It is also used to help determine if and when the government needs to intervene to direct the contractor to take corrective action. Typically, the requiring activity that drafts the PWS also develops the QASP and surveillance methods, tailoring them to meet specific contract requirements and operating conditions. As discussed in section 8.3 above, the DAU Services Acquisition Mall and ARRT are wonderful tools for the team to use when developing the PWS and QASP.

Because the government always reserves the right to inspect and, within reason, can determine unilaterally how and when to inspect, the QASP is not incorporated into the contract. It may be adjusted during the life of the contract to address contract risks not originally anticipated or no longer a risk to contract success. The decision to change the plan depends largely on the contractor’s demonstrated capability to carry out its quality control plan effectively.

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.

***QASP Composition and Characteristics.*** In most cases, the QASP should address the following topics:

- Purpose;



- Roles and responsibilities;
- Procedures and methods of assessment;
- Successful performance standards;
- Incentives or remedies for services above and below standards, if applicable;
- Sample of discrepancy report; and
- Communication (complaint) procedures and instructions.

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. 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 verifying cost-type contract invoices to ensure that only those labor categories (required education and years of work experience to meet the labor category requirements) used for the performance of a task order or project are invoiced to the government. Identify security clearance levels for contractor personnel as provided in the task order or project. 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 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.

Contractor personnel should have the relevant education and work experience to meet the labor category requirements provided in the task order or project. If not, CORs should identify any proposed deviations from the relevant education and years of work experience qualifications in their contract files, documenting any potential performance and price

impacts on the Agency's requirements. CORs should document the reasons for any proposed changes to the contract requirements by notifying the Contracting Officer for his/her approval. Any deviations from the relevant education and years of work experience must be identified before the deviation is accepted by the Contracting Officer. CORs should document their surveillance and keep their documents in their contract files.

## **8.6 LABOR LAWS APPLICABLE TO SERVICE CONTRACTS**

The *Service Contract Labor Standards* (formerly known as the Service Contract Act), applies to contracts in excess of \$2,500 for which principal purpose (subject matter) of the contract is to procure services of mostly non-professional skill sets and personnel. It applies to work performed in U.S. and some U.S. Territories and may apply overseas when employees will be recruited and employed from the U.S. One of the primary purposes of this law is to take employee wages out of the bidding process.

It requires contractors and subcontractors to pay their service employees in various classes no less than the monetary wage rates and fringe benefits found prevailing in the locality, or rates contained in a contractor's collective bargaining agreement (CBA). The Wage and Hour Division of the DOL publishes wage classifications and prevailing wage rates by locality (known as a "Wage Determination)," most often by county (See <https://sam.gov/content/wage-determinations>). These wage determinations are incorporated into the contract.

On service contracts, the DOL is responsible to investigate, interview and direct contractors, and they are the final authority on labor matters - not DoD. For more information on when this may be applicable and how often wage determinations must be updated on the contract see FAR 22.10.

The Contracting Officer has the authority to initiate procedural actions by reporting/notifying complaints to DOL. Potential remedies may range from suspension of payments up to contract termination. The contractor is required to post and pay prevailing wage rates, provide a safe and sanitary workplace, and maintain employee records and payroll information. The COR needs to inform the Contracting Officer if they learn of or suspect labor or employee pay issues.

The *Contract Work Hours and Safety Standards Act* requires that certain contracts specify 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.

## **8.7 CHAPTER 8. KEY POINTS**

1. DoDI 5000.74, Defense Acquisition of Services, establishes policy, assigns responsibilities, and provides direction for the acquisition of contracted 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. A COR needs to be vigilant against having a non-personal service contract turn into a personal service contract due to the manner in which it is administered.

3. PWS is a critical document in that it defines the contract's performance requirements. There is a significant preference for performance based service contracts.
4. The DAU Services Acquisition Mall and ARRT are wonderful tools for the acquisition team to use when developing the PWS and QASP. The DAU Services Acquisition Mall website is located at <https://www.dau.edu/tools/Documents/SAM/home.html> .
5. To assist the COR with inspection and ensure the contractor is meeting performance requirements, a QASP is utilized. The QASP establishes the metrics that will be used by the COR to assess contract performance. CORs should verify whether contractor employees meet the labor categories as specified in the task order or project. Any deviations from relevant education and years of work experience qualifications for any labor category must be approved by the Contracting Officer and documented in the COR's contract files, considering any potential performance and price impacts on the Agency's requirements.
6. There are a number of labor laws that apply to most service contracts; the most common being Service Contract Labor Standards and the Contract Work Hours and Safety Standards Act. These require the contractor to provide a safe environment and pay certain employees according to the DOL determined wage rates.

## **8.8 CHAPTER 8. FOOTNOTES**

1. DoDI 5000.74, "Defense Acquisition of Services," can be found at <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/500074p.pdf>.

# CHAPTER 9: MONITORING CONSTRUCTION CONTRACTS

## 9.1 LABOR LAWS APPLICABLE TO CONSTRUCTION CONTRACTS

The *Construction Wage Rate Requirements Statute* (formerly known as the Davis Bacon Act or DBA), applies to contracts in excess of \$2,000 for construction; alteration; or repair, including painting and decorating, of public buildings and public works. It applies to work performed in the U.S. One of the primary purposes of this law is to take employee wages out of the bidding process.

It requires contractors and subcontractors to pay laborers and mechanics employed or working upon the site of the work unconditionally and not less often than once a week the monetary wage rates and fringe benefits found prevailing in the locality. With few exceptions, payment must be based on the actual work performed regardless of their skill or title. The Wage and Hour Division of the DOL publishes wage classifications and prevailing wage rates by locality (known as a “Wage Determination”), most often by county (see <https://sam.gov/content/wage-determinations>). These wage determinations are incorporated into the contract.

Unlike service contracts, the Contracting Officer and requiring activity have much more responsibility in overseeing the contractor’s compliance with labor laws. The law requires that a copy of the wage rates be posted on the job site in a prominent place where the workers can see it.

It requires the government to conduct regular interviews of contractor’s employees to determine the Act is being adhered to. The COR may be delegated authority and responsibility to accomplish this action. These are called “labor standard interviews” and are documented on the SF 1445 as they are accomplished. As part of this process, the government reviews contractor’s certified payrolls and visually inspects work sites for required wage determination postings. The payrolls are compared to onsite interviews. Discrepancies/violations are reported to the Contracting Officer. Investigations are accomplished using the SF 1413, Statement and Acknowledgement Form.

<b>LABOR COMPLIANCE CHECK PROCESS FOR CONSTRUCTION CONTRACTS</b>
• Review the contractor’s certified payrolls.
• Check work sites for required postings.
• Conduct labor standard interviews.
• Compare payrolls and onsite interviews.
• Resolve/Report - discrepancies/violations.

For more information on when the construction wage rate requirements may be applicable and how often wage determinations must be uploaded on the contract, see FAR 22.4 or the Department of Labor compliance website at <https://www.dol.gov/agencies/ofccp>.

## **9.2 CONSTRUCTION CONTRACT PAYMENTS**

Often times the COR will be delegated authority and responsibility to review and certify contractor invoices for payment. FAR clause 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 clause 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 CLIN.

In the event the COR is delegated this responsibility, they should screen each invoice for progress payments and its required 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. If not being accomplished in WAWF, the COR will 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.

### **9.2.1 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. **Payment bonds** protect suppliers of labor and materials in the event that the prime contractor does not reimburse their 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 a mechanics' lien. Such liens can be placed against real property by subcontractors in civilian contracting if the prime contractor does not reimburse the subcontractors.

### **9.3 CONTRACTOR INSPECTION CLAUSES**

When construction contracts are in excess of the simplified acquisition threshold, the contractor is required by FAR clause 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 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.

### **9.4 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 (discussed below) 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.

## **9.5 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. 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.

## **9.6 LIQUIDATED DAMAGES**

Liquidated damages (LDs) are amounts agreed to and settled on in advance to avoid litigation. They are not punitive and are not negative performance incentives. LDs are used to compensate the government for probable damages. They are typically defined as “rates” and included in the solicitation and resultant contract. The rate(s) must be a reasonable forecast of just compensation for the harm that is caused by late delivery or untimely performance of the particular contract. The contract normally specifies a maximum amount or a maximum period for assessing liquidated damages if these limits reflect the maximum probable damage to the government. A contract may contain more than one LD when the probable damage to the government may change over the contract period of performance.

Although not limited to construction contracts, LDs are most often used in them. For DoD, the clause at FAR clause 52.211-12, Liquidated Damages--Construction, is required in all construction contracts that exceed a certain dollar value; currently the amount is \$700,000. LDs are not used in cost-plus-fixed-fee contracts or contracts where the contractor cannot control the pace of the work. LDs in contracts of \$700,000 or less is optional.

LDs are only estimates and may not be the actual damages the party ultimately may incur. When assessing LDs, the amount does not have to be the exact damages that were or may be incurred, but they must show some reasonable relationship to the actual or anticipated damages. 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. It is not uncommon for contractors to disagree with the government’s delay determination. They may 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 and assess liquidated damages if the delay is not excusable.

## **9.7 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.

There are two categories of differing site conditions:

- **Type I** – Subsurface or latent physical conditions at the site which differ materially from those indicated in the contract.
- **Type II** – Unknown physical conditions at the site of an unusual nature that differ materially from those ordinarily encountered and generally recognized as inherent to work of the character provided for in the contract. This includes the geographic area.

The contractor has an affirmative duty to notify the government when a differing site condition is encountered. Depending on the situation, an equitable adjustment may be made and the contract modified accordingly. Requests for equitable adjustments are made in writing to the Contracting Officer. No request for an equitable adjustment is allowed unless the contractor has given the written notice of a differing site condition within the time required by the contract clause. Moreover, no request by the contractor for an equitable adjustment is allowed if the request is made after final payment under the contract has been made.

## **9.8 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 only if they result in an unreasonable delay.

It is vital all CORs maintain adequate records for any actions taken under the Suspension of Work clause. Adequate records may reveal the contractor contributed to the suspension, the contractor may not have been damaged by the suspension, or the government's suspension



was reasonable. COR records are vital in determining the amount of monies the contractor may be entitled to if the suspension is determined to be unreasonable.

## 9.9 CHAPTER 9. KEY POINTS

1. The *Construction Wage Rate Requirements Statute* (formerly known as the Davis Bacon Act or DBA), applies to contracts in excess of \$2,000 for construction, alteration, or repair, including painting and decorating, of public buildings and public works. It requires contractors and subcontractors to pay laborers and mechanics not less often than once a week the monetary wage rates and fringe benefits found prevailing in the locality.
  - a. Unlike other service contracts, the COR's role in overseeing compliance with labor law provisions may be significant.
  - b. Labor interviews and payroll reviews are a significant aspect of contract administration under construction contracts.
2. 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.
3. Performance and Payment Bonds are critical tools in ensuring satisfactory contractor performance for construction contracts in excess of the simplified acquisition threshold.
4. Although not limited to construction contracts; liquidated damages are a key tool in trying to motivate timely completion. Liquidated damages are not a penalty, they 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 could be something discovered during contract performance that differs from what was originally anticipated; known as differing site conditions. There are two types of differing site conditions:
  - a. **Category I**, something that was not identified in contract documents (e.g. drawings and specifications); and,
  - b. **Category II**, something different than would normally be encountered in the geographic area.
6. 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 10:**

## **FOREIGN ACQUISITION LIMITATIONS AND GUIDANCE**

### **10.1 PROHIBITED SOURCES**

The federal government and DoD are prohibited from awarding contracts or allowing subcontracts to certain firms and entities. Typically, these are firms within countries that are deemed to be state sponsors of terrorism. Often times these countries or entities have economic sanctions levied against them which have been instituted by or supported by the U.S. Currently, except as authorized by Office of Foreign Assets Control (OFAC) in the Department of the Treasury, most transactions involving Cuba, Iran, and Sudan are prohibited, as are most imports from Burma or North Korea into the United States or its outlying areas. In DoD, we have a statutory prohibition on *Contracting with the Enemy* as well as a prohibition from procuring supplies or services covered by the United States Munitions List (USML) through a contract or subcontract at any tier, from any Communist Chinese military company.

### **10.2 U.S. DOMESTIC PREFERENCE LEGISLATION**

Many countries, including the U.S., have established domestic preference laws to protect the domestic economy and industry. However, in today's global economy, there are economic benefits and often mission necessity in procuring non-domestic goods and services. When conducting market research, CORs should seek to determine if the materials or supplies (including supplies and materials to be used in service or construction contracts) being procured are not normally manufactured, produced or grown in the U.S. In some instances, this may also apply to components and raw materials used in end items manufactured in the U.S.

### **10.3 THE BUY AMERICAN STATUTE**

Buy American (BA), 41 U.S.C. §§ 8301-8305, is the major domestic preference statute governing procurement by the federal government. Essentially, BA 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 or location of incorporation of the contractor is not considered when determining if a product is of domestic origin. It is important to note that BA does not apply to articles procured for "use outside the U.S.," nor is it applicable to procurements below the micro-purchase threshold.

BA applies to all federal procurements, but it has separate provisions for supply contracts and construction contracts. The rules and definitions used in applying BA are found in FAR Part 25 and DFARS Part 225 and associated PGI.

BA 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 percent of the cost of all components.

### 10.3.1 EXCEPTIONS TO BUY AMERICAN

The exceptions to the Buy American Act are:

- ***Inconsistent with the Public Interest.*** The head of the agency may waive the requirements of BA if a determination is made that the application of BA would be inconsistent with the public interest.
- ***Unreasonable Cost.*** A federal agency is permitted to use a foreign product if the Contracting Officer determines the cost of the lowest priced domestic product is “unreasonable.” For DoD a 50 percent evaluation factor differential is applied when evaluating non-domestic items.<sup>1</sup>
- ***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.
- ***Resale.*** The Contracting Officer may purchase foreign end products specifically for commissary resale.
- ***Information Technology that is a Commercial Item.*** The restriction on purchasing foreign end products does not apply to the acquisition of information technology that is a commercial item.

## 10.4 THE BERRY AMENDMENT

For DoD, the Berry Amendment, 10 U.S.C. § 2533a, is more restrictive than Buy American (BA). It is a statutory requirement that restricts the DoD from using appropriated funds or otherwise available to DoD for procurement of *food, clothing, fabrics, fibers, yarns, other 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 made on behalf of DoD by another agency, for example the General Services Administration (GSA), must also comply with the Berry Amendment restrictions. Berry Amendment rules apply even if the DoD-funded purchase is made under an interagency agreement and is awarded by a non-DoD-agency. The Berry Amendment follows the funds; if DoD funds are sent to another federal agency for a procurement action, 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. Your Contracting Officer will know the DFARS PGI 225.7002-2 process for requesting a DNAD.

Note: A comparison of the Berry Amendment and the BA is provided in Figure 10.1.

*Figure 10.1 – A Comparison of the Berry Amendment and the Buy American Act*

Name	Ref Law	Applies to	Flow down	Covered Items	Threshold	Domestic Content	Commercial Exception?	Qualifying Country Exception	Where Contract Performed
Berry Amendment	10 U.S.C 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
Buy American	41 U.S.C 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

## 10.5 TRADE AGREEMENTS

The Trade Agreements Act of 1979, 19 U.S.C. §§ 2501-2582, 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.

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

- The World Trade Organization Government Procurement Agreement (WTO GPA);
- Free Trade Agreements (FTA);
- The least developed country; and
- The Caribbean Basin Trade Initiative.

For more information on Trade Agreements, see FAR 25.4.

## **10.6 QUALIFYING COUNTRIES – DEPARTMENT OF DEFENSE**

As a result of memoranda of understanding and other international agreements, DoD has determined it inconsistent with the public interest to apply restrictions of the Buy American statute or the Balance of Payments Program to the acquisition of qualifying country end products. DFARS 225.872 discusses contracting with qualifying country sources.

Individual acquisitions of non-qualifying country end products may (on a case-by-case basis), be exempted from application of the Buy American statute and the Balance of Payments Program as inconsistent with the public interest.

## **10.7 CHAPTER 10. KEY POINTS**

1. There are a number of “domestic preference” programs in place which guide the federal government on the source of supplies and services being procured.
2. The BA Statute is the primary domestic preference program. It applies to end products and construction materials.
  - a. There are a number of exceptions and waivers to BA.
  - b. Two of the most commonly BA exceptions used by DoD are the Qualifying Country exception for certain items; and the exception for items “not reasonably available commercial quantities and of satisfactory quality.”
3. The Berry Amendment applies to acquisitions involving 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.

## **10.8 CHAPTER 10. FOOTNOTES**

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

# **CHAPTER 11:**

## **CORs IN THE CONTINGENCY ENVIRONMENT**

DoD relies heavily on the private sector to support military operations and accomplish combatant commander objectives. In fact, at the height of operations in Iraq and Afghanistan, the contractor population constituted more than 50 percent of the total in-theater force structure. Contractors provided, and continue to provide, critical support and capabilities across a broad range of functions, including life support services (e.g. food, lodging, laundry, etc.), logistics (e.g. airlift trucking), linguists and interpreters, training/advising support, systems support, engineering, and construction. CORs play a significant role in meeting operational objectives given DoD's dependency on commercial support to operations, and the COR's responsibility in monitoring such contracts. A well trained COR is especially critical to effective contract surveillance in the contingency environment. Contract surveillance is vital to ensure contractors are performing and providing timely, high-quality services and supplies. The goal is to meet the mission and ensure the federal government receives best value for the warfighter while being good stewards of taxpayer dollars.

This chapter provides general COR guidance for use in contingency environments. Although this COR guidance can be used in contingency-type environments, further contingency specific guidance can be found in the DCCORH which is a supplement to this Guidebook.

### **11.1 TYPES OF CONTINGENCY ENVIRONMENTS**

Contingency operations, humanitarian or peacekeeping operations, and international disaster assistance operations are types of expeditionary operations where contractor performance is likely outside of the United States. CORs also support emergency operations and major disasters inside of the United States, and given the severity of the emergency have similarities to expeditionary operations outside of the United States. All of the aforementioned operations can vary in scope, complexity, and duration. No two operations are alike, but the main elements a COR might face include the urgency of requirements, a heavy ops-tempo, austere or limited business infrastructure, potential challenges with traveling to areas the contractor is performing, and probable cultural or ethical differences. These operations have specific legal requirements and must be properly designated by the President, Congress, or the Secretary of Defense (SECDEF) depending on the operations.

Below is a breakdown of expeditionary operations.

#### **11.1.1 CONTINGENCY OPERATION (10 U.S.C. § 101(A)(13))**

The official designation of a contingency operation is significant in that it triggers an increase in the micro-purchase threshold (MPT) and Simplified Acquisition Threshold (SAT) (See MPT and SAT definitions at FAR 2.101 for current threshold amounts). Also,

the threshold authorized for use when procuring certain commercial items or services increases substantially (See FAR 13.500). These increases in thresholds are important as they can greatly streamline the acquisition process. In accordance with 10 U.S.C. § 101(A)(13), a designated DoD contingency operation must meet the following requirements:

(A) Is designated by the SECDEF as an operation in which members of the armed forces are or may become involved in military actions, operations, or hostilities against an enemy of the United States or against an opposing military force; or

(B) Results in the call or order to, or retention on, active duty of members of the uniformed services under sections 688, 12301(a), 12302, 12304, 12304a, 12305, or 12406 of title 10 of the U.S.C., chapter 15 of title 10 of the U.S.C., or any other provision of law during a war or during a national emergency declared by the President or Congress.

Contingency operations range in size, complexity and duration.

**Major Operations and Campaigns.** In some conflicts, hostilities are ongoing, imminent, or likely, and there is a substantial commitment of U.S. military forces. Operation Enduring Freedom and Operation Iraqi Freedom are examples of major operations and campaigns. During such operations, contracting usually supplements robust combat support and combat service support infrastructures.

**Smaller-Scale Contingency Operations.** Some conflicts involve ongoing, imminent, or likely hostilities with the U.S. military, but smaller-scale contingencies involve fewer places and usually a more restricted time schedule (e.g. Operation United Assistance in Africa and Operation Just Cause in Panama). Contracting often supplements combat support and combat service support capabilities that are limited by the location, strategic lift, or staffing ceilings.

### **11.1.2 HUMANITARIAN OR PEACEKEEPING OPERATIONS (10 U.S.C. § 2302(8) AND 41 U.S.C. § 153(2))**

Not necessarily a conflict scenario, this is defined in statute as a military operation in support of the provision of humanitarian or foreign disaster assistance or in support of a peacekeeping operation under Chapter VI or VII of the Charter of the United Nations. The term does not include routine training, force rotation, or stationing. When a humanitarian or peacekeeping operation is designated, the simplified acquisition threshold can be raised to the amount specified in FAR 2.101 for DoD purchases that are awarded and performed, or purchases that are made outside the United States in support of that operation.

### **11.1.3 DOMESTIC DISASTER AND EMERGENCY RELIEF**

According to Joint Publication (JP) 3-28, Defense Support of Civil Authorities, domestic disaster and emergency relief operations can range from domestic natural and human-made disasters to civil disturbances or terrorist incidents in the United States. DoD disaster relief

missions include efforts to mitigate the results of natural or human-made disasters such as hurricanes, earthquakes, floods, oil spills, riots, and air, rail, or highway accidents. Acquisition flexibilities, such as an increase in acquisition thresholds, can be authorized to support emergency operations and major disasters once designated by the President. Chapter 12 contains additional information on domestic disaster and emergency relief operations.

#### **11.1.4 MILITARY EXERCISES**

Routine military exercises can be anything but routine for a COR. Anyone who participated in Cobra Gold, Joint Dawn, Key Resolve, National Training Center rotation, OCS Joint Exercise (OCSJX), or similar types of exercises will attest to the associated sense of urgency, pressure, or risk to life or national interest. Be aware that exercises and training environments do not receive the same flexibilities and consideration as contingencies or other emergency-type operations.

### **11.2 THE DEPLOYED COR'S WORKING ENVIRONMENT**

Each deployed COR works in an environment where the operational and functional demands are greater and more complex than those confronted by CORs supporting the armed forces during peacetime or in the continental United States. Deployed CORs may face challenges such as:

- Different customs,
- Corruption,
- Ethics issues,
- Language barriers,
- Time management due to high ops-tempo,
- Urgency of requirements,
- Limited contractor base,
- Chain of command and conflicting responsibilities,
- Length of deployments,
- Transition of COR duties prior to redeployment, and
- Personal security threats in hostile environments.

Note: A COR must be an employee, military or civilian, of the U.S. Government, a foreign government, or a North Atlantic Treaty Organization or other coalition partner. In no case shall contractor personnel serve as CORs.



## **11.3 CULTURAL AND ETHICAL CONSIDERATIONS IN A CONTINGENCY ENVIRONMENT**

The COR should recognize there will often be ethical, cultural, and contractual issues you may face in a contingency environment, such as:

- Differences in cultural and social norms;
- Bribery, kickbacks and other illegal acts that may be customary business practices in the respective country but that are illegal in the U.S. or when working for the U.S. government; and
- Difficulty in determining contractor compliance with contract quality, schedule and other performance terms and conditions.

In years past, often many of those being deployed to the United States Central Command (USCENTCOM) area of operations (AOR), ended up designated as CORs (after arriving in theater) without any previous training. This culture and process has changed as a result of numerous GAO reports, the Gansler Commission Report, and the Commission on Wartime Contracting recommendations. The Military Services and Combatant Commands (CCMDs) do a much better job of identifying personnel who will be assigned COR duties and getting them trained prior to departure. Unfortunately, real world contingencies happen fast, with minimal time to assign/train CORs. Making COR designations a priority and part of operational and acquisition planning will help ensure supplies and services are delivered to the Warfighter expeditiously.

If a person finds out after arrival they are to be assigned as a COR, they need to take the on-line training (see Training under Appendix B). But, this isn't the only thing a COR needs to succeed, they need specialized training from the Contracting Officer on the specific contract(s) they will be supporting. This includes knowing the PWS and/or SOW inside and out, contract deliverables, schedules, and inspection/acceptance requirements. Establishing a strong working relationship with the Contracting Officer will greatly assist CORs with their responsibilities and can help address questions they may have.

CORs will also need to ensure that their own financial interests (or the financial interests of his or her spouse, dependent children or outside employer) do not conflict with their assigned duties. A COR must confer with both the Contracting Officer and legal office to discuss and resolve possible conflicts interests PRIOR to starting work as a COR.

The COR is responsible for making sure the contractor is performing to the contract terms and conditions. They need to observe the contractor, document what they see and communicate with the Contracting Officer and contractor accordingly to keep the contract on schedule and within cost. Through proper contract oversight and monitoring contractor performance, the COR will be a critical link to successful operations.

### 11.3.1 CAN I ACCEPT A GIFT OR IS IT A BRIBE?

As mentioned earlier, bribes, gratuities, exchanges of gifts, etc. are common business practices in many parts of the world, however, they are prohibited by U.S. acquisition regulations (FAR Part 3 and 5 U.S.C. 2635.202). If you are confronted with this situation, you must explain to the contractor(s) the U.S. government does not conduct business in this manner. Upon returning to the office, notify your supervisor and write a memo for your file documenting what occurred. Even after you let the contractor know you must not accept the gift, they may not take “no” for an answer. If this occurs, you must reiterate to the contractor this is not how the U.S. government conducts business, and the gift will in no way affect contract decisions.

Dealing with gifts requires tactfulness, understanding, and the ability to explain to the contractor why we are **not** allowed to accept gifts of any kind. One thing the deployed force has learned over and over again, is that once the local populace and industry understand our rules, they accept and respect us for it.

If the contractor is insistent and there is no diplomatic way to avoid accepting the gift (remember, this is extremely rare), you should accept the gift on behalf of the U.S. government, immediately notify the Contracting Officer and your superiors, consult with the legal office, turn the “gift” over to finance or other authority as directed by your chain of command, and write a memo to document the situation.

Ethics are vitally important, particularly in the contingency environment because of the cultural differences. You must not forget your duty is to the United States government, the DoD, and your customer, not the contractor.

### 11.3.2 HOW DO I HANDLE CULTURAL DIFFERENCES?

Working as a COR overseas in a contingency environment can be challenging. The hours can be long and you may have to deal with combat related dangers and other challenges from working in austere conditions. The goal is for you to understand the cultural differences you may encounter and how that may impact the contract and your responsibilities as a COR. As stated above, in some cultures “gifts” are routine and acceptable business practices. While it is acceptable in other cultures, you are **not** allowed to accept gifts, bribes, or kickbacks and will be held legally accountable if you do.

In the U.S., we value competition, but in many places of the world, cooperation is more important. This can lead to collusion between contractors proposing on contracts – where different contractors work together to decide which one of them will get the next contract. As a COR with regular engagement with contractors, it is pertinent to document improper business practices (e.g. fraud) and report up your chain of command and to the Contracting Officer.

Additional information on cultural and ethical considerations in contingency type environments can be found in the DCCORH<sup>1</sup>.

## **11.4 ADDITIONAL OVERSEAS AND DEPLOYED LOCATION DIFFERENCES**

The *standards* in the U.S. may be higher in the way of *safety*, etc. Many times the building codes, food codes, etc. are U.S. codes that foreign companies accept when they sign the contract. Understand, that doesn't mean they won't try to revert back to doing things their way which would be obvious safety or health violations. If you let them get away with a small amount, expect them to try their luck with other contract requirements. This also can happen in the U.S., but may be more prevalent in a contingency environment.

Although already discussed in Chapter 6.12, the issue of human trafficking and how to handle it requires extra consideration in many deployed environments. You may find Other Country Nationals (OCN's) that have had their passports taken away after arrival in the country. Another issue may be contractors/subcontractors purchasing commercial sex during the performance of the contract which is prohibited even if prostitution is legal in that country. Discuss with the Contracting Officer and legal office if you uncover trafficking in persons incidents or violations. All CORs must take the specialized CTIP Acquisition Personnel training upon their appointment as a COR.

## **11.5 CONTRACTING AND COMMAND AUTHORITIES**

Being a COR is most often an additional duty, especially in the contingency environment where there is a high-ops tempo. It's important to remember, CORs get their authority from the Contracting Officer who designates them. This differs from command authorities over CORs. See Figure 11-1 below for clarification on the different lines of authority CORs will encounter in their day to day duties – contracting authority and command authority.

### **11.5.1 CONTRACTING AUTHORITY**

Contracting authority is the legal authority to enter into binding contracts and obligate funds for the U.S. government. Contracting Officers have the legal authority to enter into and make binding contracts, obligate funds, and make other commitments on behalf of the U.S. government. They may bind the government only to the extent of the authority delegated to them. They are also the only personnel with the authority to designate ordering officers, field ordering officers (FOOs), and CORs.

### **11.5.2 COMMAND AUTHORITY**

Command authority includes the authority to perform functions involving organizing and employing commands and forces, assigning tasks and designating objectives, and giving authoritative direction over all aspects of an operation. Command authority includes the

authority and responsibility for effectively using available resources and for planning the employment of, organizing, directing, coordinating, and controlling military forces for the accomplishment of assigned missions. Combatant command (command authority) does *not* include the authority to make binding contracts or modify existing contracts for the government. The Geographic Combatant Commands (GCCs) do *not* have their own contracting authority, they rely on the Services to provide contracting support. Command authority does, however, include command direction on how the contracting function will be integrated in the planning stages of an operation and setting theater entry and exit requirements for all government personnel, including contractors.

Commanders and other contracting support personnel, including CORs, at all levels must avoid improper command influence — or even the appearance of improper command influence on the acquisition process, as explained in the following example.



*Figure 11-1. Lines of Authority*

**Real-World Example:**

A COR on a new construction project was a high-ranking commander. The COR developed the requirements package and delivered it to the Contingency Contracting Officer (CCO). The COR then told the CCO to award the contract to the incumbent contractor in order to commence work sooner. When the CCO explained the contracting process, the COR tried to “pull rank” and told the CCO to follow orders. The COR obviously did not understand contracting authority and was trying to use rank to influence the contracting process. The CCO courteously removed himself from the situation and immediately contacted his supervisor. The Chief of the Contracting Office (COCO) and CCO explained the difference between contracting authority and command authority to the COR.

**The Bottom Line:**

You can expect to be unduly pressured at times. Be diplomatic and professional when dealing with undue influence, and elevate such issues up your chain of command to avoid delays in acquisition.

## 11.6 CONTRACTING ORGANIZATION ROLES AND RESPONSIBILITIES

It is important for CORs to understand the various contracting rules and responsibilities, and where they fit in the acquisition process. Below are some of the contracting positions that are relevant in contingency environments:

**Head of Contracting Activity (HCA).** The HCA is the official designated by the agency head to have overall responsibility for managing the contracting activity. The HCA oversees contracting to ensure it complies with applicable statutes, regulations, and sound business practices.

**Senior Contracting Official (SCO).** The SCO is the official designated by a Service HCA to execute theater support contracting authority for a specific command or operational area. This includes establishing policies and procedures for developing, reviewing, and managing the contingency contracting process in theater. Note: This is referred to as the Principal Assistant Responsible for Contracting (PARC) in the Army.

**Chief of the Contracting Office (COCO).** The COCO plans, directs, and supervises purchasing, contracting, administration, and closeout for supplies, services, and construction for assigned customers. The COCO also acts as the business advisor to the deployed commander.

**Contingency Contracting Officer (CCO).** The CCO acquires supplies and services needed by the warfighter to support essential missions in response to a crisis, contingency, humanitarian or peacekeeping missions, and any other emergency-type operations.

**Contracting Officer's Representative (COR).** CORs are appointed in writing by a Contracting Officer. Preferably, CORs are designated before contract award to carry out pre-award and post-award responsibilities, including requirements generation, preparation of acquisition documents to support contract actions, monitoring contract performance, and performing other duties specified by their appointment letter or letter of designation. In JAM, contracts must be awarded before a COR is designated. CORs may self-nominate prior to contract award, but the award must be made before a COR can be appointed.

## 11.7 TYPES OF SUPPORT CONTRACTS

Now that we've defined contracting organization roles and responsibilities, we will briefly discuss the three categories of operational support contracts. These are defined in Joint Publication 4.0 and 4-10,<sup>2</sup> and include theater support contracts, system support contracts, and external support contracts. It is important that CORs understand these categories of contracts that are used in contingency environments to support organic military capabilities.

**Theater support contracts** are contracts awarded by contingency Contracting Officers in the operational area serving under the direct contracting authority of the Service component, United States Special Operations Command (USSOCOM), or designated joint head of a contracting activity for the operation. They provide goods, services, and minor construction, often through local and third-country vendors, to meet the immediate needs of operational commanders. This is the most common support contract appointment for a COR.

**System support contracts** are prearranged contracts awarded by a Military Department and the USSOCOM program management office that provide fielding, technical, and maintenance support for selected military weapons and other systems. These systems include, but are not limited to, vehicles, weapon systems, aircraft, command and control infrastructure, and communications equipment.

**External support contracts** are contracts awarded by contracting organizations whose contracting authority does not derive directly from the theater support contracting head(s) of a contracting activity or from systems support contracting authorities. The most common include the civilian augmentation program (CAP) contracts. You may be assigned to be a COR on an external support contract task order. These are specific examples of external support contracts:

- **Logistics Civil Augmentation Program (LOGCAP).** LOGCAP is designed to provide general logistics and minor construction support to deployed Army, Joint, multinational, and interagency forces. LOGCAP has been routinely used with significant success in supporting full spectrum operations for over a decade to augment U.S. and allied forces. LOGCAP capabilities include supply operations, such as the delivery of food, water, fuel, spare parts, and other items; field

operations, such as dining and laundry facilities, housing, sanitation, waste management, postal services, and Morale, Welfare and Recreation activities; and other services, including engineering and construction, network support, transportation and cargo services, and facilities maintenance and repair.

- **Air Force Contract Augmentation Program (AFCAP).** AFCAP is a worldwide contingency contract tool available to U.S. government entities in need of urgent logistics and civil engineering assistance. AFCAP utilizes pre-qualified vendors that can provide cost effective, highly responsive solutions via task orders to meet urgent needs. Such services include but are not limited to: Professional engineering services and infrastructure support; emergency management; environmental management services; limited explosive ordnance disposal and flight line crash fire rescue operations; and food service, troop support, lodging, laundry, fitness, and recreation support.
- **U.S. Navy Global Contingency Contracts.** The Navy Facilities and Engineering Command (NAVFAC) has two worldwide contingency support contracts: the Global Contingency Construction Contract (GCCC) and the Global Contingency Service Contract (GCSC).
  - **GCCC.** GCCC provides construction, design and build construction, and related engineering services in response to natural disasters, humanitarian assistance, conflict, or situations with similar characteristics. This includes occasional projects to ensure readiness to perform during emergency situations and military exercises.
  - **GCSC.** The Navy's GCSC is designed to quickly provide short-term facilities support services with incidental construction at various locations (including remote locations) throughout the world. This contract was designed to respond to natural disasters, humanitarian efforts, contingencies, and other emergency-type operations.

## 11.8 OPERATIONAL CONTRACT SUPPORT OVERVIEW

Operational contract support (OCS) is the process of planning for and obtaining supplies, services, and construction from commercial sources in support of combatant commander (CCDR)-directed operations, regardless of designation as a formal contingency operation or not. OCS is a multi-faceted, cross-functional staff activity executed primarily by the combatant command (CCMD), subordinate staffs, Military Service components, theater special operations commands, and, in some cases, functional components, along with supporting combat support agencies (CSAs).

OCS policy is defined in DoD Directive 3020.49, "Program Management for the Planning and Execution of Operational Contract Support" and DoD Instruction 3020.41, "Operational Contract Support." It is also described in Joint Publication 4-10<sup>2</sup> Operational Contract Support. OCS synchronizes all planning and execution activity -- from contract support integration and requirements generation through contracting support to contractor management. There are many links between OCS and Contracting, especially Contingency Contracting, and communication between these communities is important. CORs play a

critical role in OCS, from acquisition planning and requirements definition to contract monitoring and contractor management. Below is a description of the three OCS tenets:

- **Contract Support Integration.** Planning for when and how to use contractors during the operation/mission, AND when and how much contracting CCOs support will be needed to support the deployed force.
- **Contracting Support.** How contracting resources will be organized and how contracting will be conducted. Contracting support includes the planning, coordination, and execution of contracting authority to legally bind contractors in support of military operations.
- **Contractor Management.** The oversight and integration of contractor personnel and associated equipment in support of military operations. Contractor management includes the deployment, sustainment, and redeployment of contractor personnel, accounting for contractor personnel in the AOR, and ensuring commanders have visibility of contractors supporting operations.

COR duties and responsibilities primarily fall within the “contract support integration” and “contractor management” tenets. Figure 11-2 below shows these three OCS tenets.

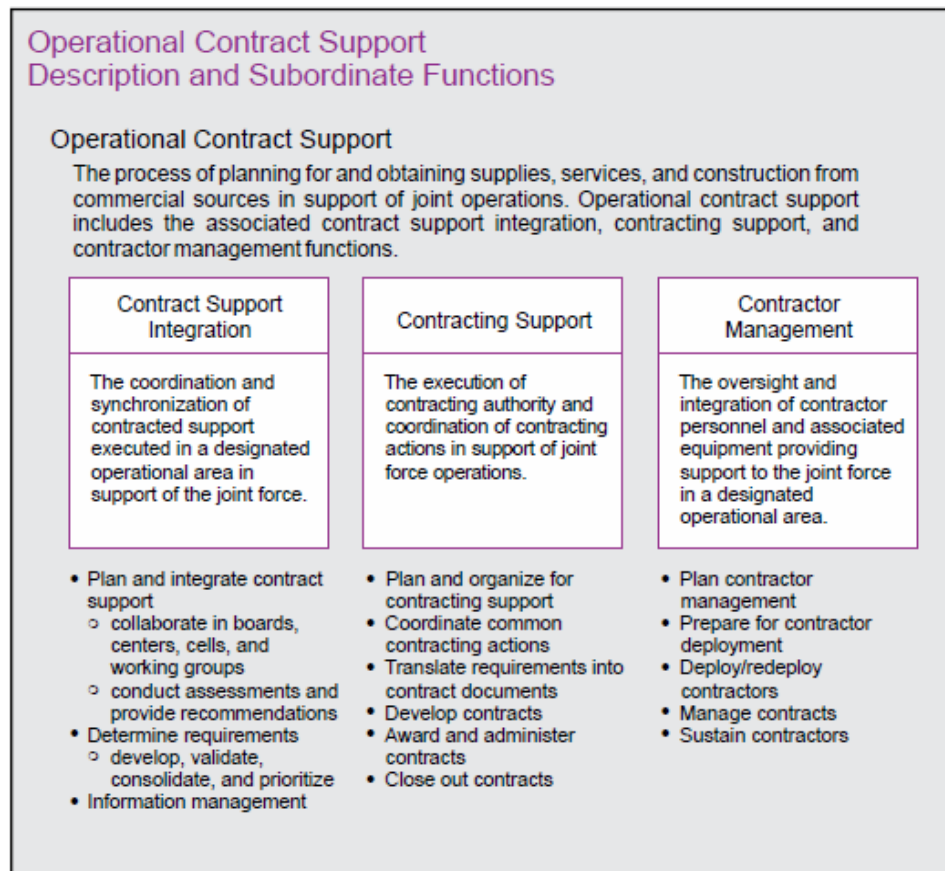


Figure 11-2. OCS Description and Subordinate Functions



As shown in Figure 11-2, OCS includes a multitude of planning, integration, contract execution, and contractor management activities. Accordingly, commanders, Contracting Officers, CORs, OCS planners, finance officers, logistics personnel, and others are involved.

## **11.9 OCS PLANNING AND ACQUISITION BOARDS**

Part of the commander's responsibility is to set the priority for purchases based on operational needs. A primary method of accomplishing this is through the use of requirement and contracting-related boards. They help ensure proper acquisition planning, contracting integration, and prioritization of customer requirements before the contracting process begins. The use of OCS boards, cells, and working groups bolsters OCS planning efforts and the prioritization of requirements. Acquisition boards also help ensure senior leadership is part of the overall planning, and decision-making process. CORs can play a critical role in these boards. A description of some of the key boards and cells is included in the following sections, but it is important to note that the names and structures may vary and that there may be additional OCS-specific working groups established at the Combatant Command or Joint Task Force.

### **11.9.1 JOINT REQUIREMENTS REVIEW BOARD (JRRB)**

The joint task force or sub-unified commander establishes the JRRB to review, validate, approve, and prioritize selected component contract support requests. The JRRB may also assist by providing acquisition strategy ideas and discussing potential areas where contract consolidation makes sense. The JRRB is an operations-focused (rather than contracting-focused) board designed to provide control of mission-critical, high-dollar contract requests and ensure other sources of support (such as organic military, multinational, and host nation) have been properly considered before going to a contracted support solution.

A more contracting-focused OCS related board in theater is the Joint Contracting Support Board (JCSB).

### **11.9.2 JOINT CONTRACTING SUPPORT BOARD (JCSB)**

The JCSB is the primary mechanism for coordinating and de-conflicting common contracting actions between theater and external support contracting activities executing or delivering contracted support in the operational area. It is also the major mechanism for implementing JRRB guidance in determining the appropriate contracting mechanism — theater support, Air Force Contract Augmentation Program (AFCAP) or Logistics Civil Augmentation Program (LOGCAP) task orders, and other common external contracts — for major, common services. The JCSB has two goals: 1) ensure contract support actions support the Joint Force Command's (JFC) OCS-related command guidance (such as maximizing the use of local national (LN) firms and reducing costs); and 2) maximize contracting capabilities of the operational area while minimizing the competition for limited vendor capabilities.

A primary player in implementing and executing OCS related boards is the Operational Contract Support Integration Cell (OCSIC).

### 11.9.3 OPERATIONAL CONTRACT SUPPORT INTEGRATION CELL

The OCSIC or similar structure is a key organizational elements in effective, efficient OCS planning and integration. Its primary task at the Geographic Combatant Command (GCC) and subordinate JFC levels is overseeing OCS planning and execution across the joint force. This includes OCS analysis of the operational environment and the resulting planning and coordination of OCS actions. The OCSIC ensures relevant OCS data and information flow between the subordinate JFCs' primary and special staff members, the designated lead contracting activity, and other key supporting contracting activities, such as the Defense Logistics Agency (DLA), designated military construction agent (the U.S. Army Corps of Engineers, for example), and Service Civil Augmentation Program (CAP) offices. The OCSIC also ensures the contract support drawdown progresses according to plan. Figure 11-3 is an example of a GCC OCSIC placed in the J-4.

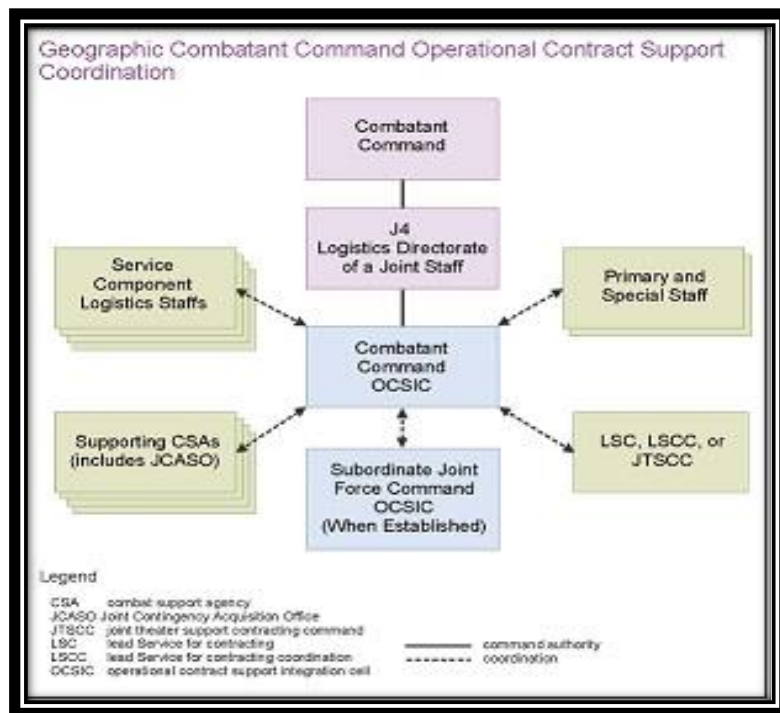


Figure 11-3. Geographic Combatant Command OCS Coordination

Note: This graphic is from Joint Publication 4-10, Appendix A, Figure 4-3, published March 4, 2019. Subsequently “JCASO” was disestablished as of September 30, 2020, IAW the findings of the Defense Wide Review (DWR) 1.0 in 2019.

## 11.10 GENERAL CONTRACTOR MOBILIZATION AND DEPLOYMENT PROCEDURES

CORs often play a pivotal role in the verification and validation of contractor personnel entering, moving within, or exiting the theater of operations. DoDI 3020.41 includes requirements and procedures for contractor deployment, reception, in-theater management, redeployment, and adhering to medical/dental standards.

***Deployment Procedures.*** Before departing for a contingency operation, all contractors authorized to accompany the force (CAAF) are required to report to the deployment center designated in the contract to complete the following general deployment procedures:

- Validate entry of accountability information in the Synchronized Predeployment and Operational Tracker (SPOT) database (described in more detail below).
- Issue or validate possession of proper identification cards.
- Receive applicable government-furnished equipment.
- Receive medical and dental screening, including required vaccinations and immunizations.
- Validate or complete required training.

Prior to deployment processing, the company employing the individual must build the individual's record in SPOT including a request for the letter of authorization (LOA). Upon receiving the contracted company's certification that employees meet deployability requirements, the contracting officer, or representative, will digitally sign the LOA, which CAAF will then present to officials at the deployment center. Affected contracts must require that all CAAF deploying from outside the operational area process through a designated deployment center (e.g., the CONUS Replacement Center, or CRC) or a government-authorized, contractor-performed deployment processing facility before deploying to an applicable operation and redeploy in the same manner. CAAF personnel deploying individually are required to carry this certification at all times.

***In-theater contractor personnel management.*** The in-theater contract and contractor management challenges include accountability, reception, onward movement, and restrictions on contractor support (by area, phase of operation, or other measures as appropriate).

***Personnel accountability.*** CCMDs and JFCs have established processes for maintaining accountability of contractor personnel. DoDI 3020.41 includes minimum requirements for contractor personnel, including CAAF personnel, that must be maintained. Without such information, properly planning for and integrating contractor personnel into the overall operation are impossible. Personnel accountability is critical in determining and resourcing government support requirements such as facilities, life support, force protection, and force health protection in hostile or austere operational environments. The Office of the Under Secretary of Defense for Acquisition and Sustainment (OUSD(A&S)), has designated SPOT as the DoD enterprise system for managing and maintaining accountability (by name) of contractor personnel when they are deployed to an operational area. SPOT gives combatant

commanders the foundation for operational contract support planning and enables functional oversight and integration of all contracted capabilities. A web-based database, SPOT allows authorized users to view, enter, and manage contractor personnel from pre-deployment through redeployment. In addition, SPOT is sole authorized source designed for generating and issuing the automated LOAs. The LOA documents the authorized government services negotiated in the terms and conditions of the contract, as part of the contractor accountability process. More information on SPOT is provided in section 11.11 below.

***Reception.*** All CAAF and selected non-CAAF personnel are processed in and out of the operational area through a designated reception site or other JFC-designated personnel processing center. The designated reception site verifies contractor personnel are included in the SPOT database and they meet all theater entrance requirements. Contractor personnel who do not satisfy established theater entrance requirements may be returned to the point of origin or placed in a holding area until these requirements are met. GCCs and their subordinate JFCs need to set and enforce specific policies for handling CAAF and selected non-CAAF personnel who do not meet all established theater entrance requirements.

***Onward movement.*** After the government fully verifies that the individual contractor is included in the SPOT-Enterprise Suite (SPOT-ES) database and that all theater entrance requirements are met at the designated reception site, the required operationally specific identification documents should be issued to contractor personnel. The designated reception site arranges for transportation of the contractor and contractor equipment to the point of performance. The arrangement of intra-theater transportation of CAAF personnel includes appropriate force protection and security measures, commensurate with those taken for DoD civilians.

***Location and movement considerations.*** Contractors can be expected to perform virtually anywhere in the operational area, subject to the terms of the contract and the JFC risk assessment of the local threat level. On the basis of this risk assessment, the JFC or subordinate area Commanders may restrict the location and timing of contract support; however, care must be taken to coordinate such restrictions with component commanders, applicable DoD agencies, Contracting Officers, and assigned CORs.

## **11.11 CONTRACTOR ACCOUNTABILITY THROUGH THE SYNCHRONIZED PRE-DEPLOYMENT AND OPERATIONAL TRACKER (SPOT)**

As mentioned above, the Synchronized Predeployment and Operational Tracker (SPOT)<sup>3</sup> is a web-based joint database used for tracking contractor personnel who accompany the U.S. armed forces. SPOT is the current system of record 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/or by contract. SPOT also provides for tracking the use of and accountability for DoD equipment in the custody of contractors. Contractor companies are responsible for entering employee data.

CORs are often assigned responsibility to verify contractor information has been input and is updated in compliance with the SPOT business rules.

SPOT is used by the Department of Defense in all contingency operations and in many of the geographic combatant commands. It is also used by the Department of State and the U.S. Agency for International Development in these areas. If SPOT reporting is required in the contract, CORs should work with the contractor to ensure timely and accurate reporting and compliance with business rules and local procedures, if the duty has been authorized by the Contracting Officer in the COR's appointment or designation letter.

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 from SPOT-ES in a portable document format (PDF). LOAs are supplied to deployed 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 when required.

## **11.12 JOINT ASSET MOVEMENT MANAGEMENT SYSTEM (JAMMS)**

Joint Asset Movement Management System (JAMMS) is a stand-alone application developed to capture movement and location information of federal government contractors, operating forces, and U.S. government civil servants, throughout specified operational theaters. JAMMS has rapidly evolved to scan a wide range of personnel identity credentials (e.g., Common Access Card (CAC), Real-Time Automated Personnel Identification System (RAPIDS) cards, LOA, etc.).

JAMMS workstations are established in high-traffic locations to collect date, time, location and person information for tracking use of services and movement of personnel. The personnel movement records captured by JAMMS are uploaded to SPOT daily. Data from all JAMMS workstations is consolidated in SPOT to provide near real-time situational awareness capability.

## **11.13 TOTAL OPERATIONAL PICTURE SUPPORT SYSTEM**

Total Operational Picture Support System (TOPSS) is a secure, business intelligence solution that extends the capabilities of SPOT. It provides more than 30 standard and configurable reports to assist with accountability, visibility of personnel, and location data. TOPSS aggregates data from multiple sources and analyzes it to provide reports based on five categories: Administrative, Audit Compliance, Contracting, Operation/Planning/Logistics, and Personnel.

Standard Reports are preconfigured and can be filtered by individual users. Custom Reports are tailored by the user from available templates. TOPSS also includes customizable

geospatial mapping of data points and trend analysis. TOPSS is available at <https://topss.dmdc.mil/>.

## **11.14 CONTINGENCY FUNDING**

In addition to the type of funds discussed in Chapter 3, the following is a brief summary of additional types of funding a COR may see during a contingency operation. These funds may be denoted as “OCO” or Overseas Contingency Operations funds, which is a budgetary term based in policy. The sources below are authority and not funding sources.

### **11.14.1 OFFICIAL REPRESENTATION FUNDS**

The DoD uses the authority of 10 U.S.C. § 127, “Emergency and extraordinary expenses,” to use appropriated funds for official representation purposes. Strict regulatory controls govern their use, as noted in DoD Instruction 7250.13, Official Representation Funds (ORF); Air Force Instruction (AFI) 65-603, ORF: Guidance and Procedures; Army Regulation (AR) 37-47, ORF of the Secretary of the Army; and Secretary of the Navy Instruction (SECNAVINST) 7042.7, Guidelines for Use of ORD. Basically, ORF may be used only to provide official courtesies to authorized guests, which may include foreign dignitaries. The courtesies may include gifts, mementos, or tokens.

### **11.14.2 COMBATANT COMMANDER INITIATIVE FUNDS**

Combatant Commander Initiative Funds (CCIF) are governed by statute (10 U.S.C. § 166a) and the funds are managed by the Chairman of the Joint Chiefs of Staff. The Chairman is authorized to provide funds to combatant commanders from O&M, Defense-wide appropriations to cover activities authorized by statute.

### **11.14.3 EMERGENCY AND EXTRAORDINARY EXPENSES**

Service secretaries may use Emergency and Extraordinary Expenses (E&EE) authority for unanticipated emergencies or extraordinary expenses. The amount of O&M, Defense-wide funds apportioned to the services for E&EE is fairly small (e.g., approximately \$12 million to the Army in FY 2020), and if the project cost exceeds certain thresholds (\$100,000 for intelligence or counter-intelligence activities, or \$500,000, for all other activities), the Secretary of Defense must notify the appropriate congressional committees.

### **11.14.4 OVERSEAS HUMANITARIAN, DISASTER, AND CIVIC AID (OHDACA) APPROPRIATION**

Funding for OHDACA is used to provide relief to foreign countries. The OHDACA appropriation supports the Secretary of Defense and combatant commanders’ security cooperation strategies to build indigenous capabilities and cooperative relationships with allies, friends, civil society, and potential partners. The appropriation is used to build collaborative relationships with the host nation’s civil society.

### **11.14.5 HUMANITARIAN AND CIVIC ASSISTANCE**

Humanitarian and Civic Assistance (HCA) is the DoD term for relief and development activities that take place in the context of an overseas military exercise, training event, or operation. Under the HCA program, U.S. military personnel participating in overseas deployments also carry out humanitarian activities such as road and school construction, vaccination of children and animals, and well digging. HCA programs often are executed with the assistance of host-country civilian and military personnel. U.S. National Guard or reserve units also perform many HCA activities.

### **11.14.6 FOREIGN DISASTER ASSISTANCE**

To prevent the loss of life, the President may direct the Secretary of Defense to provide disaster assistance (including transportation, supplies, services, and equipment) outside the United States in response to human-made or natural disasters.

### **11.14.7 COMMANDERS' EMERGENCY RESPONSE PROGRAM**

The Commanders' Emergency Response Program (CERP) was designed to enable local commanders to respond to urgent humanitarian relief and reconstruction requirements in their AORs and, where authorized by Congress, by implementing programs that immediately help the indigenous population. See DoD FMR 7000.14-R, Volume 12, Chapter 27, CERP, for specific and current information on CERP and use of the funds.

## **11.15 CONTRACT PAYMENT CONSIDERATIONS**

In the early stages of a contingency, or a short duration exercise, DFAS may not be the payment office. Often the Service component comptroller will establish local vendor pay operations. As a result, WAWF is typically not used in these scenarios. Below are some contract payment considerations in contingency environments:

### **11.15.1 PAYMENT IN LOCAL CURRENCY**

As a contracting practice, the preferred payment method for contracts entered into and performed outside the U.S. with local foreign firms is to pay in local currency, unless an international agreement provides for payment in a specified currency. See FAR 25.1002 for details. It is a preferred practice to utilize EFT [electronic funds transfer] when making payments to vendors.

### **11.15.2 PROHIBITION ON PROVIDING FUNDS TO THE ENEMY**

One last consideration to be aware of, in a hostile contingency environment, is where do funds from contract payment eventually end up? Could the funds fall in the hands of the enemy? Sections 841-843 of the FY15 NDAA entitled, "Never Contract with the Enemy," require identification of contractors that directly or indirectly provide funds to enemies of

the U.S. or that fail to exercise due diligence to prevent such activities. As a COR, due to the routine engagements you'll have with contractor personnel, it is paramount to report any threats posed from supporting vendors, and any information on money flowing to the enemy, to the Contracting Officer and through your chain of command. The "Never Contract with the Enemy" statute provides special authorities to terminate, void, and restrict contract awards that directly or indirectly fund activities of enemies of the United States.

Contracting and funding are critically important weapon systems in any combatant command and must be treated as such. Unit leaders who use proactive management controls to provide timely and accurate funding to warfighters are paramount to success or failure on the battlefield anywhere in the world. Contracting and funding can be used to help defeat targets, without creating collateral damage, by motivating antigovernment forces to cease lethal and nonlethal operations, creating and providing jobs along with other forms of financial assistance to the indigenous populations, and restoring or creating vital infrastructure.

## **11.16 OPERATIONS SECURITY (OPSEC) AND SITUATIONAL AWARENESS**

OPSEC and situational awareness involve never letting your guard down while constantly observing and understanding your surroundings. CORs should remain situationally aware at all times, trusting their instincts and relying on their training. Especially during initial contingency operations, CORs will travel to project sites, attend meetings, meet with local contractors, conduct inspections, etc. You should understand local security procedures and protocols and do not hesitate to request security assistance while in hostile areas. Seek out secure locations to meet with contractors. Work with the supporting security personnel to determine a safe location for meeting and communicating with contractors. Check local standard operating procedures (SOPs) and acquisition instructions (AIs), if developed, for additional information on these types of situations.

### **11.16.1 OPSEC**

OPSEC is a broad-based security program designed to prevent all types of sensitive information from falling into the wrong hands. Such information can be extremely valuable to adversaries of the United States. It can provide intelligence indicators of daily operations and, more important, future plans and activities. For example, if you are expected to conduct missions away from your base or embassy and overnight accommodations are needed contact joint staff intelligence (J2) for information on areas that have been vetted for various security and intelligence concerns. Also, contact J2 to receive the most recent threat brief, which will provide critical information for you to keep in mind.

**Definition.** OPSEC is the process of identifying critical information and subsequently analyzing friendly actions attendant to military operations and other activities to accomplish the following:



- Identify actions that can be observed by adversary intelligence systems.
- Determine indicators that an adversary's intelligence operatives might obtain that could be interpreted or pieced together to produce critical information (in time to be useful).
- Select and execute measures that eliminate (or reduce to an acceptable level) the vulnerabilities of friendly actions to adversary exploitation.

The key to successful OPSEC is identifying indicators that are tipoffs of impending activities, such as stereotyped SOPs or, in some cases, observable deviations from normal operations.

OPSEC is a continuous, systematic *process* involving security and common sense. It is used to analyze operational plans or programs to detect any weakness that could give useful information to adversaries or potential adversaries. The most important steps in the process are as follows:

- Knowing the unit's mission,
- Recognizing the adversary's intelligence threat to the unit,
- Being aware of the unit's critical information (essential elements of friendly information),
- Identifying indicators that might disclose or point to this information,
- Developing protective measures to eliminate these indicators, and
- Being constantly alert for vulnerabilities in the unit.

Over time, as a COR you may develop a rapport with foreign contractors you've dealt with. However, CORs must be wary of statements to even the most trusted of contractors. You may find a contractor soliciting information of possible intelligence value. For example, a COR might be asked about the timing, footprint and demographics of the unit a contract action was put in place to support. While this question may seem innocuous, if it is not relevant to contract performance then a COR should be concerned. CORs must immediately report any suspicious activities to the:

- Supporting Army Counterintelligence Organization,
- Air Force Office of Special Investigations (OSI),
- Naval Criminal Investigative Service (NCIS), or
- Local security personnel.

CORs must also be mindful of communications they receive or create which relate to contract performance and schedules. Information should be limited only to people who have a need to know. Disclosure of certain contractual information (such as completion dates, troop movement, and delivery locations) could harm the operational mission. Be cautious of how your documents are disposed of, and ensure you follow proper disposal protocol for your location and mission.

CORs should also be cautious when using satellite communications, cellular phones, and e-mail. These methods of communication generally are not secure and should be used with

the understanding the information can be intercepted. Ensure all communications are secured in accordance with the level of classification of your documents and mission.

Gaining the trust of the local communities, especially the contractors that supply needed goods and services, is vital to the success of the mission. Remember, the presence of danger is very real for the local nationals as well as the deployed forces. Many contractors live in the local area, and doing business with the U.S. government can be dangerous for them and their families. CORs must take all precautions to ensure that a contractor's personal information is protected.

## **11.17 ANTITERRORISM AND SECURITY**

### **11.17.1 THREAT FACTORS**

Remember from your training that the following eight questions are used to understand threats in your local environment:

1. Do terrorist groups or U.S. adversaries operate in the area?
2. Are they violent?
3. Do they attack U.S. personnel?
4. How active are they?
5. How sophisticated are they?
6. How do they operate?
7. How much popular support do they enjoy?
8. Do they use common tactics?

Department of State (DOS) publishes annual Country Reports on Terrorism, which identify terrorist groups and describe their actions against U.S. citizens and personnel. Your intelligence officer and chain of command are also sources of information on terrorist groups in the area.

If terrorist groups are operating in the area, the CCO and COR need to know their level of sophistication — whether they use highly targeted, carefully planned attacks or simply explode bombs randomly in public places. Knowing how the terrorist groups operate will enable the CCO and COR to avoid danger spots and detect evidence of an attack before it occurs.

Knowing whether a terrorist group has local popular support is also important. If not, the local population is more likely to warn U.S. personnel about events leading up to an attack. DoD and agencies of the U.S. government study these factors to help protect U.S. forces. The CORs personal awareness can contribute to these efforts. CORs must always be attentive to their surroundings and ready to react at the first sign of danger.

The Contracting Officer, COR and other acquisition support personnel should work with intelligence (J2) and law enforcement (OSI, CID, NCIS, etc.) to ensure DoD does not contract with contractors that directly or indirectly support enemies and adversaries of the

United States. There are contracting authorities in place to prevent contracting with the enemy. The COR should develop strong communication with the Contracting Officer to ensure there are plans in place and to understand the available contracting remedies in the event a vendor is knowingly or unknowingly supporting the enemy.

## **11.18 PERSONAL SECURITY AND SITUATIONAL AWARENESS**

As mentioned, CORs often are required to travel outside of the installation, putting themselves at risk. OSI, CID, NCIS or other security forces personnel can brief you on potential risks and may even accompany you and your convoy as part of standard force protection practices. Your Contracting Officer is another resource for determining the local security situation as they deal extensively with the local vendor base.

### **Real-World Example:**

In recent operations, local contractors gave members of the deployed force valuable intelligence, such as the location of improvised explosive devices (IEDs) along the roadside.

### **The Bottom Line:**

Building solid professional relationships with support contractors can help strengthen your situational awareness. Build strong relationships, but do so with a watchful eye.

To ensure their personal security, CORs should take the following precautions:

- Assess the risk and establish a Risk Management Plan.
- Never reveal the schedule for an onsite visit unless absolutely necessary.
- Treat all excursions as a combat patrol.
- Coordinate all actions with the unit and the Contracting Officer.
- Debrief the intelligence officer as necessary.
- Spend time solely on the business effort (e.g., avoid personal shopping and sightseeing).

When escorting contractors inside military installations, the COR must comply with base commander requirements for such escorts (e.g., badges, armed escorts, biometric screening, etc.) and ensure the contractor understands and complies with those requirements. The installation commander maintains the authority to bar from the installation anyone who poses a threat to personnel.

## 11.19 ADDITIONAL REFERENCES

The following references were not mentioned in this chapter but offer additional information related to cross-cultural competence and situational awareness:

- Office of the Deputy Assistant Secretary of Defense for Logistics Site: Provides SPOT policy, business rules, and other related contractor accountability information;<sup>4</sup>
- Operational Contract Support (OCS) Connect (CAC enabled): Provides resources and related OCS information;<sup>5</sup>
- DoDI 3000.05, Stability Operations;<sup>6</sup>
- JP 3-24, Counterinsurgency;<sup>7</sup>
- JP 3-26, Counterterrorism;<sup>8</sup>
- JP 3-07.2, Antiterrorism (available through JEL and at the Joint Electronic Library);<sup>9</sup> and,
- JP 3-29, Foreign Humanitarian Assistance.<sup>10</sup>

## 11.20 CHAPTER 11. KEY POINTS

1. Working outside of the United States and with other cultures can be an exciting experience, but brings about an array of challenges that must be considered and overcome.
2. As a COR it is vital you understand your responsibilities, governing policies, rules and regulations, and establish and maintain excellent professional relationships with the other members of the acquisition team.
3. Ethics are vitally important, particularly in the contingency environment due to potential cultural differences. You must not forget your duty is to the United States government, DoD and your customer, not the contractor.
4. Be careful, and understand your limitations—even if it is legal doesn't necessarily mean it is something you should do. Consult your legal advisor if you aren't sure.
5. CORs are a valuable member of the team, who engage with leadership, customers, contractors, and local nationals. A COR must be an employee, military or civilian, of the U.S. government, a foreign government, or a North Atlantic Treaty Organization or other coalition partner. In no case shall contractor personnel serve as CORs.
6. Contracted support can have a direct strategic impact on civil aspects of the operation.
7. CORs must be aware of antiterrorism countermeasures and security. Mobility and adaptability are key in performing COR duties, which can include traveling outside the wire in hostile areas.

8. Get as much information about the country or domestic disaster area as possible before you deploy. Become familiar with local conditions, security, and force protection matters.
9. CORs play an integral role in the deployment and tracking of contractor personnel. CORs help contractors sign up for the deployment processing center and help CCDRs gain visibility of contractors in the AOR through the use of SPOT.
10. CORs must be aware of the risks associated with contract administration in contingency environments, and must practice good operations security (OPSEC) at all times. CORs should be aware of the “Never Contract with the Enemy” requirements and authorities in order to protect U.S. national security interests.
11. All federal regulation 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.
12. Contracting is an integral part of military operations. CORs often contribute in impacting the human terrain and building habitual relationships with the local community.
13. It’s important for CORs to always remember: Only the Contracting Officer can bind the U.S. government contractually.
14. Additional contingency COR guidance, information, templates, checklists, and related policies can be found in the DCCORH and the Defense Contingency Contracting Handbook<sup>1</sup>.

## **11.21 CHAPTER 11. FOOTNOTES**

1. The DCCORH is located at [https://www.acq.osd.mil/asda/dpc/cp/cc/docs/corhb/DCCOR\\_Handbook\\_2012.pdf](https://www.acq.osd.mil/asda/dpc/cp/cc/docs/corhb/DCCOR_Handbook_2012.pdf), and the Defense Contingency Contracting Handbook is located at [https://www.acq.osd.mil/asda/dpc/cp/cc/docs/ctrhb/DCC\\_Handbook\\_v.5\\_April2017.pdf](https://www.acq.osd.mil/asda/dpc/cp/cc/docs/ctrhb/DCC_Handbook_v.5_April2017.pdf).
2. Joint Publication 4-10, “Operational Contract Support” can be found at [https://www.jcs.mil/Portals/36/Documents/Doctrine/pubs/jp4\\_10.pdf](https://www.jcs.mil/Portals/36/Documents/Doctrine/pubs/jp4_10.pdf).
3. The SPOT database can be accessed at <https://spot.dmdc.mil/>.
4. Additional information from the Office of the Deputy Assistant Secretary of Defense for Logistics can be found at <https://www.acq.osd.mil/log/LOG/index.html> .
5. Additional information from the Operational Contract Support (OCS) Connect can be found at <https://intelshare.intelink.gov/sites/ocs/>.

6. DoDI 3000.05, Stability Operations, can be found at <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/300005p.pdf>.
7. Joint Publication 3-24, Counterinsurgency, can be found at [https://www.jcs.mil/Portals/36/Documents/Doctrine/pubs/jp3\\_24.pdf](https://www.jcs.mil/Portals/36/Documents/Doctrine/pubs/jp3_24.pdf) .
8. Joint Publication 3-26, Joint Combating Terrorism, can be found at [https://jdeis.js.mil/jdeis/new\\_pubs/jp3\\_26.pdf](https://jdeis.js.mil/jdeis/new_pubs/jp3_26.pdf) (NOTE: This publication is on a special Joint Staff site that can ONLY be accessing with a CAC)..
9. Joint Publication 3-07.2, Antiterrorism (available through JEL and at the Joint Electronic Library), can be found at [https://jdeis.js.mil/jdeis/new\\_pubs/jp3\\_07.pdf](https://jdeis.js.mil/jdeis/new_pubs/jp3_07.pdf)  
<https://jdeis.js.mil/jdeis/index.jsp?pindex=27&pubId=573>(NOTE: This publication is on a special Joint Staff site that can ONLY be accessed with a CAC).
10. Joint Publication 3-29, Foreign Humanitarian Assistance, can be found at [https://www.jcs.mil/Portals/36/Documents/Doctrine/pubs/jp3\\_29.pdf](https://www.jcs.mil/Portals/36/Documents/Doctrine/pubs/jp3_29.pdf).

## CHAPTER 12:

# DOMESTIC EMERGENCY RESPONSE

You may be called upon to be a COR to support different types of domestic emergency operations. Domestic emergencies can affect the public welfare, endanger life and property, and/or disrupt U.S. government operations. Domestic emergencies can result from enemy attacks, natural disasters (such as hurricanes, tornadoes, earthquakes, floods, or fires), or human-made disasters (such as dirty bombs, insurrections, or civil disturbances). Private industry continues to play a vital role in response efforts to support recovery and reconstruction, and deliver essential items such as ice, water, and food supplies.

### **Real-World Example:**

On October 28, 2012, the President authorized an emergency declaration for the states affected by Hurricane Sandy. The President's actions authorized FEMA to coordinate all disaster relief efforts to provide assistance for required emergency measures directly to state, tribal, and local governments to save lives and protect property and public health and safety. The President directed FEMA to ensure federal partners continue to bring all available resources to bear to support state, local, territorial, and tribal communities in Hurricane Sandy-affected areas. The SECDEF directed DoD to provide any available disaster response resources requested by FEMA and state authorities as states throughout the Northeast began to recover from Hurricane Sandy. DoD coordinated with FEMA, U.S. Northern Command, and the National Guard Bureau on providing life-saving and sustaining assets to FEMA and Governors, as requested.

### **The Bottom Line:**

The National Defense Authorization Act for FY 2012 built on earlier legislation to enable individual states and DoD to coordinate their efforts through a single commander, usually a National Guard officer, who is given tactical control of both state-controlled National Guard forces and DoD military forces. While state and federal military forces maintain separate and distinct chains of command, this dual-status commander leads all military forces and directs their response efforts, achieving a unified effort. During Hurricane Sandy, this unified effort enabled much-needed assistance from DoD to move quickly to support states.

## 12.1 DOD RESPONSE TO DOMESTIC EMERGENCIES

When the President issues an emergency declaration after a natural or other major disaster, it gives the federal government the authority to engage in various emergency response activities. The President or SECDEF can then direct DoD assets to support response efforts. A large portion of the federal response is through contracts with private businesses, including those for debris removal, reconstruction, and the provision of supplies. The Secretary of the Department of Homeland Security (DHS) is responsible for coordinating federal operations in the United States to prepare for, respond to, and recover from terrorist attacks, major disasters, and other emergencies. For most emergency operations in the United States, Federal Emergency Management Agency (FEMA), a branch of the DHS, serves as the lead federal agency and supports local, tribal, or state authorities under the provisions of the Stafford Act and guidance in the National Response Framework (NRF). DoD supports these missions by providing defense support of civil authorities (DSCA). Figure 12-1 shows the national response framework for domestic emergencies.

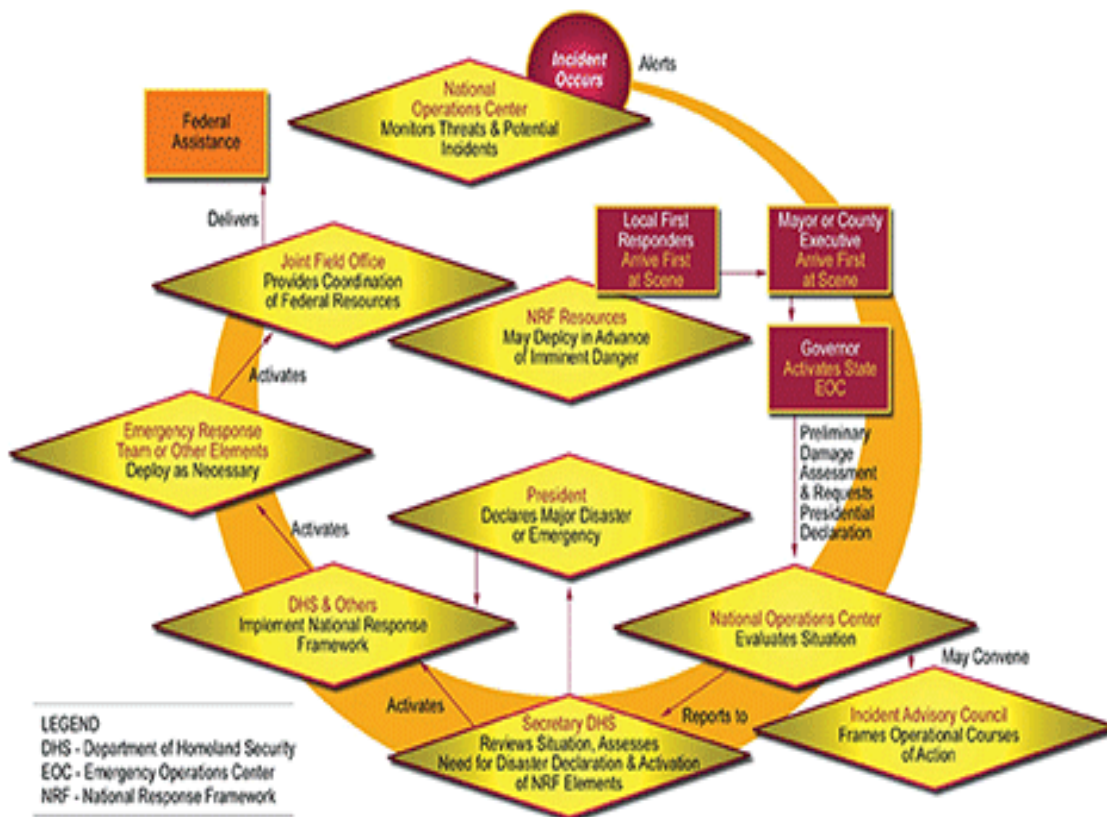


Figure 12-1. National Response Framework

Upon designation by the President of an emergency or major disaster, special emergency procurement authorities can be authorized to streamline the contracting process to expeditiously deliver needed supplies and services in support of relief operations. The authorization would allow for an increase in acquisition thresholds. See definitions of



micro-purchase threshold and simplified acquisition threshold at FAR 2.101 for current thresholds and applicability.

A DoD response to domestic incidents is almost always the last resort. All DoD support to disaster response is temporary, and the end state is the transfer of all emergency functions back to civilian authorities.

### **12.1.1 DEFENSE SUPPORT OF CIVIL AUTHORITIES (DSCA)**

As defined in DoD Directive 3025.18, DSCA is support by U.S. federal military forces, DoD civilians, DoD contract personnel, DoD component assets, and National Guard forces, in response to requests for assistance (RFAs) from civil authorities for domestic emergencies, law enforcement, and other domestic activities. DSCA is initiated by either a request for DoD assistance from civil authorities or qualifying entities or is authorized by the President or SECDEF.

### **12.1.2 NATIONAL RESPONSE FRAMEWORK (NRF)**

The NRF is an all-hazards plan — coordinated and managed by FEMA — that provides the structure and mechanisms for national level policy and operational direction for incident management to ensure timely and effective federal support. The NRF specifies how federal departments and agencies will respond to state, tribal, or local RFAs. The Secretary of DHS executes overall coordination of federal incident management activities. (The [FEMA website](#)<sup>1</sup> contains additional information on the NRF.)

### **12.1.3 ROBERT T. STAFFORD ACT**

The Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. §§ 5121–5206) authorizes the federal government to help state and local governments alleviate the suffering and damage caused by disasters. DoD assistance can be requested under Stafford Act or non-Stafford Act conditions. A Stafford Act incident is one in which state and local authorities declare a state of emergency and request federal assistance. The Stafford Act establishes programs and processes for the federal government to provide major disaster and emergency assistance to states, local governments, tribal nations, individuals, and qualified private nonprofit organizations. The Secretary of DHS is responsible for the overall coordination of federal Stafford Act incident management activities.

## **12.2 REQUESTS FOR ASSISTANCE (RFA)**

DoD assistance is requested by a lead federal agency (LFA) through a formalized RFA process. DoD capabilities and assets can greatly support domestic emergency response efforts but are normally requested only when other local, state, and federal capabilities and resources have been exhausted or when a military-unique capability is required. DoD handles RFAs on the basis of factors such as its categorization as a Stafford Act event; urgency of the incident; establishment of a joint field office if a defense coordinating officer

(DCO) or joint task force has been appointed; and, originator of the request (such as incident command or state, regional, or national organization).

## **12.3 CONTRACTING SUPPORT FOR DOMESTIC EMERGENCY OPERATIONS**

Normally, FEMA is the LFA in domestic emergency operations. When requested, DoD partners with other federal, state, and local agencies to coordinate acquisitions with the LFA and supporting personnel like DCOs. This will assist in procuring needed supplies and services effectively and efficiently and reduce duplication of effort, given the large number of agencies that could potentially be involved in the response. Military forces operating in domestic support operations should minimize contracted support to the deployed force to avoid competing with state and federal agencies for limited local commercial resources.

### **Real-World Example:**

During support to Hurricane Katrina, lack of communication and coordination between FEMA and the U.S. Army Corps of Engineers resulted in an order for at least double the needed amount of ice. This resulted in an oversupply of ice and a lack of distribution sites to handle the volume ordered.

### **The Bottom Line:**

A high operational tempo and the “need now” mentality that arise in emergency environments can affect the way contracting is executed. Effective communication and coordination between the requiring and contracting activities supporting an operation protect against waste.

## **12.4 U.S. NORTHERN COMMAND (NORTHCOM)**

NORTHCOM regional DCOs and the defense coordinating element can deploy in advance of disasters or other emergency incidents to validate, plan, and coordinate potential DoD support of response efforts from FEMA or other LFAs; and facilitate DoD support of life-saving and response operations.

## **12.5 HOMELAND SECURITY OFFICE OF OPERATIONS COORDINATION AND PLANNING (OPS)**

The DHS OPS serves as the primary national-level multiagency situational awareness and operational coordination office.

## 12.6 NATIONAL GUARD OPERATIONS

Many domestic support operations are handled at the state level. In these cases, Army and Air National Guard units provide military support under U.S.C. Title 32. Similar in concept to the National Guard tiger teams, the Office of Management and Budget (OMB) may deploy members of the Contingency Contracting Corps to help during an emergency situation (41 U.S.C. § 2312). (National Guard Regulation 500-1 describes National Guard support operations.)

## 12.7 INCIDENT COMMAND SYSTEM (ICS)

The ICS is a standardized, on-scene incident management tool designed to allow responders to adopt an integrated organizational structure equal to the complexity and demands of a single incident or multiple incidents without hindrance by jurisdictional boundaries. The ICS manages and addresses the following problems:

- Too many people reporting to one supervisor,
- Differing emergency response organizational structures,
- Lack of reliable incident information,
- Inadequate and incompatible communications,
- Lack of structure for coordinated planning among agencies,
- Unclear lines of authority, and
- Terminology differences among agencies and unclear or unspecified incident objectives.

An ICS enables integrated communication and planning by establishing a manageable span of control.

## 12.8 CHAPTER 12. KEY POINTS

1. FEMA, a branch of DHS, is the lead federal agency responsible for coordinating contracting support for domestic emergency operations.
2. The DoD does **NOT** augment FEMA or other federal agencies with contracting staff but can support specific contracting-related tasks as directed by the President or SECDEF.
3. Military forces working on domestic support operations should minimize contracted support to the deployed forces to avoid competing with other support efforts for limited local resources.
4. Many domestic support operations are handled at the state level. In these cases, U.S. Army and Air National Guard units provide military support under state active duty or under U.S.C. Title 32.

5. It is critical to know how to plug into a multi-functional response effort when DoD is not the lead agency but is called upon for assistance by FEMA or other lead federal agencies.
6. The Robert T. Stafford Disaster Relief and Emergency Assistance Act applies to emergency declarations or major disaster declarations.
7. Additional COR guidance, information, templates, checklists, and related policies for use in domestic emergencies and major disasters can be found in the Defense Contingency COR Handbook (DCCORH) and the Defense Contingency Contracting Handbook.<sup>2</sup>

## **12.9 CHAPTER 12. FOOTNOTES**

1. More information on FEMA can be found at <https://www.fema.gov>. The FEMA website has a lot of useful information on travel safety, storms, and safety tips.
2. The DCCORH is located at <https://www.acq.osd.mil/asda/dpc/cp/cc/cor-handbook.html>, and the Defense Contingency Contracting Handbook is located at <https://www.acq.osd.mil/asda/dpc/cp/cc/ctr-handbook.html>.

## **APPENDIX A: FORMS**

**This appendix contains a list of some of the common forms a COR may encounter. Many of the forms have instructions for filling them out.**

Department of Defense Forms (DD) may be found at the Department of Defense (DoD) Forms Management Program website: <https://www.esd.whs.mil/DD/forms/>.

Standard Forms (SF) may be found at the GSA Forms Library website: <https://www.gsa.gov/reference/forms>.

### **CONTRACT, ORDER, MODIFICATION RELATED FORMS:**

- SF 1449, Solicitation/Contract/Order for Commercial Items
- SF 33, Solicitation, Offer and Award
- DD Form 1155, Order for Supplies or Services
- SF 26, Award/Contract
- SF 30, Amendment of Solicitation/Modification of Contract
- SF 1442, Solicitation, Offer and Award (Construction, Alteration or Repair)

### **CONTRACT ADMINISTRATION RELATED FORMS:**

- DD Form 250, Material Inspection and Receiving Report
- DD Form 2772, Contractor Discrepancy Report
- SF 24, Bid Bond
- SF 25, Performance Bond
- SF 25A, Payment Bond
- SF 308, Request for Wage Determination and Response to Request
- SF 1034, Public Voucher for Purchases and Services Other Than Personal
- SF 1443, Contractor's Request for Progress Payment
- SF 1445, Labor Standards Interview 12/1996
- SF 1446, Labor Standards Investigation Summary Sheet
- Synchronized Predeployment and Operational Tracker (SPOT) Letter of Authorization (LoA)

### **FUNDING FORMS:**

- DA 3953, Purchase Request and Commitment
- AF Form 9, Request for Purchase
- NAVCOMPT Form 2276, Request For Contractual Procurement
- DD Form 448, Military Interdepartmental Purchase Request (MIPR)
- DD Form 448-2, Acceptance of MIPR

## **RECEIVING REPORTS**

In most cases Wide Area Workflow will be used to document the government's acceptance of delivered supplies or services. WAWF is the electronic data interchange version of the DD Form 250. However, there may be times when acceptance is done outside of WAWF. In these instances, any of the following may be used as a receiving report:

- SF 1449; blocks 32 through 42 as applicable.
- DD Form 1155; blocks 26 through 42 as applicable, see DFARS PGI 253.213.
- DD Form 250; blocks 21 and 22, see DFARS Appendix F.
- Contractor's commercial Invoice may be used as receiving report.

## **RECURRING COR REPORTS**

Typically, the COR will use the SPM module to post and transmit recurring COR surveillance reports to the Contracting Officer and other stakeholders. SPM contains numerous smart forms that may be used by CORs when conducting contract surveillance.

## APPENDIX B: TRAINING

DoDI 5000.72 identifies the minimum training requirements for CORs (see Enclosure 5 of DoDI 5000.72).

The following are additional courses available to the COR depending on the functions delegated to the COR. This list is not all inclusive.

CLV 018 Earned Value and Financial Management Reports  
CLB 023 Software Cost Estimating  
CLC 004 Market Research  
CLC 006 Contract Terminations  
CON 0070 Source Selection  
CLC 011 Contracting for the Rest of Us  
CLC 013 Services Acquisition  
CLC 055 Competition Requirements  
CLM 031 Improved Statement of Work  
CLM 039 Foundations of Government Property

HBS 408 Customer Focus  
HBS 409 Decision Making  
HBS 441 Time Management  
HBS 444 Writing Skills

Note: There are also potential courses or credentials the Contracting Officer and requiring activity may use for COR refresher training. You can learn more about DAU training courses and Harvard Business School (HBS) training courses at iCatalog ([dau.edu](http://dau.edu))

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

**REMEMBER:** Your agency may also specify “agency specific training” you may be required to take.

## **APPENDIX C: ACRONYMS AND TERMS**

Almost all acronyms and terms referenced in the COR Guidebook have been defined as they were used in their respective chapters.

The official “Glossary of Defense Acquisition Acronyms and Terms” may be found at the following website: <https://www.dau.edu/tools/t/DAU-Glossary>.



## **APPENDIX D: COR CHECKLISTS**

These are not mandatory checklists. They were developed to assist you during performance of your designated COR duties and responsibilities. The checklists are representative of functions normally designated to a COR.

It is recommended that you become familiar with the content of these checklists. There may be functions in your letter of designation that are not covered below; if necessary, revise and update your checklists to cover those functions actually delegated.

**Note:** Refer to the letter of appointment/designation from the Contracting Officer to determine all functions you have been designated to perform.

### **Content**

- D.1. DOs and DON'Ts - Contract Administration and Remedies Checklist
- D.2. Contents of a COR Surveillance File
- D.3. DOs and DON'Ts - Contract Monitoring
- D.4. DOs and DON'Ts - Pre-Award and Solicitation
- D.5. Considerations for the Performance Work Statement (PWS) and Quality Assurance Surveillance Plan (QASP)
- D.6. Contractor Performance Assessment
- D.7. Combating Trafficking in Persons Checklist
- D.8. Contractor Delay Assessment
- D.9. COR Compliance - Surveillance of Construction Contracts (Labor Checks)
- D.10. Payment Approval/Recommendation Checklist

**D.1: DOS AND DON'TS:  
CONTRACT ADMINISTRATION AND REMEDIES CHECKLIST**

<b>CONTRACT ADMINISTRATION</b>	
<b>DO</b>	<b>DON'T</b>
Remember 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. When in doubt, talk to the Contracting Officer.
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.

<b>REMEDIES</b>	
<b>DO</b>	<b>DON'T</b>
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.	

## D.2: CONTENTS OF A COR SURVEILLANCE FILE

CONTENTS OF A COR SURVEILLANCE FILE IN SPM	
	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, unless available in Electronic Document Access (EDA) and the COR has an EDA account.
	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. (For certain DAU courses; ensure that the completion date is recorded in JAM via PIEE.)
	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. May also use GFP module within PIEE.
	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 unless available in WAWF and the COR has a WAWF/PIEE account.
	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 outdoor 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 surveillance report. The frequency of the COR's surveillance report is contract dependent.
	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.
	If the COR is responsible for contractor performance reporting, has the COR completed CPARS report inputs?
	Has the COR performed contractor surveillance/site visits?
	Are the results of surveillance/inspection documented?

Note: Some of the above items may not be applicable to your assigned contract(s) or order(s). In addition, SPM may be the repository for many of these items.

**D.3: DOS AND DON'TS:  
CONTRACT MONITORING**

<b>CONTRACT MONITORING</b>	
<b>DO</b>	<b>DON'T</b>
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 only reviews and approves/disapproves contract performance (not personnel); and the contractor supervises their contractor personnel.
	Assume the contractor billings are correct.

**D.4: DOS AND DON'TS:  
PRE-AWARD AND SOLICITATION**

<b>PRE-AWARD AND SOLICITATION</b>	
<b>DO</b>	<b>DON'T</b>
Use market research.	Write vague specifications, assuming “the contractor will do whatever is necessary to satisfy us.”
Look for commercial solutions.	Write design specifications, prescribing in detail what materials should be used 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.	Divulge budget information.
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.	
Limit use of design 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.	

## D.5: CONSIDERATIONS FOR THE PWS AND QASP

CONSIDERATIONS FOR THE PERFORMANCE WORK STATEMENT AND QASP	
	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?

## D.6: CONTRACTOR PERFORMANCE ASSESSMENT

<b>CONTRACTOR PERFORMANCE ASSESSMENT</b>	
	Invoicing/cost control. Are the invoices completed according to the billing instructions?
	Timeliness (schedule/delivery). Is the contractor on schedule to meet contractual requirements? Did the contractor meet the contractual delivery requirements?
	Quality of performance and deliverables. 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?



## **D.7: COMBATING TRAFFICKING IN PERSONS CHECKLIST**

### Combating Trafficking in Persons Checklist to Prevent Trafficking in Government Contracting

**Contract Number:**

**Place of Performance:**

**Name of Auditor:**

**Appointed COR/SME: (name, e-mail, redeployment date)**

**Date of Audit:**

**Date of previous Audit:**

**Number of Non-Conformances:**

**Number of Repeat Non-Conformances:**

**Out-brief with Contractor Supervisor: Yes No (name, e-mail)**

**Contractor QA/QC: (name, e-mail)**

**Follow-up required: Yes No**

**Audit Summary:**

**Concerns:**

**Non-Conformances: (list specific part of contract not in compliance with) FAR 52.222-50, CTIP**

- Has the contractor informed employees of the U.S. Government's Zero Tolerance CTIP policy to include actions taken against them for violations of CTIP policy? FAR 52.222-50(c) (1).
- Do employees understand what TIP is? FAR 52.222-50(c)(1)
- Does the contractor maintain a CTIP Compliance plan? FAR 52.222-50(h)
- Does the CTIP Compliance Plan have all the mandatory information? FAR 52.222-50 (h)
- Are employees charged a recruitment fee? FAR 52.222-50(b)(6)
- Do employees maintain their own identity and immigration documents? FAR 52.222-50(b) (4)
- Does the contractor provide housing that meets the host county's housing and safety standards? FAR 52.222-50(b) (8) (check for cleanliness, overcrowding, fire/safety issues)
- Have employees been provided a copy of their employment contract in a language that they can read? FAR 52.222-50(b) (9)
- Has the contractor informed the contracting officer of any information that it receives (including Host Nation law enforcement) that alleges a contractor employee or subcontractor employee has engaged in conduct violating CTIP policy? FAR 52.222-50(d) (1)
- Does the contractor provide return transportation for employees upon end of employment? FAR 52.222-50(b)(7)

**FAR 252.225-7995 Contractor Personnel Performing in the USCENTCOM AOR (Deviation 2017-O0004)**

- Have employees been paid? FAR 252.225-7995 (Deviation 2017-O0004)(d)(8)(ii)
- Have employees received the agreed upon wage on-time? FAR 252.225-7995 (Deviation 2017-O0004) (d)(8)(ii)

**General Observations. During the review, did you see any indicators of TIP:**

- Signs of physical abuse (i.e., bruises, cuts, and/or broken bones)
- Serious communicable diseases
- Injuries from violence or hazardous work conditions
- Escorted or closely monitored at all times
- Someone speaks for them
- Live at or are confined to their worksite – doors locked from outside, fenced-in work site/housing
- Exposure to toxic or hazardous materials
- Evidence of a sexually explicit online advertisement, especially of minors

**List all examples. Provide pictures if possible.**

## D.8: CONTRACTOR DELAY ASSESSMENT

<b>CONTRACTOR DELAY ASSESSMENT</b>	
<p>Before making a final recommendation to the Contracting Officer, the COR must be certain 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 item 2 below.</p> <p>If “yes,” did the contractor:</p> <ul style="list-style-type: none"> <li>• File a charge with the appropriate labor relations board to seek injunctive relief in court?</li> <li>• Did the contractor use other available government procedures or private boards or organizations in an attempt to settle or arbitrate disputes that caused the strike?</li> </ul>
	<p>2. Was the delay caused by government interference or disruption? If “no,” go to item 3 below.</p> <p>If “yes,” did the government:</p> <ul style="list-style-type: none"> <li>• Delay in making payments due to the contractor?</li> <li>• Deliver GFP late?</li> <li>• Fail to reply to a contractor request for clarification?</li> <li>• Fail to disclose all facts applicable to performance?</li> <li>• Cite or misrepresent conditions that were different from those portrayed?</li> <li>• Experience scarcity of supplies due to Defense Production Act priorities over commercial or nonrated orders?</li> <li>• Delay issuing a required notice to proceed?</li> <li>• Delay issuing changes?</li> <li>• Delay performance by other government contractors?</li> <li>• Experience delays because of an interested party protesting the contract award?</li> <li>• Delay making the site available?</li> <li>• Delay providing funding?</li> <li>• Delay inspection or acceptance?</li> <li>• Delay because of defective or ambiguous specifications?</li> <li>• Delay granting approvals?</li> </ul>
	<p>3. Was the delay caused by a subcontractor? If “no,” go to item 4 below.</p> <p>The determination is “no” if either of the following occurred:</p> <ul style="list-style-type: none"> <li>• Did a dispute between the subcontractor and prime cause the delay?</li> </ul>

	<ul style="list-style-type: none"> <li>• Were subcontracted products or services available from other sources in time for the prime to complete performance?</li> </ul>
	<p>4. Was the delay caused by any other occurrence specifically characterized in the Default or Excusable Delays (or other clauses), as generally excusable? If “no,” go to item 5 below.</p> <p>If “yes,” was the delay caused by:</p> <ul style="list-style-type: none"> <li>• Acts of the government in either its sovereign or contractual capacity?</li> <li>• Acts of God or the public enemy?</li> <li>• Fire?</li> <li>• Flood?</li> <li>• Unusually severe weather?</li> <li>• Epidemics?</li> <li>• Quarantine restrictions?</li> <li>• Labor disputes resulting in strikes?</li> <li>• Freight embargoes?</li> <li>• Common carrier delays?</li> </ul>
	<p>5. Was the delay caused by other circumstances not previously mentioned? If “yes,” did the contractor:</p> <ul style="list-style-type: none"> <li>• Not cause the delay?</li> <li>• Not have any control over the circumstances that caused the delay?</li> </ul>

**D.9: COR COMPLIANCE - SURVEILLANCE OF CONSTRUCTION CONTRACTS (LABOR CHECKS)**

<b>COR COMPLIANCE – SURVEILLANCE OF CONSTRUCTION CONTRACTS (LABOR CHECKS)</b>	
	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.

**D.10: PAYMENT APPROVAL/RECOMMENDATION CHECKLIST**

Invoice Number:

Total Dollar Amount of Invoice (when WAWF is not available):

Vendor Name (when WAWF is not available):

Contract Number:

Task Order Number:

Modification Number:

Agency/Office Code (when WAWF is not available):

Date Invoice Received By Payment Office (when WAWF is not available):

Compliance Question	Yes (insert checkmark)	No (make comment for follow-up with contractor or describe why invoice should still be paid) For deductions, describe next to relevant question
<p>Is the invoice document in compliance with contract requirements?</p> <p>a. Is the identifying information correct (e.g., contract and task order number, CLIN or sub-CLIN number)?</p> <p>b. Is the invoice dated?</p> <p>c. Is the billing period correctly stated, with no overlaps with other invoices?</p> <p>d. Is adequate shipping information included?</p> <p>e. Is the remittance address included?</p> <p>f. Are prompt pay discounts offered (when payments are subject to prompt pay, usually for a cost-reimbursement contract rather than a fixed price contract)?</p> <p>g. Is a point of contact identified?</p>		
<p>Has the contractor submitted required deliverables for this invoice period? Were they delivered on time?</p>		
<p>Is the quality of the deliverables or services acceptable and in compliance with the terms of the SOO, SOW, or PWS?</p>		
<p><b><i>For cost contracts or cost elements of mixed-type contracts:</i></b></p> <ul style="list-style-type: none"> <li>Are the labor hours, travel, subcontract, equipment, and ODCs (detailed below) reasonable and commensurate for the type and nature of work completed during the invoice period?</li> </ul>		

Compliance Question	Yes (insert checkmark)	No (make comment for follow-up with contractor or describe why invoice should still be paid) For deductions, describe next to relevant question
<p><b>Labor Hours</b></p> <ul style="list-style-type: none"> <li>• Are the skills and labor categories needed for the work performed?</li> <li>• Is the level of expertise billed consistent with the work performed (neither too little nor too much experience)? (Compare to the contract and proposal. If the agency is paying for too high a level of expertise than that needed for the job, funds will likely run out before the work is completed. If the level of expertise is too low, performance will suffer.)</li> <li>• Is any OT authorized in writing in the contract?</li> <li>• Are management hours disproportionate to worker hours?</li> </ul> <p><b>Travel</b></p> <ul style="list-style-type: none"> <li>• Is the travel authorized by the contract?</li> <li>• Are the mode and class of travel consistent with contract terms?</li> <li>• Was any required prior approval obtained?</li> </ul> <p><b>Subcontracts</b></p> <ul style="list-style-type: none"> <li>• Are subcontracts consistent with the Subcontract Plan and subcontract approval requirements in the contract?</li> </ul> <p><b>Equipment</b></p> <ul style="list-style-type: none"> <li>• Is any purchased equipment required for performance of the contract?</li> <li>• Has the equipment been properly reported (if required for tracking purposes) consistent with the agency's reporting requirements?</li> </ul> <p><b>ODCs</b></p> <ul style="list-style-type: none"> <li>• Are all ODCs clearly described and tied to a task performed in the billing period?</li> </ul>		
Are you aware of any current or future problems that might adversely affect contractor performance?		
<p>Are there any funding issues?</p> <ul style="list-style-type: none"> <li>• Are funds available to cover the invoice?</li> <li>• Are the unexpended funds sufficient to complete the work required for this project?</li> <li>• Is the rate of spending consistent with performance?</li> </ul>		

CURRENT AMOUNT DUE: \$

FFP

\_\_\_ I APPROVE PAYMENT

\_\_\_ I DO NOT APPROVE PAYMENT

\_\_\_ N/A

OTHER THAN FFP

\_\_\_ I RECOMMEND PAYMENT

\_\_\_ I DO NOT RECOMMEND PAYMENT

\_\_\_ N/A

REASON FOR DISAPPROVAL/NO RECOMMENDATION (short summary of relevant comments and information provided above):

HOLD-BACK AMOUNT (under terms of contract<sup>1</sup>): \$

**Complete the following when WAWF is not available:**

COR Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Contracting Officer Signature: \_\_\_\_\_ Date: \_\_\_\_\_

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<sup>1</sup> For instance, FAR Subpart 52.232-5, "Payment under Fixed-Price Construction Contracts," permits a maximum retention of 10 percent of the amount of the payment until satisfactory progress is achieved, unless the Contracting Officer approves a lower retention percentage.