Federal Aviation Administration

Contracting Officer’s Representative Handbook

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Chapter 1

Chapter 1 - Introduction

### The COR Function

The FAA depends increasingly on contracts to accomplish its operations and competent contract management is vital to ensuring FAA gets the services and products that it needs, and business relationships between FAA and its contractors remain mutually beneficial. No one person has all of the necessary skills for successful contract management. It requires a team, with each member having the necessary expertise and responsibilities. The Contracting Officer’s Representative (COR) is a key member of this team. Delegated authority to act on behalf of the Contracting Officer, a COR’s major responsibilities include:

* Assisting the contractor interpret technical requirements.
* Recommending changes in contract terms to the Contracting Officer.
* Monitoring and evaluating contractor performance.
* Reviewing contractor invoices.
* Recommending corrective actions.
* Inspecting and accepting contract deliverables.

### Purpose of Handbook

This handbook supplements policy and guidance in the FAA Acquisition Management System (AMS) by providing general processes, practices, and other information for anyone delegated COR duties.

The FAA Acquisition System Toolset (FAST) at http://fast.faa.gov is the exclusive location and official record of all AMS policy and guidance. Should there be any conflict between AMS and information in this handbook, AMS has precedence.

### Role of the Contracting Officer and COR

The Contracting Officer is the legal agent of the Government, responsible for integrity of the contracting process. The Contracting Officer safeguards the Government’s interests, ensures all necessary contracting actions are performed, and oversees compliance with contract terms and conditions.

Only a Contracting Officer or other employee with a Delegation of Procurement Authority may enter into, change, or terminate a contract, order, agreement, lease, or other transaction on behalf of the Government. The Contracting Officer signs and has legal responsibility for obligating documents. A Contracting Officer’s authority, and any limits to that authority, is stated in a certificate of appointment, commonly referred to as a “warrant.”

Although the Contracting Officer must retain certain contracting responsibilities, he or she may delegate some responsibilities. For example, a Contracting Officer may not have expertise to oversee the technical aspects of contractor performance, and may delegate this function to a COR.

A COR is the Contracting Officer’s “eyes and ears.” A contractor has responsibility for delivering quality, timely supplies or services required by a contract; the COR observes, documents, and reports on the contractor’s technical performance.

CORs help during procurement planning and source selection phases of the contracting process. When required, they work with the Contracting Officer, program officials, and other functional specialists to analyze the marketplace, define requirements, identify potential vendors, establish source evaluation criteria, and participate in source evaluation and selection.

### Limit of Authority

The COR must fully understand limits of his or her authority. Although the Contracting Officer may delegate certain responsibilities to a COR, authority to legally bind the Government remains with the Contracting Officer. A COR cannot change any requirement that affects price, delivery, quality, quantity, or other contract terms. CORs must be particularly careful that their words or actions do not commit the Government to any condition not specified in the contract. Unauthorized commitments are serious acts of misconduct; anyone without proper authority committing the Government is accountable and may be subject to disciplinary action.

### COR Selection and Designation

A COR is typically nominated by the product/service team lead or other management official from the requiring organization. The Contracting Officer designates the COR by written memorandum outlining specific authorities and responsibilities. Which duties are delegated is often a factor of the experience and preferences of the Contracting Officer, and assessment of COR’s abilities.

Each COR has different skills and knowledge, and delegated COR duties may vary by contract. The Contracting Officer and nominated COR should jointly assess the COR’s knowledge, experience, and skill versus that needed to effectively perform the delegated duties. The pre-designation interview is the time to ensure your qualifications and prior experience are considered in developing a training plan for the duties that the COR will assume. Examples of areas for the Contracting Officer and nominated COR to review and discuss include:

* List of COR duties
* COR competencies
* Type, technical complexity, and size of the contract
* Which duties will be delegated to the COR
* Prior training and experience
* Physical location of Contracting Officer and COR

The specific duties delegated to the COR and the skill set needed by a COR, is influenced by contract type, complexity, and size. Fixed-price contracts for commercial items should not require the same degree of oversight and monitoring as a cost-plus-incentive fee contract for systems development.

When possible, the COR should be identified well before contract award. His or her technical expertise may be needed during planning and source selection stages of the procurement process. By helping with planning, solicitation, and evaluation activities, the COR gains an in-depth understanding of the contract and is better equipped to oversee the contract after award.

### Teaming

Successful programs depend on stakeholders working cooperatively. Stakeholders include people from the requiring organization, program office, contracting office, other functional areas, and the contractor. Solid stakeholder relationships, based on open communication and focused on customer’s need, keep a program on target. The COR plays a unique “linking-pin” function among stakeholders, providing both technical and management expertise. The COR works with the Contracting Officer, financial representatives, work-package managers, program office representatives, and contractor personnel to achieve the program’s objectives.

High-quality contracts are produced when the COR collaborates with other technical representatives, has a good rapport with the Contracting Officer, remains unbiased, and concentrates on ensuring the best contracting arrangement for the FAA. CORs can leverage their unique role, seeing from three perspectives - procurement, technical, and contractor - to solve problems and avoid squabbling associated with competing objectives.

Cooperation between the COR and Contracting Officer is crucial. Together they ensure program requirements are clearly defined, the contract is properly structured to satisfy those requirements, the best contractor is selected, and quality products or services are delivered.

It is also important for a COR to build an effective relationship with the contractor. Vendors have a commitment to support program outcomes required by the contract. With a team approach, contractors can provide vital information and assistance to solve problems, improve performance, and reduce costs.

### Standards of Conduct

Transactions involving taxpayer dollars require the highest degree of public trust and standards of conduct. CORs must conduct themselves in a manner that instills public confidence. They must carry out their duties consistent with law, regulation, policy, order, and FAA’s mission. CORs must maintain a level of behavior and performance that will promote efficiency of the Federal service and conform to ethical principles. The general rule is CORs must strictly avoid any actual or apparent conflict of interest in their contractor relationships. As with any issue involving conduct, the appearance of misconduct may be damaging even if there is no actual misconduct. Always keep in mind that a COR’s behavior is being watched, and any appearance of unethical behavior is as damaging as the actual deed. The COR should consult their cognizant legal counsel and Contracting Officer about any questions or issues pertaining to standards of conduct.

### Types of Contracts

Many contract administration duties are driven by the type of contract. The Contracting Officer selects the appropriate contract type, but a COR’s insight into the complexity, scope, and risk of performing the required work helps guide the Contracting Officer’s decision. CORs should understand the basic characteristics of commonly used contract types:

* Fixed-price
* Cost-reimbursement
* Indefinite Delivery
* Time and Materials and Labor Hour

There are additional types of contracts and agreements not listed above. AMS Procurement Guidance T3.2.4 describes other types in detail.

***Fixed-Price***

Firm-fixed-price contracts place maximum risk on the contractor, and significantly less risk on the Government. The contractor agrees to deliver that which is required by the Government in return for a specified price. The Government receives supplies or services for the price that it promises to pay. If the contractor fails to perform at the contract price, then it is liable for default and additional costs associated with default.

Firm-fixed-price contracts are appropriate when the Government can translate its requirements into definable and clear specifications or tasks. Contractors are willing and able to develop a fair and reasonably priced offer, and assume a reasonable risk, when there is little or no uncertainty about what they must do to satisfy the Governent’s needs. Clearly defined Government requirements minimize the contractor’s uncertainty. Without clearly defined requirements, contractors have no way of estimating the price of the work with sufficient accuracy to assume the risk of a fixed-price contract. Research and development is a typical example of work with too much uncertainty for a fixed-price contract. If the Government were to require a fixed-price contract to meet these needs, it could result in offers with unreasonably high prices to cover the uncertainty and potential risk of performance.

Government surveillance and monitoring is usually lower on firm-fixed-priced contracts than other contract types; a vendor assumes nearly all risk and has an incentive to effectively and efficiently perform the work.

***Cost-Reimbursement***

There are several variations of cost-reimbursement contracts, the most common being cost-plus-fixed-fee. This type of contract is used when uncertainties in contract performance are of such magnitude that the cost of performance cannot be estimated with sufficient reasonableness to permit use of a fixed-price contract. Rather than guaranteeing to perform under a contract at a specified price, the contractor agrees to deliver its "best efforts" to perform the requirements in return for costs incurred and a reasonable fee. This type of contract requires negotiation of estimated cost and payment of a fixed dollar fee to the contractor. The fee cannot be changed unless the Government changes the scope of work in the contract.

Other variations of cost-reimbursement contracts include:

* Cost-plus-award-fee that provides for a base fee, fixed at inception of the contract, and an additional award fee amount the contractor may earn with exceptional performance.
* A cost contract with no fee.

In cost-reimbursement contracts, contractor risk is minimal and Government risk is high. The Government has no guarantee it will get the specified product or service. If the product or service is not complete and the maximum cost has been reimbursed to the contractor, the Government has equally unsatisfactory choices. It can elect to not add funds to the contract and get no further work or it can add money to fund the remaining work.

Given the nature of the work acquired by cost-reimbursement contracts, contractor performance often evolves in ways neither the contractor nor Government foresees at the time of award. Because of high Government risk and lack of guaranteed performance, cost-reimbursement contracts must be monitored far more closely than fixed-price. The COR and Contracting Officer must ensure the contractor is providing its best efforts and is efficiently expending funds and controlling costs.

***Time and Materials and Labor Hour***

Time-and-materials, and labor-hour, contract types combine features of fixed-price and cost-reimbursement contracts. These contract types are appropriate when the exact level of effort to complete a task or deliver a product are impractical to determine. The Government’s risk is high if these contract types are not actively monitored to ensure the contractor’s hours expended and mix of personnel used are commensurate with the contractually-specified deliverables.

***Indefinite Delivery***

There are three types of indefinite delivery contracts: definite-quantity, requirements contracts, and indefinite-quantity contracts. In each of these, the Government places individual orders as needs arise. In an indefinite delivery contract, the Government can enter into a contract without definite needs as to the quantity (indefinite-quantity) or delivery schedule (definite-quantity). A requirements contract is similar to the indefinite-quantity and definite-quantity types, but does not promise a minimum order. It only holds the promise the Government will order exclusively from the contractor when the supplies or services are required.

### Supplies and Services

Supply contracts are used to obtain systems, equipment, spare parts, clerical supplies, consumables, or commercial items.

A service contract requires a contractor to perform an identifiable task rather than furnish an end-item of supply. It may be either nonpersonal or personal and may be performed by professionals or nonprofessionals. When contracting for services, requirements should be described, to the extent possible, in performance-based terms that tell a contractor what is needed rather than how the work should be performed.

Personal services are characterized by an employer-employee relationship created between Government and contractor personnel. When a Government employee exercises relatively continuous supervision and control over one or more contractor employees, a personal services relationship is created. CORs should avoid this employer-employee relationship under service contracts.

### COR Duties

Chapter 2 of this handbook describes 18 generic COR duties. These duties are divided into three separate, but interrelated phases of activity:

* Procurement planning.
* Contract formation.
* Contract administration.

Each phase of COR activity can occur when a contract may be needed during any AMS lifecycle management phase. For example, procurement planning occurs during final investment analysis for new investment programs, or during in-service management for maintenance contracts for operational assets. Likewise, contract administration occurs after contract award during any lifecycle management phase.

### Phase One: Procurement Planning

During procurement planning, the COR works with the Contracting Officer and program office to define requirements, analyze the marketplace, identify potential vendors, establish an appropriate source selection strategy, and define criteria for source evaluation. Information prepared by the COR, such as market research analysis, a statement of work, specification, drawings, delivery or performance schedules, is the foundation for selecting a type of contract and assembling a solicitation.

The COR will also assist with internal determinations, reviews and justifications such as the determination to use small business set-asides, single source or full and open procedures.

### Phase Two: Contract Formation

During contract formation, the procurement team led by the Contracting Officer:

***Solicits Offers***

* Publicize the proposed procurement;
* Prepare the solicitation;
* Conduct any scheduled pre-proposal conference; and
* Respond to questions from prospective offerors.

***Evaluates Offers***

* Determine whether to consider late proposals;
* Resolve any questions from offerors or questions about offers;
* Determine whether overall offer is responsive to Government requirements.
* Evaluate cost or price, non-price factors, and other proposed terms and conditions;
* Plan for and conduct any necessary negotiations; and
* Evaluate the responsible prospective contractor.

***Awards a Contract***

* Select a source
* Obtain all required approvals;
* Prepare contract documents for award;
* Debrief any unsuccessful offeror that requests information on the award decision; and
* Respond to any [protest](javascript:GoTerm('fg000905');).

The primary activity of the COR during the Contract Formation phase is technical advice, and evaluation of offeror’s proposals against evaluation criteria established during procurement planning. This results of this activity help determine which vendor’s offer is the best value to the Government for contract award purposes.

### Phase Three: Contract Administration

Activities during contract administration ensure the contractor meets technical, quality, and quantity requirements within contractually-established cost and time. CORs perform technical monitoring and oversight during this phase. Contract administration includes:

***Initiate Contract Administration***

* Plan contract administration; and
* Conduct necessary post-award orientation.

***Administer Contract Changes***

* Modify contract; and
* Exercise contract [option](javascript:GoTerm('fg000786');)s.

***Administer Contract Performance***

* Monitor contract performance;
* Use appropriate remedies to protect the Government’s rights; and
* Document contractor performance for future reference in source selection decisions.

***Administer Contract Financial Terms***

* Monitor contract bonds or other forms of performance or payment security;
* Monitor contract financing, such as progress payments;
* Administer contractually-specified price or fee adjustments based on market factors or contractor performance;
* Review invoices for payment; and
* Watch for possible fraud.

***Perform Other Contract Administration Duties***

* Terminate the contract for convenience when appropriate;
* [Terminate the contract for default](javascript:GoTerm('fg001135');) or cause when appropriate; or
* Close out the contract when it is complete.

Chapter 2

Chapter 2 - COR Duties

COR duties in this handbook are adapted from the Federal Acquisition Institute’s Contracting Officer’s Representative Training Blueprint, which identified essential duties performed by a COR. The Contracting Officer’s delegation will outline those duties that apply to a particular contract. Not all duties (or steps within each duty) apply to all contracts. Further detail about each duty follows in this chapter:

Summary of COR Duties

| **Duty** | **Duty Summary** | **Duty Standards** |
| --- | --- | --- |
| **Duty 1 – Work Package** | Develop a procurement request work package for transmittal to the Contracting Officer to initiate procurement of a Government requirement for a service or supply. | The COR supplies sufficient documentation to support the procurement. |
| **Duty 2 – Government Property** | Recommend whether to provide Government property. | The COR correctly recommends the use of Government property for a procurement and any justifications to fully support the recommendation. |
| **Duty 3 – Technical Assistance** | Provide subject matter expertise assistance when requested by the Contracting Officer. | Technical assistance is sufficient to support actions taken by the Contracting Officer. |
| **Duty 4 – COR Work Plan** | Prepare a COR work plan and establish and maintain appropriate record-keeping files. | The work plan should clearly define delegated dutiesand identify contract risks and milestones. |
| **Duty 5 – Post -Award Orientation** | Assist and participate in the post-award orientation. | The contractor is correctly reminded of all post-award rights, duties, and milestones of both parties that affect performance.  Personnel points of contact are shared; the resolution of any issue is fully documented and provided to Contracting Officer. |
| **Duty 6 – Administer Government Property** | Work with the FAA Government Property Administrator to monitor the acquisition, control, and disposition of Government property by Government personnel and the contractor.  Help with assessment of any loss, damage, or destruction of property. | Government property is transferred and monitored according to the terms of the contract.  Any damage, loss, or destruction of Government property is accurately documented and costs are assessed by the Contracting Officer. |
| **Duty 7 – Monitor Contractor Performance** | Monitor contractor actions as authorized by the Contracting Officer; document contractor performance; resolve constructive changes. | All potential performance and delivery problems are reported to the Contracting Officer.  Any noncompliance with terms and conditions of the contract is identified and reported to the Contracting Officer.  Sufficient documentation of contractor performance exists to support payments under the contract.  Technical analysis is sufficient to support Contracting Officer’s negotiations and decisions. |
| **Duty 8 – Inspection and Acceptance** | Inspect and accept contract deliverables; inform the Contracting Officer when rejecting or accepting nonconformance. | Supplies or services tendered by contractors meet contract requirements.  Nonconforming supplies or services are rejected or otherwise resolved. |
| **Duty 9 – Document Performance** | During source selection, document contractor performance in the past-performance file. | Past-performance documentation fairly characterizes contractor performance.  Past-performance information is complete and sufficient for application in pre-award source selection. |
| **Duty 10 – Contract Modifications** | Identify a need to change the contract  Prepare a technical analysis to support a change to the contract. | A technical analysis addressing quality, quantity, price, and other factors impacting a contract modification is complete. |
| **Duty 11 – Contract Options** | Recommend in writing whether an option should be exercised under the contract.  Submit market research data to support a recommendation to exercise the option. | The option is exercised within the timeframe established in the contract.  Relevant market research data is submitted to support the recommendation to exercise option.  The option represents the most advantageous offer available from the commercial market. |
| **Duty 12 – Contract Delays** | Notify the Contracting Officer about a delay or expected delay in the delivery or performance schedule under the contract. | Technical analysis is sufficient to support action taken by the Contracting Officer to remedy a delay. |
| **Duty 13 – Stop Work** | Assist in administering stop-work orders. | The need for a stop-work order is determined and documented.  A stop-work order is administered to avoid unnecessary costs.  Government risk is minimized. |
| **Duty 14 – Claims** | Assist the Contracting Officer analyze a claim; recommend a settlement position; participate in the resolution process. | The validity of the claim is correctly determined.  Government interests are protected while treating the contractor fairly and equitably within terms of the contract. |
| **Duty 15 – Remedies** | Provide sufficient evidence of a breach and suggest an appropriate contract remedy.  Assist in evaluating contractor response. | An adequate, timely remedy notification is provided that supports the Contracting Officer’s decision.  A remedy is suggested that best minimizes the impact of contractor performance problems on the requirement, schedule, and cost. |
| **Duty 16 – Termination** | Assist the Contracting Officer in determining whether to terminate a contract. | Termination situations and procedures are recommended that supports a termination for convenience or a termination for default (or cause) when necessary. |
| **Duty 17 – Payment** | Recommend whether to authorize payment of an invoice in full, in part, or not at all. | Sufficient information is provided to the Contracting Officer to support payment of an invoice in full, in part, or not at all. |
| **Duty 18 – Closeout** | Close out contract files and submit to the Contracting Officer | The contractor and Government have fulfilled their obligations in a timely manner.  All outstanding contract administration issues are resolved and all records are correctly disposed. |

# Duty 1 – Work Package

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The procurement work package is developed when a need will be satisfied through a contract. The COR may be required to:

* Finalize requirements
* Prepare an independent Government cost estimate
* Prepare evaluation factors
* Prepare a surveillance plan
* Prepare other documentation and obtain necessary approvals

### Finalize Requirements

Providing an adequate description of Government requirements is one of the COR’s most important duties, when assigned. Final requirements are described in a specification, statement of work, or other description that defines what the contractor must accomplish to meet Government needs. The following table lists some of the ways requirements are described:

|  |  |
| --- | --- |
| Statement of Work | A description of the required outputs or results in clear, specific and objective terms with measurable outcomes. |
| Performance Work Statement |  |
| Purchase Description | A statement of essential physical characteristics and functions required to meet Government minimum needs or a statement of work outlining the services to be provided under a contract. |
| Commercial Item Description | An indexed, simplified product description that describes (by functional or performance characteristics) the acceptable commercial product that will satisfy Government needs. |
| Specification | A description of the technical requirements for a product or service that includes the criteria for determining whether the requirements are met. Specifications state only actual minimum needs of the Government; and are written to promote competition. Specifications can be written in terms of a design, performance, or a combination of both:   * Design: Specifies exact dimensions, materials, composition, physical and chemical requirements and other details of the product to be provided or the service to be performed. * Performance: Expresses requirements in the form of output, function, or operation of a capability. |
| Standard | A document that establishes engineering and technical limitations and applications of items, materials, processes, methods, designs, and engineering practices including criteria deemed essential to achieve the highest degree of uniformity in materials or products or interchangeability of parts used in these products. Standards may also be used in other product descriptions. |
| Non-Government Voluntary Standard | A standard established by a private sector body and available for public use. Voluntary standards do not include private standards of individual firms. |

The requirements document is the foundation for the solicitation and resulting contract. It describes the products, services, deliverables, or results that the Government needs, and objective measures so both the Government and contractor know when increments of work are completed and payments justified. The requirements document defines:

* Products, services, or outputs to be provided;
* Conditions under which the work is to be performed; and
* Methods by which the Government intends to measure outputs or deliverables.

The following illustrates the importance of a good description of requirements:

* The degree to which requirements can be defined shape the procurement strategy and contract type.
* The description of requirements may affect the number of vendors willing and able to respond to the solicitation. If a description is not definitive, some vendors may not respond because of uncertainty about the risks or because they do not understand the relationship of the requirement to their own capabilities. If a description is too restrictive, competent vendors may decline to respond because they believe that the Government will inhibit their creativity or opportunity to propose alternatives.
* The clarity of requirements influences the quality of proposals. A definitive description is likely to produce definitive proposals, reducing the time to evaluate them.
* Clear and precise requirements allow the Government to establish conclusive baselines on which to structure sound technical evaluation criteria. This reduces delays and administrative effort when evaluating proposals.
* The description becomes the standard for measuring contractor performance. When a question arises over work to be performed, the specification or SOW is the baseline document for resolving the question. Language in the specification or SOW that defines the limits of contractor efforts is crucial. If limits are hazy, it will be difficult to determine if the contractor met requirements or if there has been an increase in the scope of work. Negotiation of cost and schedule modifications will be impaired, if not impossible.

Inherently Governmental Function Determination

The FAA cannot contract for inherently governmental functions. Inherently governmental functions are those activities so closely related to the public interest that only Federal employees can perform them. These functions include activities that require discretion in applying Government authority or value-judgments in making decisions for the Government. Governmental functions normally fall into two categories: (1) the act of governing, which requires discretionary use of Government authority; or (2) decisions affecting monetary transactions and entitlements. The following functions are inherently Governmental (this list is not all inclusive):

* Determining FAA program priorities and budget requests;
* Conducting monetary transactions or entitlements;
* Interpreting and executing laws that bind the FAA to take or not take some action by contract, policy, regulation, authorization, or order;
* Determining FAA policy;
* Use or disposal of Government property,
* Determining budget policy, guidance and strategy;
* Directing and controlling federal employees;
* Approving position descriptions and performance standards for federal employees;
* Determining and defining supplies or services to be acquired by FAA (a contractor may not identify its own work requirements or write its own statement of work or task assignments);
* Approving contractual documents such as those defining requirements, incentive plans, and evaluation criteria;
* Awarding, administering, and terminating contracts (including functions delegated to a COR);
* Determining whether contract costs are reasonable, allocable, and allowable; and

The COR should review requirements and consult with the Contracting Officer to ensure no inherently Governmental functions are included.

### Prepare an Independent Government Cost Estimate

The independent Government cost estimate is a detailed assessment of what FAA expects to pay for work described in a statement of work or specification. It is developed by the COR or other Government subject matter experts, and cannot be shared with any potential vendor. Cost estimates for complex or non-commercial requirements include a detailed breakdown by cost element, e.g., labor, material, and overhead. The COR should ensure the Government cost estimate:

* Covers all program needs or technical objectives.
* Identifies and sequences of tasks to accomplish each objective.
* Identifies needed resources (materials, labor, etc.).
* Estimates length of time per task.
* Accurately reflects available data on the project.
* Lists probable line-items and probable quantity, cost, and milestones for each.
* Describes factual information used to develop the estimate.

### Prepare Evaluation Factors

Some contracts, such as for complex products or services, may be awarded on the basis of price and other non-price factors. Other contracts may be awarded on the basis of lowest price, technically acceptable offer. The Contracting Officer may require the COR to develop a list of price and non-price factors for evaluating contractor proposals, such as:

***Price-Related Evaluation Factors***

Costs of Government-furnished property

When contractors have Government property, any competitive advantage that might arise from using such property must be eliminated.

Options

When options are required:

* State whether options will be included in the evaluation. Options should be evaluated if the Government reasonably intends to exercise them.
* Inform offerors of the Government’s plan to exercise the option at the time of award.
* Allow option quantities to be offered with no price limitation.
* Allow offerors to submit varying prices for options.
* In limited situations, require that option prices be no higher than prices for the initial requirement.

Lease versus purchase

When the economic advantages of lease versus purchase are unknown or minimal and when market research discloses that industry offers both alternatives, prices for both lease and purchase should be solicited. The solicitation will advise offerors that the Government’s award decision will be based on the best value offer, considering all associated costs of both alternatives.

Transportation costs

When shipping of supplies will be required, delivery may be:

* Free on board (FOB) at origin; cost of shipping and risk of loss are borne by the Government.
* FOB destination; cost of shipping and risk of loss are borne by the contractor.
* Both bases.

When lower freight rates are available to the Government for shipment to final destinations, FOB origin offers generally may be more advantageous. When offers on both bases are permitted, the solicitation will advise offerors that the two FOB offers will be evaluated on the basis of lowest overall cost to the Government.

Other costs

Other price-related factors include:

* Energy conservation and efficiency criteria.
* Estimated quantities (for indefinite delivery contracts).
* Lifecycle costs.
* Installation.
* Maintenance.
* Warranty protection or repair.
* Training.
* Technical manuals.
* Spare parts.
* Supplemental supplies.

***Non-Price Evaluation Factors***

The COR should identity any non-price factors and a methodology for applying them. These evaluation factors could include potential contractor’s:

* Past performance.
* Understanding of the Government requirement.
* Technical approach to performing the work.
* Experience in performing similar work.
* Qualifications of technical personnel.
* Quality of the facilities to be used for performing the work.
* Quality assurance programs and plans.
* Management capabilities and organization for the proposed work.
* Scheduling and delivery-related controls.
* Subcontracting and make-or-buy plans.
* Environmental and energy objectives, including consideration for environmentally preferred or energy savings products.
* Cost realism and other relevant factors.

### Prepare a Surveillance Plan

The surveillance plan outlines steps that FAA will take to monitor contractor performance in delivering products and or services. Monitoring must conform to quality assurance policies and apply only to contract deliverables or outputs specified in the statement of work or specification.

### Prepare Other Documentation and Obtain Approvals

The COR ensures the work package is accurate and complete, and has all necessary authorizations. The COR consults with the program and contracting offices about any other documentation and approvals that may be required before submitting the work package, such as:

* Procurement request.
* Contractor personnel security position risk designation.
* Section 508 of the Rehabilitation Act non-availability determination.
* Single source justification.

# Duty 2 – Government Property

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The COR researches and recommends the need to use Government property, identifies sources and availability of the property, and assists in any solicitation issues concerning Government property. In fulfilling this duty the COR will:

* Identify Government property for the planned procurement
* Notify the Contracting Officer of the need to use Government property

### Identify Government Property for the Planned Procurement

To determine if Government property should be used on a proposed procurement, the COR:

* Considers recommendations from program officials.
* Reviews acquisition histories of similar procurements.
* Reviews reports on existing property inventory.
* Reviews input of potential contractors if available.

Once a determination is made that Government property is required, the COR recommends to the Contracting Officer whether the Government property will be:

* Furnished by the Government to the contractor.
* Purchased by the Government for the contractor to use.
* Acquired by the contractor for use under the contract.

COR. The COR specifies any special restrictions or conditions applicable to Government property including:

* Property to be provided "as is."
* Security issues and other special handling.
* Minimum skills needed to operate the property

### Notify the Contracting Officer of the Need to use Government Property

The COR submits written documentation to the Contracting Officer that:

* Includes all relevant factors justifying the use of Government property.
* Addresses issues specific to the type of Government property, such as:
* Government-furnished property issues.
  + - Government liability for performance.
    - Administrative and logistics support costs.
    - Modification costs.
    - Opportunity costs (i.e., other ways the Government could use the property).
    - Potential impact on the contract price.
    - Reductions in direct costs, indirect costs, and fees.
    - Economic benefits of standardization.
    - Estimated residual value.
    - Amount offered by the contractor for the right to retain the property.
    - Effect on future competition and contract pricing.
    - Contractor-acquired property issues.
    - Potential performance problems if property is not delivered.
    - Ownership.
    - Use on other contracts.
    - Administrative and maintenance costs.
    - Government liability for storage.

The COR provides information about use, availability, and condition of Government property before a solicitation is issued. After the solicitation is issued, the COR may be asked by the Contracting Officer to provide assistance when:

* A comparison with offers based on contractor-acquired property is needed.
* An offeror has proposed different terms and conditions for Government-furnished property than that described in the solicitation.

# Duty 3 – Technical Assistance

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The COR may be responsible for:

* Pre-solicitation assistance
* Solicitation assistance
* Evaluation and award assistance

### Pre-solicitation Assistance

The COR should be prepared to:

* Suggest sources.
* Develop evaluation criteria for the solicitation.
* Chair or participate on the evaluation team.
* Prepare other documentation as needed.
* Summarize the required work for the public announcement.
* Clarify technical information in contractor proposals.

***Suggest Sources***

Sources are companies, organizations, institutions, or individuals capable of providing a product or service that meets Government requirements. The COR can obtain source information from:

* Recommendations from subject matter experts.
* Past contracts for similar products and services.
* Responses to public announcements published on-line.
* FAA Small Business Development Office.
* Market research.

***Develop Technical Evaluation Criteria***

Technical evaluation criteria are used to determine which offeror’s approach to satisfying Government’s requirements is most advantageous. The Contracting Officer may request the COR to prepare a technical evaluation criteria and plan that describes:

* The criteria to be used for evaluating offerors’ technical proposals.
* Guidelines for a technical evaluation panel on how to evaluate technical proposals.

***Chair the Technical Evaluation Panel***

A technical evaluation panel is used to assess offeror’s proposals. The COR assembles individuals who are technically competent in identifying the strengths and weaknesses of offeror’s proposals. The panel may be chaired by the COR.

### Solicitation Assistance to the CO

The solicitation phase is the time between issuing a solicitation and receiving offers. During this time, the Contracting Officer relies on the COR for technical assistance, and may request the COR to:

* Draft answers to questions about the technical requirement, delivery or performance schedule.
* Participate in pre-proposal conferences.
* Advise on amending or canceling the solicitation before the due date for proposals.
* Refer all calls and correspondence from potential offerors to the Contracting Officer.

### Evaluation and Award Assistance

The evaluation phase is the time in the procurement cycle used for evaluating, selecting and notifying the contractor about contract award. Contracting Officer may seek COR assistance on any of the following tasks:

* Chair or serve as a member on the technical evaluation team.
* Prepare findings and recommendations on offeror’s proposals:
* Technical strengths, weaknesses, or deficiencies.
* Reasonableness or realism of proposed labor hours, skill mix, material, etc.
* Proposal rankings.
* Reference checks and contractor past-performance evaluations.
* Fact-finding sessions.
* Preparation for negotiations.
* Discussions with offerors.
* Evaluating contractor’s subcontracting plan, make-or-buy program, equipment, and facilities.
* Reviewing unsolicited proposals and advising whether offered products or services are innovative, unique, and independently originated and developed.
* Participating in debriefings of unsuccessful offerors.
* Gathering facts or preparing justifications on technical issues to respond to protests.

# Duty 4 – COR Work Plan

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In performing this duty, the COR will:

* Accept or reject duties in the delegation memorandum.
* Establish files that support actions under the contract.
* Develop and follow a COR work plan.
* Notify the Contracting Officer of any problems in performing delegated duties.

### Accept or Reject Duties in the COR Delegation Memorandum

The COR should review the delegation memorandum and:

* Identify scope of responsibilities in the delegation and contract documents.
* Identify omissions or problem areas in the delegation.
* Notify the Contracting Officer of acceptance or rejection.

The COR should thoroughly read the contract to understand the scope of delegated responsibility. The delegation memorandum may identify only overall responsibilities, but the contract details methods, procedures, reports, and timeframes. Both the delegation memorandum and contract help the COR determine the extent of responsibilities required to ensure successful contract performance.

***Scope of COR Delegation Memorandum***

A COR Memorandum of Delegation should be tailored for a particular contract Delegated tasks may include any of the following:

Administration

* Act as the Government technical representative for contract administration.
* Assist the Contracting Officer in conducting a post-award orientation conference.
* Represent the Government in conferences with the contractor and document the outcomes.
* Confer with program office representatives and other customers on performance matters.
* Maintain a file system.
* Prepare and maintain a project diary.
* Keep a current set of drawings and specifications by noting all changes or deviations.

Labor

* Ensure equal employment opportunity posters are prominently displayed at the job site.
* Report violations of labor-standard provisions to the Contracting Officer.
* Monitor time and record-keeping.

Inspection and Acceptance

* Inspect all work for full compliance with contract requirements.
* Promptly reject all work that does not comply with contract requirements and immediately notify the Contracting Officer.
* Advise the Contracting Officer if the contractor fails to remove, correct, or replace rejected work promptly.
* Provide appropriate technical direction advising the contractor of its appeal rights when there is disagreement.
* Prepare and maintain a current list of items that remain at variance with contract requirements, informing both the contractor and the Contracting Officer of corrective action or the need for it.
* Maintain a master copy of the official list of defects, omissions, waivers and deviations.
* Ensure all defects and omissions are corrected or completed.

Changes

* Administer contract modifications authorized and issued by the Contracting Officer.
* Ensure the contractor provides formal proposals for contemplated changes.

Payments

* Review and verify contractor invoices and determine Government agreement or non-agreement with the percentage of completion for progress payments or cost vouchers.

Schedule

* Review the contractor’s schedule and forward a recommendation for acceptance or rejection to the Contracting Officer.
* Require the contractor to submit a progress chart showing actual progress at the end of each accounting or payment period, if specified in the contract.
* Advise the Contracting Officer of any delay factors (strikes, weather, etc.) and the impact.

Submissions

* Determine and list the number and types of submittals required from the contractor.
* Monitor contractor submission of required samples, shop drawings, reports, etc., for timeliness.
* Monitor the Government’s timely and complete response to contractor submission of samples, shop drawings, reports, etc..
* Maintain a current record of submittals.
* Approve or reject submittals as provided by contract documents.

Safety/Environmental

* Enforce all safety and health requirements.
* Enforce environmental requirements.

Security

* Enforce all physical, information, and personnel security requirements.

The COR may assist or guide the contractor in technical aspects of the contract. This assistance may be formalized by written technical direction (if it does not affect contract price, schedule, quantity, or terms). Technical direction should require signed acknowledgment from the contractor and may include a statement such as the following: "In accepting this technical direction, the contractor agrees that price and all other terms and conditions of the contract remain unchanged." A COR may not:

* Make, or give the appearance of being able to make, contractual commitments outside the scope of the contract or execute or agree to modifications or take actions that would commit the Government to a change in contract price, quality, quantity, or delivery schedule.
* Sign any changes or modifications to contracts or delivery orders.
* Direct the contractor on how to perform the work.
* Manage contractor employees in a way that could constitute personal services.
* Use public office for gain.

***Identify Areas Omitted or Problems with Scope of Delegation***

The delegation memo should:

* Address the individual by name and position title.
* Specify the contract number that applies to the delegation.
* Specify the authorities, responsibilities, and tasks being delegated.
* Emphasize limitations of the delegation.
* Specify any record-keeping requirements and disposition of those records.
* Specify if the designee may further delegate any authority or task.
* Include a requirement for the individual to certify that he or she has read and will abide by procurement integrity and conflict of interest requirements.
* Be signed by the Contracting Officer.

The COR should identify any basic problems with the delegation, such as assigning responsibilities to the wrong person or office, or delegating responsibilities that the COR is not qualified to perform. Delegations should not include responsibilities reserved exclusively for the Contracting Officer, such as responsibility to:

* Award, agree to, or execute a contract or contract modification.
* Authorize work outside the scope of the contract.
* Obligate, in any way, payment of money by the Government.
* Give direction to the contractor except as provided in the contract.
* Resolve any dispute concerning a question of law or fact arising under the contract.
* Further delegate any assigned duties unless specifically authorized to do so.
* Cause the contractor to incur costs not specifically covered by the contract with the expectation that such costs will be reimbursed by the Government.
* Terminate for any cause the contractor's right to proceed.

The COR should notify the Contracting Officer if there are any omissions or other problems with delegation.

***Notify the Contracting Officer of Acceptance or Rejection***

By signing the acknowledgement in the delegation memorandum, the COR accepts the assignment. The COR should also justify rejecting any duties in the memorandum. When appropriate, the COR’s supervisor may also concur on the memorandum to show agreement with demands on the COR’s time.

### Establish Files That Support Actions Performed Under Contract

CORs are required to document their actions under the contract. This documentation must be a sufficiently detailed history that:

* Provides a complete background for decisions at each step in contract administration.
* Supports actions taken.
* Provides information for reviews and investigations.
* Furnishes essential facts in the event of litigation or Congressional inquiry.

Record-keeping functions are specified in the COR delegation memorandum and may include portions of the official contract file.

### Develop and Follow a COR Work Plan

CORs should develop and follow a cost-effective work plan for monitoring contract performance and performing other delegated responsibilities. The COR work plan serves as a baseline for project management and scheduling, and tracking contractor performance. When preparing a work plan, the COR should:

* Include administrative information
* Contract title.
* Identity of the contractor and key contractor personnel.
* Location of files about the contract and the contractor.
* Brief description of the work to be performed.
* Place of performance and delivery points.
* Assigned tasks and milestones for each task and function such as:
  + Monitoring the contractor quality assurance program.
  + Furnishing Government property and monitoring its use.
  + Reviewing and responding to contractor reports and requests.
  + Receiving, inspecting, and accepting work.
  + Certifying costs incurred or physical progress for payment.
  + Monitoring compliance with the small business subcontracting plan.
* Consider historical factors.
* Determine the technique to be used for monitoring the contract
* Determine how to document performance under the contract.
* Identify areas of concern or conflict.

***Consider Historical Factors***

To help determine the level of commitment involved, the COR should consider historical factors and the contractor’s performance history. Historical factors include:

|  |  |
| --- | --- |
| **Type of Contract** |  What type of contract is this?   If there was a previous procurement, did the type of contract change? |
| **Past experiences with this type of requirement** |  Has this requirement ever been purchased before?   What are current problems associated with this product or service? |
| **Past experience with the previous contractor** |  Did the previous contractor deliver on time?   Did the contractor perform as expected? |
| **Type of requirement** |  Does this type of requirement - service or supply - necessitate extensive monitoring to ensure compliance? |
| **Urgency of the requirement** |  How soon is this requirement needed and what would happen if delivery is delayed?   Were there any previous problems with contractors meeting the delivery terms?   Has this contractor established that they can expedite delivery, if needed? |

Government databases, such as National Institute of Health’s Contractor Performance System (on-line at: cps.od.nih.gov) contain information about a contractor’s performance history. The COR should review contractor past performance for the last three years, to help determine the level of attention needed for monitoring the current contract.

***Determine Techniques for Monitoring the Contract***

The appropriate monitoring technique depends on the nature, scope, and type of contract, and on contract requirements for monitoring, inspection, and acceptance. Selecting a technique for monitoring also depends on what will be monitored, such as contractor technical performance, schedule, or cost. Techniques for monitoring include:

* Do nothing. Rely on the contractor inspection system.
* Conduct progress or status meetings with the contractor and other Government officials.
* Make onsite visits and other personal observations.
* Contact other Government officials for input.
* Make telephone calls to contractor and other Government officials.
* Review contractor requests and other correspondence.
* Review contractor progress or status reports.
* Review tracking and management systems.

Determine How to Document Performance

Based on the delegation memo, there may be a requirement to establish a contract administration file and to document past performance.

Contract administration file documentation should include:

* COR delegation memo
* Purchase requests (including any amendments)
* Contract (including any modifications)
* Delivery/task-orders issued against the contract, if applicable
* Surveillance plan, if applicable
* All contract correspondence, memos and records of conversations with the contractor
* Contractor reports and other data deliverables, if applicable
* Records of inspection
* Trip reports, if applicable
* Invoices/vouchers

Documentation for past-performance should include information about:

* Quality of product or service
* Timeliness of performance
* Cost control
* Business practices
* Customer satisfaction
* Quality awards

Identify Areas of Concern

The may be contract requirements that the COR identifies as potential problems. These areas and possible solutions may be addressed in the COR work plan; examples might include:

* Delivery time indicated in the contract is after normal business hours.
* Government-furnished property may not exist or may be defective.
* Technical review cannot be accomplished within the allotted timeframe.

Prepare the COR Work Plan

**Appendix A** is sample format for a COR work plan. The plan should be completed before work starts under the contract. The COR should sign and date the plan, and place a copy in the contract administration file.

### Notify the Contracting Officer of Problems

The COR should contact the Contracting Officer to resolve any areas of concern as soon as possible, particularly if it may result in a contract modification (only the Contracting Officer has authority to modify the contract).

# Duty 5 – Post Award Orientation

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CORs play a key role in the post-award orientation. Generally, the COR performs the following tasks to ensure successful post-award orientation:

* Develop a discussion paper for the Contracting Officer’s preliminary briefing
* Participate in the preliminary briefing
* Participate in the orientation
* Review the report of the post-award orientation
* Complete assigned action items

### Develop a Discussion Paper for the Preliminary Briefing

The COR should identify and prioritize all performance issues with potential risk to the contractor or Government. The Potential Risk Worksheet below can help identify and plan for mitigating risk.

Issues of greatest risk are those that impact cost, schedule, technical requirements, and resources.

**Potential Risk Worksheet**

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| # | Describe Issue | Will the contract price need to be revised? | Will this create a change in the performance delivery schedule? | Will technical requirements have to be modified? | Do other resources need to be added? | Impact of problem: -High  -Moderate -Low |
| 1 |  |  |  |  |  |  |
| 2 |  |  |  |  |  |  |
| 3 |  |  |  |  |  |  |

The risks and possible mitigation should be addressed by the Government team before meeting with the contractor.

### Participate in the Preliminary Briefing

For a preliminary briefing, the Contracting Officer generally invites the COR, program manager, quality assurance specialist, and other subject-matter experts who will interact with the contractor during contract performance. The Contracting Officer may provide an agenda or a Post-Award Orientation Checklist to focus discussions on the contract and issues impacting performance.

**Post-Award Orientation Checklist**

|  |  |  |  |
| --- | --- | --- | --- |
| PART I - GENERAL | | | |
| 1. Contract No. | 2. Total Amount | 3. Type of Contract | 4. Date of Conference |
| 5. Pre-award Survey? \_\_YES \_\_NO | 6. Contractor Name | 7. Contractor Address |  |
| PART II-CONFEREES | | | |
| 1. Government | | 2. Contractor | |

|  |  |  |  |
| --- | --- | --- | --- |
| PART III-CONFERENCE PROGRAM | | | |
| Subject | Check if Applicable | Clause No. if Applicable | Significant conclusions, further action to be taken (attach additional sheets if necessary) |
| A. GENERAL 1. Function and authority of assigned personnel |  |  |  |
| 2. Routing of correspondence |  |  |  |
| 3. Omissions or conflicting provisions |  |  |  |
| 4. Other (specify) |  |  |  |
| B. REPORTS: PREPARATION AND SUBMITTAL 1. Work progress |  |  |  |
| 2. Financial |  |  |  |
| 3. Other (specify) |  |  |  |
| C. SUBCONTRACTS 1. Consent to placement |  |  |  |
| 2. Prime's responsibility for administration |  |  |  |
| 3. Cost or pricing data |  |  |  |
| 4. Source inspection |  |  |  |
| 5. Other (specify) |  |  |  |
| D. SB, SDB, SDVOSB, and WOSB Subcontracting 1. Contractual requirements |  |  |  |
| 2. Program to facilitate |  |  |  |
| E. CONTRACT MODIFICATIONS |  |  |  |
| F. GOVERNMENT PROPERTY 1. Use of facilities and tooling |  |  |  |
| 2. Maintenance and preservation |  |  |  |
| 3. Property procedure approval |  |  |  |
| 4. Property disposal procedures |  |  |  |
| 5. Other (specify) |  |  |  |
| G. SPECIAL CLAUSES 1. Issuing task orders |  |  |  |
| 2. Liquidated damages |  |  |  |
| 3. Government financing |  |  |  |
| 4. Special tooling |  |  |  |
| 5. Overtime |  |  |  |
| 6. Bill of materials |  |  |  |
| 7. Data/copy rights |  |  |  |
| 8. Warranties |  |  |  |
| 9. Work performed at Government installations |  |  |  |
| 10. Other (specify) |  |  |  |
| H. GENERAL CLAUSES 1. Limitation of cost |  |  |  |
| 2. Allowability of cost |  |  |  |
| 3. Other (specify) |  |  |  |
| I. DELIVERY/PERFORMANCE SCHEDULES |  |  |  |
| J. TRANSPORTATION |  |  |  |
| K. INVOICING AND BILLING INSTRUCTIONS |  |  |  |
| L. PROCESSING OF COST AND PRICE PROPOSALS |  |  |  |
| M. LABOR 1. Actual and potential labor disputes |  |  |  |
| 2. Davis-Bacon Act |  |  |  |
| 3. Work Hours Act |  |  |  |
| 4. Walsh-Healey Act |  |  |  |
| 5. Copeland Anti-Kickback Act |  |  |  |
| 6. DOL Posters and Notices |  |  |  |
| N. QUALITY ASSURANCE AND ENGINEERING |  |  |  |
| 1. Quality control system |  |  |  |
| 2. Waivers and deviations |  |  |  |
| 3. Drawing/design approval |  |  |  |
| 4. Manuals |  |  |  |
| 5. Pre-production sample |  |  |  |
| 6. Qualifications and environmental tests |  |  |  |
| 7. Inspection and acceptance |  |  |  |
| 8. Specification interpretation |  |  |  |
| 9. Laboratory facilities |  |  |  |
| 10. Value engineering clause |  |  |  |
| 11. Other (specify) |  |  |  |
| O. PRODUCTION 1. Production planning |  |  |  |
| 2. Milestones and other monitoring devices |  |  |  |
| 3. Production surveillance |  |  |  |
| 4. Safety |  |  |  |

(Additional Notes)

The Contracting Officer may ask the COR to present information about areas under his or her responsibility. The COR also presents the discussion paper that focuses on risk issues. Where contractors’ work may pose operational risks to the NAS, the COR may present the short Operational Risk Management (ORM) orientation video the FAA has posted at https://www.youtube.com/watch?v=yyq9ESQ8vds. The video provides an overview on how FAA facilities are interconnected and the criticality of the work performed on NAS facilities, along with some ORM practices. The COR may need to lead resolution of problems or prepare a technical assessment of the problem if requested by the Contracting Officer.

After the preliminary briefing, the Contracting Officer may choose not to hold a post award orientation because relatively little information is to be conveyed or the contractor has a good history of performance under similar contracts. The Contracting Officer may contact the contractor by letter, phone, or one-on-one meeting and the COR may need to prepare information for use in an alternative orientation.

### Participate in the Orientation

The Contracting Officer usually chairs the orientation. Any presentation that the COR makes must be consistent with the terms and conditions of the contract. Discussions at the orientation can establish procedures or processes to ensure compliance with contract terms, but the COR must be careful that these discussions do not alter the contract terms.

Handouts are permitted at the orientation. Some handouts are required, such as Department of Labor posters and notices. Other handouts are developed specifically for the post-award orientation. The COR must ensure that any information in the handout complies with the contract terms.

Adverse past performance information could result in the contractor not receiving future contracts. At the orientation, any presentation on past performance must include a discussion of the contractor's rebuttal rights. If the COR will prepare information for the past performance file, he or she should make the presentation at the orientation.

Issues that cannot be resolved at the orientation must be identified and recorded. When possible, a date is established for resolution. All participants are made aware at the orientation of any specific follow-up actions they personally must handle. For milestones that require contractor input, it is best to agree on milestones at the orientation. The Contracting Officer incorporates action items and due dates in the post-award orientation report.

### Review the Post-Award Orientation Report

An orientation report contains all information necessary to document the events of the meeting. All participants should receive copies for review. Any omissions, deficiencies, or disagreements are thoroughly documented and submitted to the Contracting Officer. Key elements of a Post-Award Orientation Report include:

* The names and affiliations of all participants
* The main discussion points and all agreements
* Areas requiring resolution
* Participants assigned responsibility for further action and completion dates for actions

### Complete Assigned Action Items

The COR should resolve each action item or issue in a fair and equitable manner, and as quickly as possible. Although not always practicable, it is best to resolve all problems before the contractor begins work. If a contract change is necessary, the COR must clearly define the extent of the change and promptly submit it to the Contracting Officer.

The contract file should include the conference report and other material, correspondence, or actions developed or acquired from the post-award orientation. A well-documented contract file will identify and verify the Government initial position on any performance problems that were anticipated during the orientation or in the early implementation of the contract.

# Duty 6 – Administer Government Property

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The COR often helps the Contracting Officer monitor Government property under the contract. In fulfilling this duty the COR:

* Supervises initial transfer of Government property
* Monitors contractor use of Government property
* Monitors disposition of Government property

### Supervise Initial Transfer of Government Property

***Monitor Delivery of Government Property***

The COR reviews the contract to determine if any Government data, equipment, or other property will be furnished to the contractor. When monitoring delivery of Government property to the contractor, the COR:

* Establishes an inventory list of the property.
* Sets up control requirements.
* Prepares site facilities.
* Coordinates agency procedures.
* Prepares an inspection report.

The COR examines the contract and discusses the following with the contractor:

* Contract date for delivering property to the contractor.
* If no contract date is specified, date when the contractor needs the property so as not to impact the contract completion date.
* Location of the property.
* Condition of the property and any repair, correction, or other action necessary to avoid delaying contract completion.
* Any special instructions or limitations regarding use of the property.

The COR must ensure any problems with property are remediable. Contractor claims related to Government property could arise when property:

* Is not delivered by the date in the contract, or, if no such time was specified, by a sufficiently early date to permit the contractor to finish contract work by the completion date.
* Is not delivered in a condition suitable for the intended use (e.g., poor copies or illegible data).
* Is delivered without crucial information concerning techniques or conditions of the property's use, and the contractor is unable to use the property effectively or for its intended use.

The COR should advise the contractor to submit written notice about problems with delivery or condition of Government property to the Contracting Officer.

***Monitor Contractor’s Property Control System***

The Contracting Officer may request the COR to review the contractor's property control system to ensure compliance with the Government property clause of the contract. Once the contractor takes possession of Government property, the COR should:

* Prepare a report on the contractor’s property control system.
* Perform periodic property audits.
* Record any contractor notification that property is not in working order.
* Submit a written report of any shortages, losses, damage, destruction, or misuse.

After reviewing the contractor's property control system, the COR should ensure the contractor:

* Maintains the approved system.
* Obtains all required approvals for use of the property.
* Uses the property only for those purposes authorized in the contract.
* Segregates Government property from contractor property.
* Maintains, protects, and preserves the property.
* Discloses the need for major repair, replacement, or other capital rehabilitation work.

***Resolve Deficiencies in the Contractor's Government Property Control System***

If the property control system does not adequately maintain and monitor Government property under the contract, the COR should notify the Contracting Officer and:

* Notify the contractor of deficiencies in the system.
* Specify, in writing, required corrections and establish a schedule for completion of actions.
* Monitor compliance with the schedule of corrective actions.

The COR should notify the Contracting Officer if the contractor fails to correct any deficiency.

### Monitor Contractor Use of Government Property

The COR monitors contractor use of Government property by conducting physical inventories at the contractor's site, and by reviewing the contractor's preventive maintenance program.

To ensure contractor use of property complies with the contract clause for Government property and is in accordance with sound industrial practices, the Contracting Officer may require the COR to investigate and resolve:

Reported Loss, Damage, or Destruction of Government Property

* Identify the extent to which the contractor is liable.
* Prepare written reports on the extent and value of the property which covers:
* Proposals from the contractor to repair, replace, or otherwise mitigate damage.
* Government estimates and/or audit reports.
* Government position on a remedy.
* An opportunity for the contractor to present additional facts.
* Prepare information to support the Contracting Officer’s written demand for payment or make any equitable adjustment for the repair of property when the Government has assumed the risk for property.

Unauthorized Use of Government Property

* Determine whether there has been unauthorized use.
* Evaluate and document any evidence.
* Provide the contractor with an opportunity to present additional facts.
* Assess the contractor for the contract clause amount if a finding of unauthorized use is determined.

Normally, Government property is kept physically separate from contractor-owned property. When advantageous to the Government and the contractor agrees, Government property may be commingled with contractor property. The COR should verify with the Contracting Officer or the FAA property management organization to determine when commingling is permitted.

### Monitor Disposition of Government Property

When property is no longer needed, the COR ensures the contractor:

* Discloses excess inventory.
* Prepares and documents inventory schedules.
* Corrects inventory schedules that are not accurate or complete.

When the contract is completed, the COR may:

* Request the contractor to return Government property to the Government.
* Request the contractor to deliver Government property to another Government contractor.
* Dispose of the property.

When disposing of property, the COR may, in the following priority:

* Allow the contractor to purchase or retain Government property at cost.
* Return the property to suppliers.
* Use within the Government.
* Donate to eligible organizations (i.e., schools, charitable groups).
* Sell property.
* Donate to other public agencies (i.e., state and local Governments).
* Abandon property.

Once the method of disposition is determined, the Contracting Officer may request COR assistance in:

* Preparing funding requirements for disposition, if applicable.
* Providing information to support the disposition modification, if necessary.
* Resolving property disposal problems.

# Duty 7 – Monitor Contractor Performance

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CORs monitor and document contractor performance by performing the following tasks:

* Respond to requests from contractors
* Monitor contractor performance
* Resolve constructive changes

### Respond to Requests from the Contractor

The COR reviews, approves, or takes other action on contractor requests based on a contractual requirements. Contract terms and conditions guide Government responses to contractor requests. The COR should consider:

* A contractor's right to request Government action.
* Government responsibilities.
* The impact for not complying with a request.

Contract terms generally specify if the contractor is required to:

* Respond in writing.
* Respond within a pre-established timeframe.
* Notify other Government personnel.
* Stop work.

Depending on the contractual requirement, the COR will either:

* Respond within the timeframe set by the contract term; or
* Forward any request outside the scope of delegated authority to the Contracting Officer in sufficient time to permit a timely response or other action.

When there is no specified timeframe for responding to a contractor’s request, the COR should reply within a reasonable time that does not delay the contractor’s performance. An untimely Government response may have major consequences. The contractor may legitimately point to the Government's inability to act on its request as a reason for not meeting a delivery or performance requirements. Knowing in advance when and what a contractor should be requesting helps the COR monitor contractor performance. The COR should identify:

* Contractual terms that allow contractor requests.
* Government need to respond to those requests.
* Contractor's obligation and Government responsibilities for responding.

### Monitor Contractor Performance

CORs are routinely delegated monitoring functions for:

* Contractor technical and schedule compliance.
* Costs in cost-type contracts.
* Financial condition of a contractor.
* Statutory compliance.

***Monitor Contractor Technical and Schedule Compliance***

The COR closely monitors contract performance to ensure desired end items or services are as intended and are delivered on time. Among other things, monitoring technical compliance will:

* Identify potential delinquencies.
* Isolate specific problems with quality.
* Support contractor requests.
* Point out the need for Government assistance.
* Reveal actual or anticipated default.

Technical compliance is monitored through various techniques such as site visits, testing, visual inspections, or analyzing data and reports. Monitoring schedule progress for some contracts is done through review of graphical charts that display progress, such as a network, PERT, or GANTT charts.

Contracts for commercial items generally rely on a contractor’s quality assurance system as a substitute for Government monitoring, inspection, and testing. Customary market practices may permit buyer in-process monitoring and inspection. Any Government in-process inspection must be conducted in a manner consistent with commercial practice.

***Monitor Costs***

Various procedures and techniques can be used to monitor and verify appropriateness of costs. Under cost-reimbursement contracts, payments based on incurred expenses; payments include costs for labor, materials, other direct costs, overhead, and other indirect costs. For payments to be proper and allowable under the contract, costs must be:

* Reasonable - not exceeding that which would be incurred by a prudent person conducting competitive business.
* Allocable - properly assigned to one or more cost objectives under the contract.
* Consistent with applicable cost accounting standards and prohibitions on the allowability of certain costs.

Cost monitoring techniques include:

* Relying on the contractor’s financial system.
* Analyzing voucher backup information
* Periodically analyzing data obtained from the contractor, Government reports, and Government site visits.
* Scheduled audits.
* Specific audit requests.

Cost monitoring involves tracking and analyzing the rate of contract expenditures to detect variances in planned or budgeted costs versus progress made to determine whether the contract will be completed within budget. When incurred costs are considered too high, contract funds may be insufficient to complete the work. Alternatively, performance may be behind schedule when incurred expenses are too low.

Fixed priced contracts typically do not require cost monitoring, in contrast to cost reimbursement contracts:

|  |  |  |
| --- | --- | --- |
|  | **Risk** | **Monitoring** |
| **Cost Reimbursement** | Government bears the risk of the funds running out before the work is completed. | The Government must guard against paying for costs that are excessive, improper, or incurred for work not related to the contract.  The Government is responsible for overall planned expenditures. |
| **Fixed Price** | Contractor bears the risks of delivering a product or service as required by the contract, and within a specified price. | The contractor must monitor its own cost to ensure there are sufficient funds to deliver the product or perform the service.  There is no need to monitor contractor expenses or reasons for expenses; Government monitoring focuses ensuring product or service conforms to contract requirements. |

***Monitor Financial Condition of a Contractor***

Financial monitoring means detecting and acting on changes in a contractor's financial condition that have potential for endangering contract performance. The decision to monitor a contractor's financial condition should consider:

* An indication is received that the contractor is in financial trouble,
* A determination is made that the Government would be harmed by contractor financial difficulties, and
* A determination is made the Government could take positive steps to protect its interests.

The Government’s interest is not always in jeopardy because of failing contractor financial condition. Steps in monitoring financial condition include:

* When alerted, monitor financial circumstances that might endanger Government’s interests.
* Protect the Government interest if a lien is placed against contractor inventory.
* Protect the Government interest if the contractor is facing bankruptcy.
* Furnish information to interested parties upon request.

The Contracting Officer should be notified when conditions may warrant intervention by the Government.

***Monitor Statutory Compliance***

The Contracting Officer may delegate some monitoring of statutory or regulatory compliance to the COR. The COR must notify the Contracting Officer should any actual or potential noncompliance issues arise; only the Contracting Officer can resolve noncompliance issues related to law or regulation. Steps involved in monitoring statutory and regulatory requirements include:

* Identify contract clauses involving statutory or regulatory compliance, such as those involving:
* Labor law.
* Privacy Act.
* Drug-Free Workplace.
* Hazardous or recovered material, safety, and environmental requirements.
* Non-domestic materials.
* Monitor compliance and respond to notices involving compliance
* Identify any insurance or bonding issues
* Monitor intellectual property issues.
* Monitor compliance with the subcontracting plan
* Continue actions as needed to enforce statutory compliance, and keep others informed.

### Techniques Used for Monitoring

Monitoring contractor performance may be guided by the contract terms, but in general there are not set rules for techniques. The COR will probably use a combination of monitoring methods such as:

***Meetings***

Periodic meetings with the requiring activity and end users allow the COR to obtain and provide pertinent information on contract status. Meetings should be kept to a minimum and focus on problem resolution, because unscheduled meetings cost the contractor time and money. In cost-type contracts, the Government will pay the costs associated with meetings. In fixed-price contracts, the contractor may be concerned about meetings that are not accounted for in the contract price.

***On-Site Visits***

Periodic on-site visits with the contractor allow the COR to monitor through observation. On-site meetings also provide an opportunity to identify and resolve problems at the working level. Rules of etiquette for scheduling on-site meetings include:

* Provide names, official positions, and security clearance information for all visitors.
* Identify date and duration of the visit.
* Identify name and address of contractor facilities and personnel you wish to contact.
* Identify contract number, any overall program involvement, and the purpose of the visit.
* Identify data you may wish to obtain in conjunction with this visit.
* Notify the Contracting Officer and request that he or she attend.

***Telephone Contact***

Telephone contact with the contractor may be used to check on contract progress, identify performance problems, and determine if the Government is causing any problems. The COR should document these communications with date, time, synopsis of the conversation, and any action items.

***Contactor Status Reports***

Progress reports, status reports, daily logs, and other monitoring reports are normally provided by the contractor in addition to any scientific and technical reports required under the contract. Contractor reports provide indicators of potential changes, delays, or other issues such as failed tests, rejections, etc. CORs should review status reports to identify any potential or actual delays or other problems with contractor performance. If problems are identified, the COR should notify the Contracting Officer in sufficient time to resolve any performance issues.

***Contact Other Government Officials***

CORs should report to the Contracting Officer any substantive communications between the contractor and other Government officials. Meaningful communications include any discussions that might affect performance, price, schedule, quality, or other contract requirements Contractors may misinterpret this communication as direction by other Government officials to change the contract terms and conditions.

***Review Tracking and Management Systems***

Both the contractor and Government use some method to track progress. For some contracts, the COR may informally verify that these systems or processes are in place and followed by the contractor. The more complex the contract, the more sophisticated the tracking system, such as an earned value management system. An earned value management system provides planned and actual cost and schedule data; the COR should review this data to track actual work accomplished versus that which the contractor planned.

### Determine How to Document Monitoring Actions

The COR documents both contractor performance and Government actions under the contract. Copies of documentation may be sent to the Contracting Officer as notification a problem or other issue, or to include as part of the contract administration file. Documentation related to monitoring contractor performance includes:

*Memorandum to the file* - this can be prepared at any time for any reason and are useful for documenting a contract problem.

*Trip report* – this documents visits to a contractor facility. A trip report can be used to record contract status or issues that need attention.

*Contact records* - this documents discussions held with a contractor and other Government officials to preserve the conversation for the file. There may be action items and recommendations based on the conversation.

*Reports* – this documents a contractual issue or situation. Reports can convey contract status, identify problems, provide background information, justify actions taken, or request assistance or resources.

*Minutes* – this documents contract-related meetings and is another way to document contract performance. Minutes should be provided to all attendees.

*Correspondence* – this can be used by the contractor and Government to formally notify each other of performance issues or other matters that need to be attention.

*Technical analysis* – this may provide the basis for contract modifications, payment, and future work.

### Monitor Contract Performance

The COR documents performance under the contract to provide a complete picture of progress and to ensure successful completion.

### Resolve Constructive Changes

* Identify actual changes to the contract
* Prepare technical analysis and notify the Contracting Officer
* Assist the Contracting Officer with negotiations

***Identify Actual Changes to Contract***

When a COR’s technical direction to the contractor goes beyond the scope of his or her responsibility, the result is a change to the contract known as constructive change. The following table differentiates between technical direction, which is acceptable, and constructive change, which must be avoided.

|  |  |
| --- | --- |
| Technical Direction | Constructive Change |
| A technical direction is guidance within the statement of work. The need and ramifications of technical direction are different depending on whether the contract is fixed-price or cost-reimbursement. Work statements are normally more precise under fixed-price contracts than cost-reimbursement. When a work statement is precise, there is little or no need for technical direction. More technically complex contracts may require COR direction. | A constructive change occurs when the Contracting Officer or authorized representative changes the contract without the required legal formality of a contract modification. A constructive change can result from either an action or a failure to act. Examples are:   * Errors of interpretation. * Issuance of changes outside the scope of the contract. * Failure to issue a change to correct a defective specification. * Acceleration of performance. |

***Prepare Technical Analysis of a Constructive Change and Notify the Contracting Officer***

Constructive changes may be identified by either the COR or the contractor.

The COR must notify the Contracting Officer that the contract may have had a constructive change. The notification should include sufficient information about the events that led to the possible constructive change

A contractor can use any method to notify the Contracting Officer of the possibility of a constructive change. A contractor is not likely to perform extra work under a fixed-price contract without firm assurances of additional funding for the changed work. Such assurances are not needed under a cost-reimbursement contract because cost for the extra work is paid by the Government. If the contract contains a “notification of changes” clause, the contractor must notify the Contracting Officer using the format and timeframes specified in the clause.

Upon notification, the Contracting Officer determines if the event was proper under technical direction, or if the event resulted in a constructive change. No further action is required of the COR if the Contracting Officer determines the event was permitted under technical direction.

***Assist the Contracting Officer with Negotiations***

The Contracting Officer may require the COR to participate in negotiations for contract adjustments related to constructive changes. The COR may need to prepare a technical analysis of the circumstances and impact of the change.

# Duty 8: Inspection and Acceptance

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The COR is often responsible for inspecting and recommending product acceptance or rejection to the Contracting Officer. The COR performs the following tasks to ensure acceptance/rejection is processed accurately:

* Inspect products or services
* Recommend acceptance
* Recommend rejection
* Assist the Contracting Officer in evaluating a contractor reply to rejection notification

### Inspect Products or Services

Inspection and acceptance is based on compliance with contractual terms and conditions. Inspections are conducted to identify nonconformance. When the Government awards a contract, the contractor assumes responsibility for satisfactory performance, and timely and quality delivery of supplies or services. There are three steps in inspection and acceptance:

* Identify the inspection method required by the contract
* Determine if acceptance has occurred
* Perform inspections

***Identify the Inspection Method Required by the Contract***

Before accepting the product or service, the COR must assure the quality of the deliverable or performance of the work. Various inspection methods are incorporated by contract clause. The statement of work may also provide further clarification of inspection and acceptance requirements. A quality assurance plan may have been developed specifically for monitoring and inspection requirements. Contract clauses for inspection may be:

*Contractor Inspection Requirements -* The contractor is required to accomplish all inspection and testing needed to ensure supplies or services conform to contract quality requirements before payment is made. The Government may test supplies or services in advance of acceptance when it has determined that contractor quality assurance processes are inadequate or customary market practices for the commercial item being acquired include this type of inspection

*Standard Inspection Requirements Clauses (Various clauses, based on nature of contract, e.g., supplies, services, fixed price, cost re-imbursement) -* Standard inspection clauses generally require the contractor to provide and maintain an inspection system acceptable to the Government. They give the Government the right to make inspections and perform tests while contractor work is in progress. They also require the contractor to keep and make available to the Government complete records of its inspection work.

*Higher-Level Contract Quality Requirement -* This clause is appropriate in contracts for complex and critical items or when technical requirements of the contract require the Government to maintain control of work operations, in-process controls, and inspection; and concentrate its attention to organization, planning, work instructions, and document control. This clause also applies when the contractor must comply with a Government-specified inspection system, quality control system, or quality program.

***Determine if Acceptance has Occurred***

Before performing inspections and any testing, the COR should determine if the Government has the right to reject nonconforming supplies or services. This determination should resolve whether the work has been accepted by:

* Acceptance notice:
* Acceptance made on receiving report, or
* Letter indicating acceptance has been provided to the contractor.
* Any evidence of implied acceptance by:
* Silence and the time allowed for rejection has passed,
* Payment has been made, or
* Retention and use of delivered items or performed services.

It is critical to determine if acceptance has occurred since acceptance is final except for limited situations such as fraud or latent defect, and the Government may not reject deliverables or services after acceptance.

***Perform Inspections***

The COR should inspect contractor deliveries to determine if:

* Proper type or kind of supply or service was provided
* Correct quantity was provided
* Any damages exist
* Product operates as intended
* There are signs of spoilage or age deterioration
* The item is properly identified or marked
* Appropriate packaging was provided

***Inspection Methods and Occurrences***

*Sensory and dimensional checks -* sensory checks are examinations by an inspector using eyes, ears, and other senses to measure surface defects, missing pieces, noisy operations, or parts which may be out of alignment. Dimensional checks use gauges and micrometers to measure whether the dimensions of the items conform to contract specifications.

*Performance or physical tests -* These types of inspection result in actual performance data and indicate whether the product can perform as required by the contract. Requiring a motor to run or an operating system to perform at a certain level for a specified period of time are examples of performance testing. Determining hardness of an item's chemical composition is an example of a physical test.

***Interim Inspections***

The Government has the right to inspect all materials and workmanship in a manner that will not unduly delay the work. Interim Government inspections may be used to determine if:

* On-schedule performance can be expected.
* Cost will be within the initial estimate for cost-reimbursement contracts or fixed-price contracts with progress payments.
* Resources are being applied at originally predicted levels
* Quality of end products will be consistent with the specification.
* Progress payments are warranted.
* New components need to be incorporated in major systems.
* A contractor's own inspection system is adequate.

***Improper Inspections***

The Government has certain rights in the application of inspection procedures. Tests are considered improperly applied when they:

* Impose a stricter standard of performance than is otherwise prescribed.
* Do not reasonably measure if the contract conforms to specified requirements.
* Are inconsistent with prior inspections.
* Result in unnecessary delays due to unreasonable time and place inspections.

***Unusual or Incompetent Inspections***

Any test to overturn the results of another test is considered an unusual test. The Contracting Officer must be involved in these cases. Inspections made by incompetent inspectors may result in the Government being negligent. If the negligence of a Government agent causes damage to a contractor, then in all likelihood the Government will be held liable for those damages.

***Documenting Inspections***

The format to be used and the results of inspections that need to be documented are specified by the contract, quality assurance plan and/and FAA quality assurance policy and guidance.

### Recommend Acceptance

Supplies or services should be accepted when they conform to contract requirements.

Some other acceptance considerations are:

***Nonconformance***

Nonconforming supplies or services can be usually accepted when it does not adversely affect one or more of the following:

* Safety or health
* Reliability, durability, or performance
* Interchangeability of parts or assemblies
* Any other basic objective of the contract

Minor nonconformance may be accepted without modifying the contract. Written documentation to support the decision to accept minor nonconformance should be placed in the contract administration file. Accepting a nonconformance on one contract does not provide relief for correcting similar defects on pending or future work.

Acceptance of critical or major nonconforming supplies or services requires modification to the contract, and obtaining an equitable reduction in price or some other consideration.

***Time of Acceptance***

After delivery is made, a reasonable period of time is allowed for Government acceptance or rejection. Although the Government may not have formally accepted items, acceptance may be implied by: Government conduct or Government delay.

***Point of Acceptance***

The contract controls where items will be accepted. The point of acceptance may be:

* At the contractor plant when the contract requires Government quality assurance actions.
* A prescribed destination point when quality assurance actions are performed at the destination.
* Anywhere else that is mutually agreeable.

***Transfer of Ownership***

Ownership (title) transfers to the Government upon formal acceptance. The time of title transfer is significant if damage or loss occurs. The Government becomes liable for damage or loss based on when and where acceptance occurs; it may be when the contractor delivers conforming supplies to a carrier (FOB Origin) for shipment or after shipment and at the final Government destination (FOB Destination).

***Evidence of Final Inspection or Acceptance***

Evidence of final inspection or acceptance may entail one or more of the following documents:

*Receiving Report -* the COR, as the official authorized to accept supplies or services for the Government, signs the receiving report. This report is usually written evidence of final acceptance.

*Copy of an Invoice (or Voucher) -* this instrument, signed by an authorized official, can serve as an acceptance document if permitted by a contract.

*Contractor's Bill of Lading (CBL) -* under a CBL, the transportation carrier is responsible to the contractor for any damage or loss, and the contractor, in turn, is responsible to the Government. Under contract terms, a CBL usually means the Government is responsible for freight payments.

*Certificate of Conformance* *- a*cceptance on the basis of a contractor Certificate of Conformance is in the Government's interest; small losses would be incurred in the event of a defect; or contractor past-performance reputation makes it likely deliverables will be acceptable and any defective work will be replaced or corrected without contest. The Government still retains the right to inspect the deliverables.

***Finality of Acceptance***

The acceptance procedure is important because at the time and place of formal acceptance title passes from the contractor to the Government. Acceptance is final except for: latent defects, fraud, or gross mistakes that amount to fraud.

### Recommend Rejection

Notification to reject should include sufficient data to support a written rejection notice of nonconforming supplies or services.

***Notices of Rejection***

Notices of rejection must be furnished promptly to the contractor and include the reasons for rejection, and a stated time-period for the contractor to reply.

A notice of rejection must be in writing if:

* Supplies or services have been rejected at a place other than the contractor plant.
* Contractor persists in offering nonconforming supplies or services for acceptance.
* Delivery or performance was late without an excusable delay.

A written notice of rejection requires a written receipt from the contractor.

***Timeliness of Notices - Delivery Schedule***

A notice of rejection does not extend the specified delivery schedule, and the contractor remains obligated to provide supplies or services that conform to the contract within that delivery schedule.

***Notifying the Contracting Officer***

The Contracting Officer should be provided with documentation reflecting:

* The nature of Government contract quality assurance actions, including:
* Number of observations made.
* Actions taken to notify the contractor.
* Decisions regarding the acceptability of the products, processes, or other requirements, including:
* Number and type of defects.
* Impact on the Government.
* Any actions taken by the contractor to correct defects.

### Assist the Contracting Officer in Evaluating the Contractor's Reply to Rejection Notification

Advise the Contracting Officer on the acceptability of non-monetary consideration, acceptance of nonconforming supplies, or impact of contractor refusal to repair the work. A contractor may reply to a notice of rejection by:

* Submitting a proposal to repair or correct the work.
* Submitting a proposal to provide a downward adjustment in price or cost as a basis for acceptance.
* Refusing to repair or correct the work or to offer any consideration.

A COR can assist the Contracting Officer in evaluating the contractor proposal by:

* Providing advice concerning safety and performance.
* Evaluating whether acceptance of the supplies or services would be in the Government's best interest after repair, correction, or price adjustment.
* Providing supporting rationale for rejecting or accepting the contractor proposal.
* Attending any negotiations to respond to contractor positions.

# Duty 9: Document Performance

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To identify, classify, and record performance information the COR should:

* Document performance information
* Notify interested parties
* Maintain evaluations

### Document Performance Information

Evaluations are prepared when work under the contract is completed. The manner in which the evaluation is done is usually provided in the contract and may specify:

* Which Government officials evaluate and document performance.
* What is included in the documentation.
* The format for documenting the evaluation.

Contracts that have not specified evaluation procedures should at least include information needed for use in future source selection. Interim evaluations should be prepared on contracts with periods of performance (including options) exceeding one year. Interim evaluations should be conducted at sufficient intervals to be useful to source-selection officials seeking current performance information about a contractor.

***Rate Performance***

The contract will specify the manner in which contractor performance will be rated. The COR should rate performance without bias. Examples of areas in which a COR may evaluate and rate contractor performance include:

* *Quality of Product or Service*- compliance with contract requirements, accuracy of reports, technical excellence.
* *Timeliness of Performance* - compliance with milestones; reliable, responsive to technical direction; completed on time; no liquidated damages assessed.
* *Cost Control* - within budget; current, accurate, and complete billings; actual costs consistent with negotiated costs.
* *Business Practices* - effective management, effective small/small disadvantaged business subcontracting program; reasonable and cooperative behavior; flexible; effective contractor solutions; business-like concern for Government interests.
* *Customer Satisfaction* - satisfaction of end users with contractor service.
* *Key Personnel* - how long key personnel stayed on the contract and how well they managed their portion of the contract
* *Quality Awards* - Receipt of widely recognized quality awards or certifications.

***Provide Appropriate Information to Contractor***

The Contracting Officer provides copies of the evaluation to the contractor for comment as soon as practicable after completion. If the contractor disagrees with the evaluation, the COR may be asked to assist the Contracting Officer in evaluating any contractor rebuttal.

***Notify Contracting Officer of Recurring Performance Problems***

The types of information a COR needs to include are:

* Description of the performance problem.
* Discussion of mitigating or extenuating circumstance, if any.
* File of related documents.
* Analysis of the impact contractor performance problems have had on overall cost and delays in obtaining needed supplies and services; and potential impact on mission accomplishment.

***Assist the Contracting Officer Prepare Reports to Debarment and Suspension Official***

If circumstances merit contractor debarment or suspension, the COR provides any additional data requested by the debarment official, such as:

* Potential impact of a debarment or suspension on the Government's ability to meet its needs.
* Current mailing address for the contractor and any affiliates.

### Maintain Evaluations

* Retain performance evaluations
* Release performance information to other Government officials
* Destroy past performance records

***Retain Performance Evaluations***

The following should be filed in the contract file or past performance database:

* Evaluations
* Any interim evaluations
* Contractor response
* Review comments (if any)

The documents should be marked "Source Selection Information" and should be readily accessible by contracting office personnel.

***Release Past-Performance Information to Other Government Officials***

The past-performance evaluation may only be released to other Government officials and the contractor whose performance is being evaluated. Disclosure of such information to anyone else could cause harm to both the Government and the competitive position of the contractor. The contractor's statement and Government review of any contractor rebuttals must be attached to the performance evaluation report and provided to source-selection officials requesting a reference check.

***Destroy Past-Performance Records***

Destroy the information within three years after completion of contract performance in accordance with agency procedures.

# Duty-10 Contract Modifications

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The Contracting Officer may delegate the COR the following responsibilities related to contract modifications:

* Identify the need to change the contract
* Prepare the technical analysis
* Assist in negotiations

### Identify the Need to Change the Contract

Some circumstances that can prompt a change to the contract include:

* A change in agency need.
* Inadequate specifications.
* A need to increase or decrease funds.
* A need for extensions to provide additional time.
* Suspension of work.
* Required revisions to the original terms and conditions in the contract.
* A change in performance requirements.
* Development of contingencies that need resolution.

Some circumstances that should NOT prompt a change to the contract include:

* Already covered by terms and conditions of the contract.
* Outside the scope of the contract.

### Prepare a Technical Analysis

The COR performs the following when preparing a technical analysis for a modification:

* Gather information for a change request
* Prepare written documentation to support the proposed change
* Notify the Contracting Officer of a pending change

***Gather Information for a Change Request***

A COR should obtain necessary documentation from the contractor. This may include:

* Description of the change.
* Chronology of events.
* Justification for change.
* Pricing information.

The COR should also obtain input from the requiring activity and other support personnel. This may include:

* Statement of facts.
* Correspondence with the contractor.
* Reaction to the request.
* Impact of the change request on its mission.

***Prepare Written Documentation to Support the Proposed Change***

Before issuing a contract modification, the COR should determine the impact a change will have on contract price or cost, delivery, and performance. The documentation should address:

* Background of the issue and reason for the change.
* Whether the issue is already covered by the technical requirements of the contract.
* Whether the change is within the scope of the contract.
* Impact on the requirement in terms of quality, quantity, or delivery.
* Impact on cost or price.
* Consequences if the change is not made.
* Available alternatives.
* Proposed recommendation for a solution.
* Any attachments supporting the technical analysis.

***Scope of Contract***

Consider whether any change, initiated by either the Government or the contractor, is within the scope of the contract. Adding work under an existing contract avoids the costs and disruption associated with issuing a new procurement. But there are definite limits to additional work. A proposed contract change within the scope of the contract encompasses the following:

Factors indicating "within scope" changes

* The function of the item or service has not changed.
* The basic contract purpose has not changed.
* The dollar magnitude is proportionate to the price of the original contract.
* Competitive factors of the original solicitation are the same.
* Changes to the specification or statement of work are not extensive.

Questions to consider when deciding whether a change is outside the scope of the contract include:

* Does the changed work represent what both parties reasonably contemplated at the time of award?
* Is the changed work essentially the same as was bargained for?
* Is the nature of the requirement altered by the change?
* Would this type of change normally be expected for this kind of requirement (sophisticated, complex requirements)?
* Was the specification defective, requiring extensive redesign?

***Cost and Price Documentation***

Although the Contracting Officer is the person ultimately responsible for all decisions on contract modifications, he or she relies on the COR and other support personnel for technical and pricing decisions. Changes to basic contract requirements can be classified in three ways, according to the effect the change has on the resulting price adjustment. Usually a single change will embody elements of more than one type. These categories of change are:

* *Additive Changes -* work added to the contract, resulting in more money to the contractor.
* *Deductive Changes*- work a contractor has not yet performed deleted from the contract, resulting in a reduction of contract price.
* *Substitution Changes -* added work substituted for deleted work, resulting in either no change in contract price or a change that is tempered by the monetary effect of the substitution involved.

The effects of the change on the original pricing and technical proposal should be considered and addressed. Pricing considerations should consider a history for similar requirements, or current market prices.

***Notify the Contracting Officer of a Pending Change***

The COR should notify the Contracting Officer within a timeframe that does not:

* Jeopardize the Government mission.
* Delay the contractor from performing under the contract.

At a minimum, the COR’s recommendation should include items such as:

* Memorandum to the file, letters, or other documents. These are used to request, explain, and justify the contract modification request.
* Work statement changes that specify deliverables and due dates.
* A purchase request attached with the appropriate signatures if the change requires additional funds.

### Assist in Negotiations

The Contracting Officer will often solicit assistance from the COR in researching information, preparing the pre-negotiation position, developing negotiation strategies, and conducting the negotiation.

A COR can assist in evaluating the contractor proposal by:

* Providing advice concerning safety and performance.
* Providing guidance on whether acceptance of supplies or services would be in the Government's best interest after repair, correction, or price adjustments.
* Providing supporting rationale for rejecting or accepting the contractor proposal.
* Attending any negotiations to respond to the contractor position.

The Contracting Officer makes a final decision at the conclusion of negotiations.

# Duty-11 Contract Options

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The COR often advises the Contracting Officer of the need to exercise options under the contract. To ensure options are processed accurately, the COR must:

* Identify available options
* Determine the need for additional supplies, services, or time
* Research the marketplace for the latest pricing information
* Document the file and provide written data to the Contracting Officer

### Identify Available Options

The COR should understand the requirement, pricing information, terms and conditions of the contract, and timeframe needed to exercise the option, and determine if it is in the Government's best interest to exercise the option. The COR should begin this step in sufficient time to make an informed decision and before the option expires.

In supply-type contracts, options may be appropriate when:

* Basic quantities are for learning or testing purposes, or
* Competition for the options is not possible once the initial contract has been awarded

.

The COR should ensure that:

* Funding is available.
* The requirement covered by the option fulfills an existing Government need.
* Exercising the option is the most advantageous method of fulfilling the need.

### Determine the Need for Additional Supplies, Services, or Time

The COR submits to the Contracting Officer a written determination that includes information about:

* Government requirements supporting the need to exercise the option.
* Advantages of exercising the option.
* The technical impact and value of the option.
* Funding availability for the option.

COR documentation assists the Contracting Officer in making a decision about the option. After review, the Contracting Officer sends a written notice to the contractor advising of the Government intent to exercise the option.

### Research the Market Place for Latest Pricing Information

The COR submits to the Contracting Officer market research data which confirms:

* The option price would be lower than prices likely to be offered by other vendors.
* The option otherwise represents the most advantageous offer.

The following are factors taken into consideration:

* Any economic price adjustment clause that affects the option price
* The need for continuity of operations
* Potential cost of disrupting operations

The COR uses market research to obtain information on latest commercial market pricing and industry trends. Market research can include:

*Continuous market research -*This research is on-going and not related to a specific procurement. It can provide the COR with knowledge involving:

* Changes, advances, and trends in technology.
* Products of interest.
* Industry capability.
* Product availability.
* Competitive market forces.
* Alternative sources.

*Initial market research -*Initial market research is related to a specific procurement and determines whether sources of commercial items are available to satisfy the specified need. The COR can use this information to determine whether the Government requirement could be modified (to a reasonable extent) to allow use of commercial items.

*Subsequent market research-* Subsequent market research is conducted before the solicitation of offerors. It helps the COR determine whether the requirement fits market conditions by identifying the various standards and practices of commercial firms.

The COR notifies the Contracting Officer when information is not available through market research.

### Document the File and Provide Written Data to the Contracting Officer

COR written documentation should include:

* A rationale for exercising the option,
* The option period as stated in the contract,
* The technical evaluation that indicates the option meets the Government requirement; and
* A funding document or form that certifies funds are available to exercise the option.

# Duty-12 Contract Delays

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The COR often performs the following tasks when advising the Contracting Officer of delays:

* Identify and verify a delay in performance
* Notify the Contracting Officer of the technical impact of the delay
* Assist the Contracting Officer in evaluating the contractor response

### Identify and Verify a Delay in Performance

Every contract includes a delivery or performance schedule. To assist the Contracting Officer, the COR:

* Identifies the existence of a delay
* Verifies the delay

A delay occurs if the:

* Contractor fails to perform in accordance with the contract delivery or performance schedule; or
* Government causes the contractor to stop performing.

Before identifying the reasons for a delay, the COR reviews the contract for any applicable clauses and modifications to ensure the performance or delivery schedule was not previously extended by the Contracting Officer. The COR confirms the delay by:

* Obtaining feedback from any other Government personnel responsible for monitoring performance or delivery.
* Reviewing the notice and supporting documents from the contractor regarding the delay.
* Reviewing any contractor claim regarding the delay.

***Examples of Excusable Delays***

* Delays when neither the Government nor the contractor is responsible:
* Acts of God
* Unusually severe weather
* Strikes and labor disputes
* Public enemy causes
* Causes beyond the control of subcontractors and suppliers
* Delays caused by actions taken when a Government official:
* Directs the contractor to stop work
* Makes a change to the contract
* Performs other acts within the Government's sovereign capacity
* Delays caused by Government failure to act:
* Make the site available when required
* Process approvals
* Obtain funding
* Issue changes in a timely manner
* Respond to contractor requests
* Furnish Government property when required
* Inspect or accept when required

### Notify the Contracting Officer of the Technical Impact of the Delay

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

* List of persons with factual knowledge of the delay.
* Description of the delay.
* History of performance, indicating:
* When work under the contract began,
* When work deviated from contract requirements, and
* When work stopped.
* Other issues such as:
* Information that would support whether the delay was excusable.
* Contractor progress to date and remaining obligations.
* Estimate of a reasonable period of additional time to perform.
* Potential alternatives and resolution.
* Pros and cons of each alternative (price, quantity, and quality).

***Contractor Delay Assessment***

The following checklist will assist in evaluation of whether contractor delays are excusable. The Contracting Officer relies on the COR’s knowledge of how the contract was executed and any additional information that may affect your determination. Before making a final determination, the COR must be certain the contractor had no control over the circumstances that caused the delay. If a "Yes" answer to any of these questions, the delay was probably excusable.

|  |  |
| --- | --- |
| **#1. Was the delay caused by a labor strike? *If NO, go to Question #2***  ***If YES, did the contractor:*** | **YES   NO** |
| File a charge with the appropriate labor relations board to seek injunctive relief in court? | Yes     No     N/A |
| Use other available Government procedures or private boards or organizations in an attempt to settle or arbitrate disputes that caused the strike? | Yes     No     N/A |
| **#2. Was the delay caused by Government interference or disruption? *If NO, go to Question #3***  ***If YES, did the Government:*** | **YES   NO** |
| Delay in making payments due to the contractor? | Yes     No     N/A |
| Deliver Government-furnished property late? | Yes     No     N/A |
| Fail to reply to a contractor request for clarification? | Yes     No     N/A |
| Fail to disclose all facts applicable to performance? | Yes     No     N/A |
| Cite or misrepresent conditions which were different than portrayed? | Yes     No     N/A |
| Experience scarcity of supplies due to Defense Production Act priorities over commercial or non-rated orders? | Yes     No     N/A |
| Delay issuing a required notice to proceed? | Yes     No     N/A |
| Delay issuing changes? | Yes     No     N/A |
| Delay performance by other Government contractors? | Yes     No     N/A |
| Experience delays because of an interested party protesting the contract award? | Yes     No     N/A |
| Delay making the site available? | Yes     No     N/A |
| Delay providing funding? | Yes     No     N/A |
| Delay inspection or acceptance? | Yes     No     N/A |
| Delay because of defective or ambiguous specifications? | Yes     No     N/A |
| Delay granting approvals? | Yes     No     N/A |
| |  |  | | --- | --- | | **#3. Was the delay caused by a subcontractor?**  ***If NO, go to Question #4***  ***Note: The determination is "No" if either of the following occurred:*** | **YES     NO** | | |
| Did a dispute between the subcontractor and prime cause the delay? | Yes     No     N/A |
| Were subcontracted products or services available from other sources in time for the prime to complete performance? | Yes     No     N/A |
| |  |  | | --- | --- | | **#4. Was the delay caused by any other occurrence specifically characterized in Default or Excusable Delays, (or other clauses), as generally excusable? *If NO, go to Question #5***  ***If YES, was the delay caused by:*** | **YES     NO** | | |
| Acts of the Government in either its sovereign or contractual capacity? | Yes     No     N/A |
| Acts of God or the public enemy? | Yes     No     N/A |
| Fire? | Yes     No     N/A |
| Flood? | Yes     No     N/A |
| Unusually severe weather? | Yes     No     N/A |
| Epidemics? | Yes     No     N/A |
| Quarantine restrictions? | Yes     No     N/A |
| Labor dispute resulting in strikes? | Yes     No     N/A |
| Freight embargoes? | Yes     No     N/A |
| Common carrier delays? | Yes     No     N/A |
| |  |  | | --- | --- | | **#5. Was the delay caused by other circumstances not previously mentioned? *If YES, did the contractor:*** | **YES     NO** | | |
| Not cause the delay? | Yes     No     N/A |
| Not have any control over the circumstances that caused delay? | Yes     No     N/A |

### Assist in Evaluating Contractor Response

CORs may be asked to assist the Contracting Officer in evaluating the contractor response. In their response, contractors may be asked to:

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

Concurrent or commingled delays fall in a middle ground, being neither excusable nor non-excusable. A commingled delay occurs when both parties are at fault for one or more reasons contributing to the delay. A concurrent delay occurs when two or more delays happen at the same time.

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

***Examples of Recoverable Expenses***

|  |  |
| --- | --- |
| **Possible Contractor Expenses** | **Government Verification Review** |
| Idle time of facilities or equipment | Idleness of rental equipment is not normally a recoverable expense since the equipment can be returned to the rental agency. If the contractor can show it is less expensive to continue renting, these costs are recoverable. |
| Increase in material prices | The contractor should support these increases with supplier invoices or letters substantiating price increases. |
| Increase in wages | These costs can normally be verified by:   * Consulting local labor union officials. * Interviewing contractor personnel. * Examining payroll records in an audit. |
| Loss of efficiency | When the contractor has been forced to work out of sequence, that is, in a poorly-organized, inefficient manner instead of in the originally-scheduled sequence of work, learning curve efficiencies will be lost. This is the most difficult expense to document, although it is also one of the most common delay and disruption costs. |
| Unusually severe weather conditions | To be recoverable, these conditions could not have had an effect on performance were it not for the change in time of performance due to the delay. Conditions of unusually adverse weather can be verified by National Weather Service reports for the affected period. These reports can be compared with those of the original period of performance to verify the degree or extent of unusual weather conditions that could have contributed to the delay. |
| Insurance and bond coverage | If the contractor extended this coverage for the period of the delay, and would not have otherwise done so, a notice from the bonding or insurance company for the amount of the increased premium should be provided. |
| Protection or storage of materials | These must be actual additional costs. Examples are re-handling and transportation charges that would not have been necessary if the work had proceeded without interruption. |
| Additional make-ready costs | If a production run is interrupted, there will be additional costs for restarting the production line. |
| Demobilizing and mobilizing the workforce | If the contractor lays off personnel during the delay, there may be administrative rehiring costs. If the delay is long and the contractor is unable to rehire part of the original workforce, recruitment advertising and employment fees to recruitment agencies may be included within these costs. |
| Interest | Interest on funds necessary to finance the extended performance time caused by the delay is recoverable. |
| Unabsorbed overhead expenses | Unabsorbed overhead, when it applies, can include both direct labor personnel underutilized because of the delay and general office overhead expenses directly attributable to or chargeable against the contract. |

# Duty-13 Stop Work

j0115855

The COR often advises the Contracting Officer of the need to issue a stop work, or suspension of work, order. To ensure a work stoppage is processed accurately, the COR:

* Identifies potential conditions to stop work
* Recommends a work stoppage to the Contracting Officer
* Assists in issuing a stop work order

Suspension of work is used under construction and architect-engineering contracts to halt all or part of the work.

### Identify Potential Conditions to Stop Work

The Government or contractor may request a stop work order. The COR identifies conditions under which work stoppage might occur, which might include:

**Government**

* When unable to furnish property or services per the contract schedule.
* When a request for a change to the contract has been received and a modification cannot be issued.
* When time is necessary to consider contract modifications that would substantially change the end product.

**Contractor**

* When a proposal has been submitted to materially change the technical requirement of the contract (i.e., value engineering change).
* When conditions at a Government work site make performance of work unsafe and not immediately correctable.

***Determine the Impact of a Work Stoppage***

Work stoppages should only occur after the Government has determined the impact, which may include:

* Estimated cost for delaying the work.
* Potential effect on labor (loss of skilled labor, loss of efficiency, and so forth).
* Potential damage to perishable goods.
* Estimated effect on overhead (inventory, indirect labor, etc.).
* Any adverse effects of the potential delay on contract completion.

The COR should determine if there is a contract clause that allows the Government to issue a stop work/suspension of work order. CORs must avoid issuing oral or written instructions to a contractor to start or stop work. The Contracting Officer is the official responsible for issuing stop work orders.

Document Recommendation

The COR may be asked to document the stop work order. This documentation may include:

* A description of the work to be suspended
* Effective date and time
* Timeframe to resume work
* The contractor right to file a claim
* Origin, purpose, and benefits of stopping the work
* Any costs associated with the work stoppage
* Alternatives to stopping the work (if any)
* Nature or reason for stopping work
* Nature or reason for number of days in the stop work order

### Assist With Issuing Stop Work/Suspension of Work Order

The COR may be requested to:

* Select the method for issuing the stop work/suspension of work order
* Assist in discussions with the contractor
* Recommend when work can resume

The COR may be asked to prepare information for the written stop work/suspension of work order. There are two methods for issuing stop/suspension of work orders:

*Oral**-*Oral orders are issued for highly urgent reasons, such as life-threatening issues or safety violations. A Contracting Officer issues oral orders only when the situation precludes waiting for a written one, and a timeframe for work stoppage needs to be conveyed. Oral orders should be confirmed in writing as soon as possible.

*Written**-* Written orders include all details involving the stop work order and its requirements. Written orders are presented to the contractor in person or through a third-party messenger. Whatever method is used, a signature of a contractor employee acknowledging receipt must be obtained for the stop work to become effective. The signature assures the Government is released from responsibility for paying any unnecessary costs incurred for contract work as a result of the stoppage.

***Assist in Discussions with the Contractor***

The COR assists the Contracting Officer discuss the stop work order with the contractor. The following topics may be covered:

* Reasons for issuing the stop work order
* Factors for reaching specified timeframe and the probability of revisions
* Impact of possible timeframes for the work stoppage
* Estimates of labor and other costs of the expected work stoppage
* Alternatives for continuing the stop work order
* Acceptance of a stop work order by the contractor
* Types of costs that may or may not be allowed by the Government

Daily communication, preferably in writing, is important since costs associated with the work stoppage are occurring daily. The Contracting Officer, COR, and the requiring organizations affected by the work stoppage should be included in any communication.

### Recommend When Work Can Resume

Stop work orders are undesirable and should be discontinued as quickly as possible. The contractor will resume work when:

* Written notice is received from the Contracting Officer to resume work.
* The stop work order is cancelled.
* The stop work order expires and written notice is received.
* The stop work order expires and no official Government action is taken.

# Duty-14 Claims

j0115855

The COR often analyzes a claim and recommends a settlement position to the Contracting Officer. To complete this duty, the COR:

* Notifies the Contracting Officer of potential disputes
* Assists in responding to claims
* Assists in resolving claims

### Notify the Contracting Officer of Potential Disputes

Disagreements between the Government and a Contractor can evolve into contract disputes. For instance:

* Complex projects may create troublesome interrelationships.
* Lengthy contractual documents with numerous revisions may lead to misinterpretations.
* Unforeseen conditions may cause disagreements, e.g., changed weather conditions may disrupt schedules.
* Well-intended actions can create out of scope changes.

A Contracting Officer may be required respond to different types of disagreements, such as:

* Payment of invoices.
* Settlement of contract claims.
* Reinstatement of a previously terminated contract.
* Termination of a breached contract for default.
* Acceptance or rejection of nonconforming items.

The COR should be aware of warning signs of a potential dispute and should notify the Contracting Officer as soon as it is identified. Disagreements not addressed early may turn into disputes. When possible, disputes should be avoided because of the time and cost involved in resolving them.

***Warning Signs of a Potential Dispute***

Warning signs include:

* Lack of specific information from a contractor during a pre-proposal conference about how the job will be completed.
* Failure of a contractor to begin work within approximately 10 percent of the total contract period of performance.
* Repeated failure of a contractor to meet milestones on the critical path of a project schedule.
* Repeated safety violations or accidents, possibly indicating poor management.
* Repeated incidents of poor quality or rework.
* Complaints from site workers to Government personnel about conditions.
* Refusal by a contractor to sign bilaterally negotiated contract modifications or agreements containing the required language necessary to release a modification.
* Letters from a contractor alluding to field problems without specific details regarding those problems.
* Numerous correspondences from a contractor requiring replies to very insignificant matters, creating a nightmare of paperwork.
* Persistent complaints from a contractor concerning the behavior, motives, or requirements of an inspector or contract administrator that are found to be without foundation.
* Receiving complaints from subcontractors concerning late payments or nonpayment.

### Assist in Responding to Claim

***Prepare Supporting Documentation***

When possible, the Contracting Officer makes all reasonable efforts to informally resolve disagreements or controversies. The COR submits supporting data to the Contracting Officer that:

* Describes the dispute.
* Refers to pertinent contract terms.
* States factual areas of agreement or disagreement.
* Determines if the contractor is indebted to the Government.
* Makes a recommendation to reject, partially accept, or fully accept the claim.
* Includes background information covering:
* Facts in chronological order.
* All separate issues or allegations.
* Points of contact for discussion of the dispute.

Methods used in developing supporting documentation include:

* Discussions with the contractor.
* Personal observations at the work site.
* Discussions with other Government personnel (e.g., audit personnel, quality assurance personnel, program office).

***Submit a Detailed Analysis of the Claim***

The analysis of a claim has five phases:

* Identifying the issue(s).
* Performing an impact analysis.
* Evaluating project documentation.
* Performing a price/cost analysis and damage apportionment.
* Preparing a report.

The COR provides information to assist the Contracting Officer in a detailed analysis of the claim. A technical analysis should be submitted in writing and include:

* Background information (including information used to support the dispute).
* Contract number and date.
* Estimated contractor claim amount, the amount the contractor may be entitled to, and any differences between the two.
* Contractor labor and equipment usage and cost.
* Idle time, wasted time, or dragged-out time (including dates from monitoring reports).
* Possible over-staffing of personnel or over-equipping.
* Contractor cost overage (or overrun) on materials, labor, equipment, and overhead.
* Contractor diligence and production efficiency (note the number of days or months the contractor is behind schedule).
* Number of changes or change orders received and processed under the contract.
* The engineering approach employed by the contractor.
* The reasonableness of any additional time and person-hours expended.

### Assist in Resolving Claim

***Alternative Dispute Resolution (ADR) Procedures***

ADR procedures are used at any time to resolve disagreements or controversial issues. ADR procedures are used when:

* An issue exists.
* Both parties voluntarily participate with officials authorized to resolve the issue.
* Both parties agree on procedures and terms.
* Formal litigation will not be used.

***Participate in Formal Proceeding***

The contractor may submit a contract dispute to FAA’s Office of Dispute Resolution for Acquisition (ODRA). To prepare for an ODRA proceeding, the Contracting Officer may request the COR to assist with preparation or assembly of:

* The contract specification and drawings, including all modifications.
* COR correspondence files.
* Copies or documentation of any written or oral technical direction the COR may have provided that may be pertinent to the claim.
* Modifications that include technical changes. Particularly important are originally approved changes, plus those added throughout the course of the contract.
* Inspection records including daily records, if applicable, and logs or reports by inspectors and contractor personnel.
* Memoranda of meetings pertinent to the claim.
* All progress charts and information, and all changes concerning progress.
* Copies of the post-award orientation meeting notes. These may establish expectations and understandings of both parties concerning a provision of the specification or anticipated problems.
* Copies of contract relevant contract clauses.
* Copies of all photographs pertinent to the claim.
* Copies of pertinent logs such as change-order logs or submittal approval logs.
* Copies of contractor interim and/or final performance evaluations of contractor performance.

If the result of formal proceeding favors a contractor, the Contracting Officer may request assistance from the COR in negotiating any equitable adjustment. After negotiation, a contract modification formally reflects the equitable adjustment.

# Duty-15 Remedies

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The COR is often responsible for recommending a formal contract remedy to the Contracting Officer. This involves two tasks:

* Notify the Contracting Officer of performance failures
* Provide technical assistance

### Notify the CO of Performance Failures

During contract monitoring, the COR may identify performance failures or other breach of contract situations. These may include:

* Anticipated or actual late delivery.
* Failure to control costs.
* Unsatisfactory performance.
* Nonconforming supplies/services.

Once a performance failure or breach is identified, the COR must notify the Contracting Officer. Because many remedies are time sensitive, delays in informing the Contracting Officer may result in harm to the Government. A remedy recommendation should best match the problem and include adequate and timely documentation that supports the decision.

### Provide Technical Assistance

To provide the technical assistance, a COR may need to:

* Prepare documentation and make appropriate recommendations to support the Government position for:
* Any monetary or non-monetary consideration.
* A new delivery schedule.
* Modifying other terms and conditions of the contract.
* Attend meetings with the contractor and provide technical advice as requested by the Contracting Officer

The COR can also assist in the contract remedy process by:

* Providing technical analysis for delinquency notice situations.
* Calculating liquidated damages.
* Preparing written rejection of nonconforming supplies and services.
* Determining warranty provisions.
* Providing technical review of contractor responses.

***Technical Analysis for Delinquency Notice Situations***

CORs may analyze critical performance problems that justify the issuing a delinquency notice. In response to a cure notice, the COR may be asked to determine the impact of the contractor's offer to:

* Correct the work.
* "Cure" performance.
* Provide a downward price adjustment for acceptance.
* Provide substantial performance in exchange for relief from some terms or conditions in the contract.
* Analyze and negotiate a revised delivery schedule for a conforming product with consideration.
* Present a case for excusable delay.

The COR may be required to assist with reviewing a contractor’s response to a show cause letter by evaluating:

* The impact of no reply or one with no offer of a justification.
* A claim for a case of excusable delay.
* An assertion that performance is impossible under the contract terms and conditions.
* A claim that work is substantially complete.

***Calculating Liquidated Damages***

When assessing liquidated damages is appropriate, the Government withholds payments based on an accurate computation of the amount due. The actual computation will depend on the specific amount or formula in the contract, and also on actual events during contract performance.

Liquidated damages are calculated by:

* Identifying all factors that control how these amounts are computed to reflect an accurate maximum amount authorized under a specific liquidated damages clause.
* Subtracting amounts of time that may have constituted an excusable delay from the period for liquidated damages. When subtracting time for excusable delay, also subtract calendar days unless the performance is specifically described as "work" days. Holidays and weekends are not considered "work" days. The rate of assessment for liquidated damages may be in two or more increments, providing a declining rate of assessment as the delinquency continues.
* Examining the contract for any restrictions. Generally, the contract will restrict the total amount withheld to the greatest amount that can be withheld under the authority of a single clause. Compute amounts that would be authorized under each clause.

To ensure the total liquidated damages amount is reasonable and not a penalty, there may be special contract terms limiting the overall dollar amount or period of time, or both, for liquidated damages. The courts and administrative boards will not uphold liquidated damages that are so excessive that they can be construed as a penalty.

***Preparing Written Rejection of Nonconforming Supplies or Services***

The rejection of nonconforming supplies and services must clearly demonstrate the reason the supply or service did not conform to the specification or SOW. CORs need to provide supporting documentation, identifying which part of the contract the contractor did not perform and why. Inspection and acceptance clauses in the contract provide the basis for rejecting supplies and services.

When the nonconformity seriously affects the requirement, the item should be rejected. The COR should discuss the rejection with the contractor before issuing any written notification since the contractor may have additional information concerning the deliverable. Before rejecting the product or service, the COR should determine whether any contract requirement may have been changed.

CORs, when authorized by the Contracting Officer to perform inspection and determine acceptance, may also be required to notify the contractor of the rejection. The notification must be in writing if:

* The rejection took place at a location other than the contractor plant.
* The contractor persists in providing minor nonconforming items or services.
* Late supplies are being rejected and no excusable delay factors were involved in the delinquency.

Written notification should:

* Provide the reason for rejection.
* Allow a time period for the contractor reply.
* Be furnished promptly.

CORs need to consider the following when issuing rejection notices:

* The contractor's acknowledgment of delivery.
* The context of the supplies or services that were rejected.
* A rejection notice does not extend the delivery period.

***Determining Warranty Provisions***

The Contracting Officer may request the COR to assist in identifying some of the following information:

* A summary of warranties that apply to a specific product or service.
* Specific components to which a warranty applies, if all components are not included.
* Who has Government responsibility to report warranty incidents and the authority to implement warranty clauses.
* Duration of the warranty.
* Documentation and other warranty requirements.
* Packaging and transportation requirements.

CORs may also be asked to verify that a warranty clause applies to a specific failure by:

* Confirming the Government has officially accepted the items or services.
* Examining the written terms and conditions of the warranty. This examination should reveal duration of the warranty, and coverage for specific defects.
* Determining if any Government obligations under the warranty were met or providing assurance they will be met.
* Confirming that facts support invoking the warranty.

***Providing Technical Review of Contractor Responses***

CORs are asked to assist in evaluating the impact of the contractor response to remedy including:

* A proposal to repair or correct the work.
* A proposal to provide a downward adjustment in price or cost as a basis for acceptance.
* No reply.
* A refusal to repair or correct the work or to offer any consideration.

# Duty-16 Termination

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When performance monitoring leads to contract termination, the COR will:

* Identify the event(s) that cause termination
* Notify Contracting Officer of possible termination
* Assist with termination proceedings

### Identify the Event(s) that Cause Termination of a Contract

***Triggering Events for Termination for Convenience***

The Government might need to discontinue the contract and terminate for convenience when:

* There is no longer a need for the item or service under the contract.
* Funds are not available for continued contract performance.
* It is impossible for the contractor to perform as specified in the contract (specifications, acceptance, delivery, etc.).
* There has been a radical change in the requirement that goes beyond the contractor's expertise.

***Triggering Events for Termination for Default (or Cause)***

A termination for default (or cause) may be triggered by events that include:

* The contractor has failed to perform as required by the contract.
* A contractor response to the Government cure or show-cause notice fails to show that a contract will be completed in accordance with its terms.

***Financial Warning Signs***

Occasionally there may be evidence or rumors that a contractor is in "financial trouble." Warnings of an impending bankruptcy or financial difficulties sometimes go hand-in-hand with a delinquent contract when:

* A contractor fails to pay subcontractors on time.
* Late deliveries of materials to the job site, usually brought in on a C.O.D. basis.
* A contractor is falling behind the schedule.
* Complaints occur by laborers on the job.
* Telephone calls go unanswered.
* Sloppy performance and workmanship is evident.

***Default Questionnaire***

Default questions will assist the COR in determining the issues that may prompt a contract termination. Once a circumstance has been identified, use the questions to validate the issue. Each checked item should be detailed in a report that the COR submits to the Contracting Officer recommending whether or not a contract should be terminated.

|  |  |
| --- | --- |
| Circumstance | Validating Questions |
| Issues regarding terms and conditions of the contract and applicable laws and regulations | * Was there a breach? * Do the facts support a finding that the contractor has breached the contract? * Does the breach, on its face, merit the severe remedy of default? * Has the Government met procedural requirements for proceeding with a default termination notice (e.g., issued any required notices)? * Has the decision to default been made on the merits (i.e., free of outside influence)? * Has the requiring activity proposed any change in the material requirement for the re-procurement (which would thereby undermine the Government case for a default termination)? |
| Mitigating circumstances | * Does the contractor have a good case that it is not at fault, based on such grounds as: * Impossibility of performance? * Excusable delay? * Breach by the Government? * Does the contractor have a good case for contending that default would be arbitrary, capricious, or retaliatory? |
| Impact on the requirement if the contractor is terminated for default | * Have alternatives to termination for default been considered? * Is there any reasonable probability of meeting the requirement by continuing to work with the contractor? If so, what is the additional time and cost of continuing to work with the contractor? * Is the deliverable available from other sources and, if yes, what would be the reprocurement lead-time? * What is the urgency of the need for the deliverable? * What is the potential for recovering the Government's current investment in the contractor (e.g., any Government guaranteed loan(s), unliquidated progress payments or advance payments) and reprocurement costs? * Can the contractor afford to repay or would it go bankrupt? |
| Impact on other requirements | * Is the contractor essential to other critical work of the Government? * Will the contractor be able to meet other critical Government requirements if terminated for default on the instant contract(s)? |

### Notify Contracting Officer of Possible Contract Termination

The COR should notify the Contracting Officer when conditions indicate a contract may need to be terminated. The notification should include:

* Clause(s) for the contract termination.
* Specific failure of the contractor and reasons provided by the contractor for such failure.
* Availability of supplies or services from other sources.
* Urgency of the need and the period of time that would be required for work by other sources as compared with the time in which completion could be obtained from the delinquent contractor.
* Degree of indispensability of the contractor, such as unique contractor capabilities.
* Impact the termination would have on availability of funds.
* Any other pertinent facts and circumstances.

The COR should suggest available alternatives to terminating a contract including pros and cons of each alternative. Alternatives may include:

* Continuing the present contract, through such means as:
* Permitting performance by the contractor, surety, or guarantor under a revised delivery schedule.
* Permitting the contractor to subcontract with an acceptable third party or establish other business arrangements with such party.
* A no-cost cancellation, such as:
* The Government obtains the supply or service elsewhere.
* A no-cost settlement is acceptable to the contractor.
* Government property had not been furnished to the contractor.
* There are no outstanding payments, debts due the Government, or other contractor obligations.
* Termination for Convenience, if:
* The requirement is no longer necessary.
* It could be more cost-effectively met by a reprocurement.
* There is no sustainable case for default.
* Termination for Default, if the Government case for default can be confirmed by the default questionnaire.

### Assist with Termination Proceedings

Termination proceedings may involve meetings, discussions, and conference calls between the contractor and the Government. The COR may be asked to assist in preparing for these proceedings by providing documentation supporting a termination decision and by coordinating the settlement document. A settlement document may include the following information:

* Reasons for termination.
* General principles related to the settlement of any settlement proposal, including contractor obligations under the termination clause.
* Extent of the termination, point at which work is stopped, and the status of any plans, drawings, and data that would have been delivered had the contract been completed.
* Status of any continuing work.
* Obligation of the contractor to terminate subcontracts and general principles to be followed in settling subcontractor settlement proposals.
* Names of subcontractors involved and dates that the termination notices were issued to them.
* Contractor review and settlement of subcontractor settlement proposals and the methods being used.
* Arrangements for the transfer of title and delivery to the Government of any material required by the Government.

# Duty-17 Payment

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In assisting the Contracting Officer with determining and authorizing payment, the COR will:

* Accept the payment document for processing
* Calculate payment amount
* Notify the contractor of final amount calculated to be paid
* Submit the correct invoice to paying office

### Accept the Payment Document for Processing

***Determine if Payment Can be Processed***

Before processing any payments acceptance of the product or service must have occurred; or the contract must have been otherwise completed.

The COR may need to obtain documentation to make this determination. This may include:

* Documentation to support successful delivery of products or completion or services, including inspection forms, receiving reports, commercial shipping documents, and packing lists.
* Documentation on suspension of performance.
* Documentation on remedies applied, such as liquidated damages or rejection of work.
* Adjustments to liquidation rates or reductions in progress payments.
* Interim or final adjustments to the contract price.
* Modifications to the contract.
* Termination settlements.

***Review the Payment Document for Completeness***

Once a contractor submits an invoice for payment, the COR may be required to:

* Determine if the invoice is under a fixed-price or cost-type contract.
* Review submitted invoices.
* Determine if the invoice was complete.

***Accept Invoice or Notify the Contractor of Defects Found in an Invoice***

Once an invoice is received, the COR evaluates the invoice and either accepts it or notifies the contractor and Contracting Officer of any deficiency. Incomplete or incorrect invoices should be returned to the contractor before acceptance for payment. Contractors must be notified of the specific deficiency in writing and within seven calendar days after receipt of the invoice. The COR should keep a record of the number of days of delay caused by contractor correcting a deficient or incomplete invoice.

### Calculate Payment Amount

***Identify Terms and Conditions of the Contract***

The COR should identify applicable contract terms and conditions for payment, such as:

* Price.
* Type of contract.
* Payment provisions (in-full, partial, performance, or progress).
* Period for acceptance.
* Discounts.
* Liquidated damages

***Obtain Documents and Determinations***

Supporting information and data for invoices and vouchers are essential to verify contractor billing for:

* Work that has been completed.
* Work in process.
* Costs incurred for a specified period of time.

The extent of such information and data may vary considerably under different types of contractual arrangements, but the contractor must support the amount claimed on the invoice or voucher.

Voucher Documentation

Vouchers submitted by the contractor should list corroborating information or data concerning all incurred costs. These may include:

* Vendor, subcontractor, or supplier billings.
* Contractor internal cost sheets or displays.
* Referenced cost-expenditure files where detailed information or data are stored.

Invoice Documentation

Supporting information and data for invoice payments may include the following:

* Inspection or receiving reports.
* Commercial or Government shipping documents.
* Determinations on billing rates.
* Reports on contractor indebtedness.
* Determinations for reductions in progress payments.
* Determinations for the adjustment of liquidation rates for progress payments.

***Identify Amounts That Will Not be Paid***

The COR should determine when billed amounts cannot be paid. Reasons for nonpayment include:

Withholdings and Deductions in Fixed-Price Contracts

* A withholding is a subtracted amount that may be paid at a later date.
* A deduction is an amount that is permanently subtracted, unless a contractor provides appropriate supporting evidence for the reinstatement of any deducted amount. For example, some contracts specify deductions for defects of a service or product that do not meet an "acceptable” quality level.

Unallowable Costs in Cost-Type Contracts

In a cost-type contract, the COR should examine each cost element (direct or indirect) vouchered to determine if the cost will be allowed under the contract. Voucher documentation must support whether or not costs are allowable. These costs are subject to a determination of allowability by audit. Factors for determining whether a cost is allowable include:

* Reasonableness. A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person in the conduct of competitive business.
* Allocable. A cost is allocable if it is assignable or chargeable to one or more cost objectives on the basis of relative benefits received or other equitable relationship.
* Standards promulgated by the Cost Accounting Standards Board, if applicable, otherwise generally accepted accounting principles and practices appropriate to the particular circumstances.
* Terms of the contract.
* Any other cost limitations as set forth in Government guidelines for cost principles.

***Determine the Total Amount Owed the Contractor***

Once all appropriate withholdings and deductions are identified, the COR determines the amount due the contractor. Depending upon the contractual situation, the contractor will then be issued:

* Payment in full.
* Partial payment.
* Performance-based payment.

When the COR recommends payment in full or issues a partial payment, the amount owed the contractor is clearly known. When payment is performance-based, the amount due must be liquidated by deducting a percentage or a designated dollar amount from delivery payments, and the Contracting Officer must specify the liquidation rate or designated dollar amount in the contract. Whatever the method of liquidation, it must ensure complete liquidation no later than final payment under a contract.

The COR may use the following methods of liquidation:

* For payments established on a total contract amount, liquidation must be by pre-designated liquidation amounts or liquidation percentages.
* For payments established on a partial delivery basis, the liquidation amount for each line-item must be the percent of that delivery item price that was previously paid or the specific dollar amount as stated in the contract.

### Notify the Contractor of Final Amount to be Paid

If there are differences between the amount of the invoice and the amount the Government proposes to pay, the COR notifies the Contracting Officer and contractor. The Government must accurately present all factual data that justifies the difference and the contractor should be provided with an opportunity to present their position. Some reasons for the differences may include:

* Performance problems.
* Allowable costs.
* Defective products or inferior service.
* Delivery problems.

If a contractor disagrees with the calculated amount, the COR should notify the Contracting Officer who will make a final determination.

### Submit the Correct Invoice to Paying Office

Once the amount is agreed to by both the Government and the contractor, the COR submits approval of the correct invoice to the paying office for payment within the time specified in the contract.

# Duty-18 Closeout

j0115855

The COR is required to closeout the contract and submit the completed contract file to the Contracting Officer. Tasks to complete this duty:

* Closeout contract files
* Submit file to Contracting Officer

### Closeout Contract Files

***Identify Any Outstanding Claims***

The COR should be aware that a contractor may raise issues after a contract closeout. To avoid having to reopen a contract that has been closed, the Contracting Officer requests a written release of claims from the contractor as a condition of final payment. The Contracting Officer may request the COR to document that there are no outstanding claims or disputes.

***Identify and Recommend Deobligation of Excess Funds***

The COR should identify any funds remaining on a contract. If there is no known potential for the funds to be used in the future on the contract, the COR should recommend that the Contracting Officer deobligate funds.

***Verify the Return or Disposition of Government Property***

The COR should verify and document whether the contractor has returned or otherwise disposed of Government-furnished property, and has properly disposed of classified or sensitive unclassified material.

### Submit File to Contacting Officer

A contract is considered to be physically complete when:

* The contractor has delivered all required supplies or services and the Government has inspected and accepted them and all existing options periods have expired; or
* A notice of complete contract termination has been issued to the contractor.

A COR is responsible for documenting that the file is physically complete. All files, correspondence, and other documents pertaining to the contract should be forwarded by the COR to the Contracting Officer. The COR may be asked to prepare a contract completion statement.

***Prepare a Contract Completion Statement***

The contract completion statement should provide information about:

* Contracting office name and address.
* Contract number.
* Name and address of contractor
* Date of physical completion
* Last modification number, if any.
* Last call or order number, if any.
* Disposition of classified or sensitive material
* Final patent and royalty reports
* Settlement of value engineering change proposals
* Plant and property clearance reports
* Settlement of interim, disallowed costs, and prior year overhead rates
* Final close-out audit report
* Completion of any price revisions
* Settlement of subcontracts by prime contractor
* Final subcontracting plan
* Completion of termination docket
* Dollar amount of excess funds to be deobligated, if any.
* Security badges and keys returned
* Termination of access for contractor personnel to contract-specific FAA systems
* Invoice or voucher number and date, if final payment has been made.

Generally closed official contract are transferred to the Federal Records Center after final payment. These records are then destroyed after six years and three months.

Chapter 3

Chapter 3 – Training

A COR has a significant role and responsibility for making sure contracts provide positive results. To effectively perform this role, a COR needs adequate skills and knowledge. CORs should also recognize that knowledge required for delegated duties under one contract may be insufficient for another. Continuous skills assessment, and initial and refresher training, are key to successfully performing COR duties.

The Acquisition Career Management group’s intranet site contain the training, education and experience requirements to obtain and renew certification as a COR.

### Training Assessment

Each COR has different skills and knowledge, and delegated COR duties may vary by contract. The Contracting Officer and nominated CORCOR should jointly assess the CORCOR’s knowledge, experience, and skill versus that needed to effectively perform the delegated duties. This assessment highlights areas where the designated COR may need specialized training (in addition to basic or refresher training). The pre-designation interview should result in agreement on a training plan, if needed, for the COR. Examples of areas for the Contracting Officer and nominated COR to review and discuss include:

* List of COR duties
* COR competencies
* Type, technical complexity, and size of the contract
* Which duties will be delegated to the COR
* Prior training and experience
* Physical location of Contracting Officer and COR

The functions and duties performed by the COR are described in Chapter two of this handbook.

The level of contract monitoring, and skill set needed by a COR, is influenced by contract type, complexity, and size. Fixed-price contracts for commercial items should not require the same degree of oversight and monitoring as a cost-plus-incentive fee contract for systems development.

COR responsibilities are delegated by the Contracting Officer. Which duties are delegated is often a factor of the experience and preferences of the Contracting Officer, and assessment of COR abilities. This is an area negotiated in the pre-designation interview.

The pre-designation interview is the time to ensure your qualifications and prior experience are considered in developing a training plan for the duties that the COR will assume.

When the Contracting Officer and COR are not co-located, the COR may need more in-depth knowledge of procurement policy and procedures than when the Contracting Officer is on-site.

APPENDIXA: COR Work Plan Sample

***1. Contract***

FCA88-10-C-2121 Janitorial and Related Services at Federal Office Building No. 3

Contract Amount: $375,732 (base year); total of $2,076,132 for 5 years

Contract Type: Fixed Price

Date of Award: December 29, 2010

***2. Responsibilities Under Contract***

* Determining adequacy of performance.
* Ensuring compliance of work with requirements.
* Advising Contracting Officer

***3. Government Points of Contact***

Terry O'Day, Contracting Officer

* Responsible for communicating with the contractor.
* Approval of invoices.

Jamie Frehand, Quality Assurance Specialist

* Responsible for day-to-day inspection and monitoring.
* Documenting inspections.
* Following through on deficiencies.

***4. Contractor***

Profitable Building Services, Inc. 9191 Crosstown Boulevard Capital City, DR 11811

Mr. John Mahoney General Manager (101) 595-0202

***5. Files***

Federal Contracting Administration 1000 First Street Capital City, DR 11777

***6. Contractor's Scope of Work***

Provide all management, supervision, labor, materials, supplies, and equipment (except as specified).

Plan, schedule, coordinate, and assure effective performance of janitorial and related services at Federal Office Bldg. No. 3, Capital City, AR.

***7. Place of Performance***

Federal Office Bldg. No. 3 2900 Lost Lane Capital City, AR 11777

***8. Contractor Reporting Requirements***

* Annual daily cleaning schedule submitted 5 work days before start date and then annually.
* Daily work report (GSA Form 64 or equivalent), submitted to the COR.
* Quality Control Program, submitted 5 work days before start date.
* Resumes of initial and replacement supervisors.

***9. Contractor Milestones***

|  |  |
| --- | --- |
| Date | Task |
| January 25, 2011 | Annual cleaning schedule due 5 work days prior to base year start date (February 1) |
| January 25, 2012-2014 | Annual cleaning schedule due 5 work days prior to each option year start date |

***10. Previous Contracts***

This is the first time contractor. There is no information on file for this contractor.

***11. Potential Problem Areas***

* All supplies, materials, and equipment used by the contractor must conform to specifications and must on request be identified; possible problems could be avoided by requesting a listing before the start date and before any substitutions.
* Contract does not specify which official will determine when contractor personnel will be diverted for snow removal or emergency condition; when given, these instructions should be in writing to avoid disputes over deductions.
* The contractor is to have the opportunity to perform deficient services and ensure future services before deductions are taken; however, no time limit for remedial action is specified.

***12. Monitoring***

Contractor technical and schedule techniques to be used:

* Onsite visits, personal observations
* Contact Quality Assurance Specialist
* Review progress or status reports

***13. Documentation***

Contractor performance will be documented in the contract file using Form 631 - Monitoring Report.

***14. Action Requirements***

Attend post-award preliminary briefing on January 13 with CO to discuss roles and responsibilities for post-award conference with contractor scheduled for January 15.

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Prepared by: Carl Customs, Building Manager FB #3 Contracting Officer’s Representative

APPENDIXB: Definitions

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

**Alternative Dispute Resolution (ADR) -** Any procedure or combination of procedures voluntarily used to resolve issues in controversy without the need to resort to litigation. ADR procedures may include assisted settlement negotiations, conciliation, facilitation, mediation and fact-finding, mini-trials, and arbitration.

**Bilateral Modification** - Contract modifications accomplished by mutual action of the involved parties. Bilateral modifications are used to make negotiated equitable adjustments resulting from change orders and to reflect other agreements of the parties modifying the terms of contracts.

**Breach of Contract –** A breach occurs when the Government or the contractor fails to fulfill the terms and conditions of the contract and there is no relief available under the terms of the contract or the contractor has committed fraud or a gross mistake amounting to fraud.

**Claim -** A written demand by one of the contracting parties seeking payment of money for a certain amount, adjustment or interpretation of contract terms, or other relief arising under or relating to the contract. A claim can be "under a contract," meaning that it is directly connected to that contract, or "relating to a contract," meaning that it is indirectly associated with that contract.

**Closeout -** Administrative closeout of a contract after receiving evidence of its physical completion. When completed, the closeout procedures ensure that all administrative tasks were accomplished.

**Constructive Change -** A constructive change occurs when the Contracting Officer, or a duly authorized representative, changes the contract without following the required legal procedures to formally modify a contract. A constructive change can result from either a specific action or a failure to act.

**Contract Dispute** - A written request to the FAA Office of Dispute Resolution for Acquisition (ODRA) seeking resolution of a claim for payment, adjustment or interpretation of contract terms, or other relief arising under, relating to, or involving an alleged breach of the contract. A contract dispute does not require the Contracting Officer to issue a final decision.

**Contract Financing Payment -** A disbursement of monies to a contractor under a contract clause or other authorization prior to acceptance of supplies or services by the Government. Contract financing payments include: Advance payments; delivery payments; partial payments; progress payments based on percentage or stage of completion; payments under fixed-price construction contracts; payments under fixed-price Architect-Engineer contracts; and interim payments on cost-type contracts. Contract financing payments do not include invoice payments or payments for partial deliveries. No interest penalty is paid to the contractor as a result of delayed contract financing payments.

**Contract Modification -** Describes any written change in the terms of the contract.

**Contractor Acquired Property -** Property purchased by the contractor to be used on or in connection with a specific Government contract and only during the contract period.

**Delay -** Failure to perform the service or provide the product during the performance or delivery period established in the contract. Delays can be either excusable or non-excusable.

**Dispute -** A dispute is formed under a contract when a controversy develops concerning the interpretation of payment, time, or money due to either party or concerning contract terms.

**Excusable Delays -** Excusable delays are beyond the control and without the fault or negligence of a contractor or its subcontractors at any tier. A delay is excusable when the contractor can prove the following: Excusable delays may also be caused by Government performance. When Government actions cause the contractor to stop performing, the contractor may be excused from complying with the schedule.

**Government Furnished Property -** Property issued to the contractor to be used on or in connection with a specific Government contract and only during the contract period.

**Government Property -** Refers to all property owned by, leased to, or otherwise acquired by the Government under the terms of the contract.

**Inspection –** The act of examining and testing supplies or services (including, when appropriate, raw materials, components, and intermediate assemblies) to determine whether they conform to contract requirements.

**Market Research -** A process used to collect, organize, analyze, present, and maintain data for the purpose of maximizing the capabilities, technology, and competitive forces of the marketplace to meet an organization's needs for supplies or services.

**Nonconformance -** Occurs when the contractor presents a deliverable to the Government that does not conform to contract requirements. A nonconformance is evaluated to determine if it is a major (substantive) discrepancy or a minor one. Minor nonconformities may be accepted as is when the savings realized by the contractor does not exceed the cost to the Government for processing a formal modification.

**Non-excusable Delays -** When a contractor cannot justify a delay as being beyond their control. Contractors are responsible for meeting contract delivery or performance schedule requirements and for all costs incurred in making up for the "lost time" associated with other than an excusable delay.

**Options –** A unilateral right in a contract by which, for a specified time, the Government may elect to purchase additional supplies or services called for by the contract or may elect to extend the term of the contract.

**Partial Payment –** A method of payment based on acceptance of a particular part of contract performance.

**Past-Performance Information -** Relevant information for future source-selection decisions regarding contractor actions under previously awarded contracts.

**Performance-Based Payments –** Contract financing payments that are not payment for accepted items and are not subject to the interest penalty provisions of prompt payment. These payments are fully recoverable in the same manner as progress payments, in the event the contractor defaults.

**Performance Monitoring -** Activities that a Contracting Officer and other Government personnel use to ensure supplies and/or services acquired under contracts conform to prescribed quality, quantity, and other requirements. Monitoring activities include, but are not limited to, inspection and acceptance, as well as quality assurance techniques.

**Post-award Orientation -** A planned, structured discussion between Government and contractor that focuses on understanding the technical aspects of the contract, identifying and resolving oversights, preventing problems, averting misunderstandings, deciding how to solve problems that may occur later, and reaching agreement on common issues.

**Pre-award Phase** - That period of time that covers actions taken once the requirement has been identified and before the procurement is awarded to a contractor(s). The pre-award phase includes the pre-solicitation phase.

**Pre-solicitation Phase –** That period of time covering actions taken once requirement has been identified and before the Contracting Officer issues the solicitation or otherwise starts the procurement.

**Progress Payment –** A form of contract financing payment made before work or deliverables are accepted.

**Prompt Payment -** When the Government pays the contractor prior to the invoice payment date. The prompt payment discount is an invoice payment reduction voluntarily offered to the Government by the contractor for prompt payment and is made before the due date stated on the invoice.

**Property -** Personal property, and includes materials, special tooling, special test equipment, and agency-particular property.

**Property Administrator –** An authorized representative of the Contracting Officer assigned to administer contract requirements and obligations relating to Government property.

**Property Control System -** A contractor’s method to establish to record, identify, and mark Government property used while working under a Government contract.

**Purchase Request -** A form used to initiate purchase of services or supplies, which commits funding for the purchase.

**Quality Assurance -** The function, including inspections, performed by the Government to determine whether a contractor has fulfilled contract obligations pertaining to quality and quantity.

**Solicitation-award phase -** The solicitation-award phase is that period of time covering actions taken once the Contracting Officer has issued a solicitation and before award is made.

**Stop Work Order -** A written or oral order to stop work under a contract. If an oral stop work order is given to the contractor, it is only binding when confirmed in writing by the Contracting Officer and signed by the contractor.

**Suspension of Work -** A written or oral order to stop work under a construction or architect-engineering contract.

**Technical Analysis -** An analysis prepared by the COR focusing on the technical aspects of a contractor's response to a Government request. The technical analysis is used by the Contracting Officer for making decisions to change the contract.

**Technical Evaluation -** Analysis of activities and functions that cause costs or other changes to occur within a contract. The analysis is a means for determining the impact of any delivery delays on the requirement, value of proposed consideration other than price or acceptability of a value, acceptability of a value-engineering proposal, or acceptability of substitute material. The technical evaluation indicates if the Government will be harmed and include documentation supporting any modification request.

**Termination for Convenience -** Termination for convenience occurs when the Government requires the contractor to discontinue performance because completion of the work is no longer in the Government’s best interest. The Government has the right to terminate without cause and limit contractor recovery to costs incurred, profit on work done, and cost of preparing a termination settlement proposal. Recovery of anticipated profit is precluded. Termination for convenience should be considered when the requirement is no longer needed, the quantity needed has been reduced, or when there has been a radical change in the requirement beyond the contractor's expertise.

**Termination for Default (or Cause) -** Termination for default (or cause) occurs when the contractor fails to perform in accordance with the contract. The Government will terminate a contract either for default or cause, when it is determined that to do so would be in its best interest. The word "cause" relates to a termination action and is normally used in the commercial marketplace. The word "default" is traditionally used in Government contracting. A contract is terminated for default (or cause) when there is no other alternative for obtaining performance, given contractor problems and deficiencies, and the Government has a sustainable case for default.

**Unilateral Modification -** Unilateral modifications are changes to a contract signed only by the Government Contracting Officer. This type of modification is used to make administrative changes that are minor in nature and do not materially affect contract performance, issue change orders that are authorized by the Changes clause, make changes authorized by other contract clauses, such as stop-work, termination, or option clauses, or exercise of an option.