



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555-0001

# ACQUISITION GUIDEBOOK FOR CONTRACTING OFFICER'S REPRESENTATIVES



*Changing the World One Contract at a Time*

**April 2011**

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**Division of Contracts**

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## SECTION I.

### FORWARD

The role of Contracting Officer's Representatives (CORs) at the NRC is an extremely important one, requiring a rare combination of a high level of technical expertise, a capacity for defining a program vision and requirements, and the ability to provide operational and fiduciary oversight. Contracting Officers and Contract Specialists rely heavily on your valuable expertise, unique skills, and knowledge of programs and the marketplace.

This Guidebook contains information intended to assist you in performing your duties and responsibilities, including serving on evaluation panels, developing Requests for Procurement Actions, meeting COR certification requirements, and working with Contracting Officers to support a variety of contract administration functions.

The topics included in this Guidebook are not intended to be all-inclusive; rather they cover selected topics considered to be essential to the role of a COR at the U.S. Nuclear Regulatory Commission (NRC) nor should they be viewed as mandatory requirements; instead they should be viewed as guidelines that I hope are useful as you perform your role as a COR.

On behalf of the Division of Contracts, I wish to thank you for your continued dedication and cooperation throughout the acquisition process as we work together to support the Agency's mission. It is a wonderful example of how teamwork and partnership among offices can result in winning solutions and successful outcomes.

## OVERVIEW

The U.S. Nuclear Regulatory Commission (NRC) spends millions of dollars each year on the procurement of goods and services. With reduced budgets and limited resources across the Government, it is vital that the Agency receive maximum return on its contract investment dollars. Contracting Officer's Representatives (COR) play a critical role during all phases of the acquisition life cycle, and their efforts significantly affect the outcome of the process, including the quality and usefulness of deliverables and results attained. The COR's role is essential in achieving successful outcomes in its projects and programs, and meeting the NRC's mission.

The COR's role in identifying and designing NRC requirements, evaluating contractor proposals, and monitoring and evaluating contractor performance is essential to the success of the Agency. CORs serve as the "eyes and ears" of the Contracting Officer by monitoring contractor performance, providing technical direction, and mitigating and resolving performance issues, in conjunction and collaboration with the Division of Contracts (DC).

The roles and responsibilities of the COR vary greatly based on the complexity, magnitude, and nature of the work. A comprehensive listing of COR duties is provided below and divided into three major categories:

- Planning and initiation phase
- Performance phase
- Work completion and closeout phase

The NRC depends increasingly on contracts and other vehicles to perform critical Agency functions. Competent and consistent contract management oversight and involvement is critical to ensuring NRC receives the goods and services that it needs to operate effectively and efficiently, and that business relationships between NRC and its contractors are positive and mutually beneficial.

No one person has all of the necessary skills and experience for successful contract management. Rather, it requires a comprehensive and integrated team approach, with each member having specialized expertise and responsibilities. Without a doubt, the COR is a key and central part of the team.

Some CORs at the NRC are provided delegated authority to act on behalf of Contracting Officers, with major responsibilities that include:

- Assisting the contractor in interpreting technical requirements (i.e., technical direction).
- Assisting the Contracting Officer with contract administration activities.
- Monitoring and evaluating contractor performance.
- Monitoring and reviewing contractor compliance with federal laws, regulations and statutes, and the contract's terms and conditions.
- Inspecting and accepting contract deliverables.
- Reviewing and approving contractor invoices.
- Recommending changes in contract terms and conditions to the Contracting Officer.
- Recommending corrective actions.
- Documenting and reporting contractor performance.

As NRC reduces its reliance on high risk contracts (defined by OMB as cost-reimbursement, Time and Material and Labor-Hour contracts), the Agency intends to make greater use of fixed-price contracts and emphasize performance-based contracting methods. Consequently, more time and resources should be devoted to advanced procurement planning and solicitation development activities, including writing quality Performance Work Statements (PWS) with measureable performance and quality standards. Also, special attention must be placed on quality contract management and administration duties, to ensure that the NRC actually receives the products and services it has paid for.

### **Collaborative Teaming**

NRC encourages an open, collaborative work environment that is supportive of employee needs and efforts. In the context of the acquisition process, it is very important to the success of our Agency programs that all stakeholders work cooperatively. Stakeholders generally include employees from the program office, Division of Contracts (DC), Office of General Counsel (OGC), Chief Financial Officer (CFO), and other functional areas, and the contractor. CORs play a unique role among the stakeholders, providing expert technical assistance and leadership. They work with the Contracting Officer and Contract Specialist, and others, to develop quality requisition packages to meet Agency needs and achieve programmatic objectives.

Higher quality contracts are produced when the Contracting Officer's Representative, Contracting Officer, and Contract Specialist coordinate their efforts and functions as a unified team. CORs are in a unique position which enables them to leverage experience



and information from DC, program office, and the contractor, to address problems more effectively.

Cooperation between the COR and Contracting Officer is crucial. Together they ensure program requirements are clearly defined, the contract is properly structured to meet Agency needs; the best contractor is awarded a Government contract; and quality products and services are delivered to the Agency on time, at a fair and reasonable price.

## **Standards of Conduct**

The NRC has been rated the #1 agency in the U.S. Government to work for. Part of that excellent reputation comes from maintaining the highest levels of professionalism and ethics among its federal workforce. In the contracting arena, the public and Congress place tremendous trust and confidence in NRC's ability to spend taxpayer dollars in a meaningful and prudent manner, uphold federal laws and regulations, and exercise impeccable judgment, at all times. CORs must conduct themselves in a manner that instills public confidence and the respect of their colleagues. They must exhibit and maintain a high level of conduct and performance that will promote the best use for public funds while conforming to exceptional ethical principles and standards.

CORs must avoid any instances of actual or apparent conflicts of interest in their professional relationships and dealings with contractors. As with any issue involving conduct, the appearance of misconduct or giving a contractor an unfair competitive advantage may be damaging on multiple levels even if there is no actual wrongdoing or law violations. CORs are encouraged to contact their ethics officer in OGC and Contracting Officer regarding any questions or concerns pertaining to standards of conduct, procurement integrity, or issues particular to an assigned solicitation or contract. In some cases, there may be a need for CORs to recuse themselves from further involvement in a contract or with a specific contractor, which requires open and timely communication and transparency with OGC and DC, to safeguard the integrity of procurement processes and protect the interests and wellbeing of all concerned.

Additional information can be found at Federal Acquisition Regulation (FAR) 3.104 - "Procurement Integrity":

<https://www.acquisition.gov/far/current/html/Subpart%203.1.html#wp1139244>

## SECTION III.

# CONTRACTING OFFICER'S REPRESENTATIVE CERTIFICATION

Note: The terms Project Officer, Project Manager, Technical Monitor and Technical Assistance Project Managers were formerly used at the NRC to describe those individuals performing the duties of a Contracting Officer's Representative (COR). The agency is to refer to these individuals as CORs.

COR certification training helps prepare employees at the NRC and in other Government agencies to assist Contracting Officers in administering federal contracts.

The Office of Management and Budget (OMB) issued a memorandum on November 26, 2007, establishing a structured training program for CORs and other individuals performing these functions. At the NRC, an employee must be certified; thereby meeting requisite training requirements, in order to be assigned as a COR.

The following training information and certification requirements should be followed:

- Training requirements for certified CORs is located on the CORner under *"Guidance and Procedures for Federal Acquisition Certification Requirements for Contracting Officer's Representatives (FAC-COR)."*
- Employees must apply for certification by completing the *"NRC Application for Federal Acquisition Certification – Contracting Officer's Representative."*
- CORs must maintain their skills currency through the completion of 40 hours of continuous learning every two (2) years which starts the effective date specified on their FAC-COR Certificate.
- Continuous learning activities that count as Continuous Learning Points (CLPs) include training, professional activities, formal education or a rotational assignment.
- Continuous learning should consist of a minimum of 20 hours of acquisition-related training and 20 hours of job-related training.

- Job-related training can consist of technical training and other training that is necessary to perform or enhance responsibilities.
- Listing of online acquisition-related continuous learning training will be made available through iLearn.
- Mandatory annual training such as the No Fear Act, Information Security Awareness, Computer Security Awareness and Personally Identifiable Responsibilities, do not qualify as job-related training.
- After completing the required continuous learning activities every two years, CORs seeking re-certification must complete the “*FAC-COR Recertification Request Form*” found on DC’s CORner and forward the completed form to the ACM.
- Federal Acquisition Institute (FAI) website:  
<http://www.fai.gov/certification/techrep.asp>

## SECTION IV.

### CONTRACTING OFFICER'S REPRESENTATIVE ROLES

In accordance with Federal Acquisition Regulation (FAR) Subpart 2.1, the contracting officer has the authority to delegate certain responsibilities to authorized representatives.

At the NRC, CORs serve as business leaders and experts in the Government and help to ensure that government-contractor business relationships are productive and mutually beneficial, and supply the Government with needed products and services.

The three central parts of a COR's role, are primarily to:

- **Serve as technical expert**
  - **Monitor contractor performance** (*including regulatory compliance*)
  - **Foster business relations and serve as liaison with the contractor**
- 

- **Serve as Technical Expert**

A COR's role in the acquisition process is to advise the contracting officer on technical matters involved in the contract. This is important as most Contracting Officers are not well versed in the technology or science behind the work being procured. Therefore, it is the COR's responsibility to provide the proper technological information, terms and conditions to the contracting officer to successfully write a solicitation and resultant contract.

- **Monitor Contractor Performance** (*including regulatory compliance*)

A primary responsibility of a COR is to monitor contractor performance against the requirements set forth in a contract. This is usually a responsibility that includes periodic briefings on the contractor's performance during contract administration; conducting formal performance evaluations on an interim basis (typically annual and a final evaluation); monitoring performance against contract requirements to ensure that the contractor is following the contract; making

personnel recommendations (including substitutions of key personnel); coordinating with internal clients at the NRC to ensure that the contractor is doing an acceptable job; inspecting products and services to ensure they meet prescribed performance or quality standards; and monitoring contractor compliance with other terms and conditions of the contract, and federal regulations.

In order for a COR to be legally authorized to carry out these duties, he/she must be FAC-COR certified, and receive a delegation letter by a warranted Contracting Officer.

➤ **Foster Business Relations and Serve as Liaison with the Contractor**

The COR serves as a representative of the NRC during contract administration, fostering positive and productive business relations with the contractor, and acts as the conduit for communications between the contractor and the Contracting Officer. Should a problem arise that the Contracting Officer needs to be made aware, such as a funding or scope changes, the COR would coordinate the matter with the Contracting Officer and seek timely resolution.

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## **Contracting Officer Representative Functions**

The basic functions performed by CORs are outlined in Management Directive (MD) 11.1, Part 3, and are divided into three major parts: planning and initiation phase, performance phase, and work completion and closeout phase.

### **1. Planning and Initiation Phase**

Agencies are required to conduct acquisition planning, and should commence such planning as early in the fiscal year as possible. CORs are instrumental in developing Annual Procurement Plans (APP) and identifying and pursuing the needs of the NRC; in coordination with DC, SBCR, OGC, program and other offices.

CORs may engage the public through policy level discussions with key stakeholders, in collaboration with DC. Any discussions with the public, however, may not disclose sensitive government proprietary information or result in any firm receiving an unfair competitive advantage for an Agency procurement.

It is suggested that CORs review prior planning documents established for similar acquisitions and discuss them with NRC personnel, and revise and rewrite accordingly. Effort should be made to avoid inclusion of any condition

that might otherwise serve to limit or restrict competition. Government requirements should be stated in plain terms without excessive NRC speak or jargon, to allow for a clear understanding to all potential offerors. It is imperative that procurement planning include the active participation of and approval from the Contracting Officer, in conjunction with an SBCR representative. Issuance of Sources Sought Notices, Requests for Information (RFI), and draft SOWs and solicitations, contribute to the sharing and exchange of information with the public about Agency requirements. This process can serve to identify logical small business set-asides or help to establish reasonable small business subcontracting goals. Furthermore, communication with the public also supports the government-wide initiative to foster greater openness - <http://www.whitehouse.gov/Open/>

Planning activities includes, but are not limited to:

- Receiving approval for project by Branch Manager or other authorized NRC officer
- Developing an Advance Procurement Plan (APP) for approval that identifies and describes the nature of the requirement
- Conducting market research, as described herein, to gain information and perspective regarding private sector capabilities in the marketplace
- Suggesting qualified vendors or sources
- Reviewing unsolicited proposals and advise whether offered products or services are innovative, unique, and independently originated and developed Level of competition required
- Formulating a Statement of Work (SOW) that addresses the minimum requirements of the Agency
- Preparing documentation for information technology acquisitions, in accordance with MD 2.4
- Obtaining approvals for budgets and justifications
- Completing an Independent Government Cost Estimate (IGCE) for the new requirement, including adequate support documentation to substantiate budgeted amounts
- Developing a list of required Government-furnished equipment (GFE) to be used by the contractor during contract performance
- Preparing NRC Form 187, *“Contract Security and/or Classification Requirements”* for approval and submission, in accordance with MD 12.3, to the Division of Facilities and Security (DFS), if the contract will involve:
  - o unescorted access to nuclear power facilities,
  - o access to SGI,
  - o access to NRC IT systems or sensitive information, or
  - o building access

- Obtaining approval for the use of classified material
- Completing a requisition for each procurement; and submit to DC, containing:
  - o Designating Official approval (Office Director or Designee)
  - o Funds certification from FCO (for funded actions)
  - o Items including assigned requisition number, APP number (if action is valued over \$25,000), preference for new award or set-aside, base contract number (if a delivery/task order or modification), type of procurement (i.e., contract, grant, interagency agreement)
  - o Attachments include: SOW; deliverables; delivery dates; Independent Government Cost Estimate (IGCE); evaluation criteria; market research; suggested evaluation panel members; NRC Form 187 (security requirements); justification; etc., as appropriate
- Electronically transmitting requisition packages to DC
- Assisting DC with the establishment of contract milestones and schedule
- Coordinating with DC and SBCR on small business participation and other set-aside and subcontracting matters
- Providing input into synopses and evaluating responses received, including Request for Information (RFI) and Sources Sought Notices
- Drafting answers to questions about the technical requirement for issuance on FBO.gov
- Developing technical evaluation criteria for the solicitation
- Participating in pre-proposal conferences with the general public
- Advising CO on amending or canceling the solicitation before the due date for proposals
- Serving as the Chair or member of the Source Evaluation Panel (SEP) in evaluating contractor proposals received in response to RFPs and RFQs
- Channeling any SEP questions/concerns
- Clarifying technical information in contractor proposals
- Documenting the results of technical proposals during evaluation in conformance with evaluation criteria (Section M) and instructions (Section L) set forth in the solicitation, as amended
- Scoring or rating proposals during evaluation with supporting narrative
- Utilizing score sheets divided by individual evaluation factor, categorized by: strengths, weaknesses, significant weaknesses, deficiencies, and clarifications
- Evaluating Final Revised Proposals
- Developing a Final Evaluation Recommendation Report (FERR) representing a consensus of SEP members

- Conducting past performance reference checks and review official Contractor Performance Reports obtained from PPIRs
- Preparing findings and recommendations on offeror's proposals:
  - o Technical strengths, weaknesses, significant weaknesses or deficiencies, and any clarifications of technical proposal information.
  - o Reasonableness or realism of proposed labor hours, positions and skill mix, equipment, materials, etc. (cost realism analysis).
  - o Proposal rankings (technical/cost trade-off analysis).
- Identifying issues for discussion during contract negotiations
- Assisting DC with the development of a Competitive Range Report
- Preparing for and participating in contract negotiations/discussions with offerors included in the competitive range
- Offering DC feedback on proposed contractor costs during tradeoff analysis
- Assisting DC and SBCR in evaluating offerors' Small Business Subcontracting Plans
- Assisting DC with, and participating in, debriefings with unsuccessful offerors
- Gathering facts on technical issues to respond to Agency level or GAO protests

(Reference: FAR Subpart 7.1)

[https://www.acquisition.gov/far/current/html/Subpart%207\\_1.html#wp1098043](https://www.acquisition.gov/far/current/html/Subpart%207_1.html#wp1098043)



## **2. Performance Phase (Contract Administration)**

Contract administration begins with developing clear, concise performance-based Statements of Work (SOW) or Performance Work Statements (PWS), to the extent possible, and preparing a surveillance or monitoring plan that effectively tracks and measures the contractor's performance under the contract.

Contract administration involves those activities performed by the contractor, especially, to gauge how well it did in meeting contract deliverables and requirements. This phase encompasses all interactions between the Agency and the contractor from the time the contract is awarded until the work has been completed and accepted or the contract terminated, payment has been made, and disputes have been resolved. As such, contract administration constitutes that primary phase of the acquisition life cycle that assures that NRC receives the supplies or services it paid for. In contract administration, the focus is on obtaining desired supplies and services, of requisite quality, on time, and within budget. While the legal requirements of the contract controls, it is often the expertise and skill of government officials, including CORs administering a contract that ultimately makes a difference and protects the public's interest.

The extent to which CORs and other Agency officials get involved during contract administration varies widely from contract to contract. Also, involvement in contract matters can vary widely, from acceptance of a supply item to extensive involvement in acquisition issues by procurement, program, DCAA, OGC, and IG officials. Factors affecting contract administration include the nature and complexity of the work, type of contract, common understandings between the contractor and the government, contract value, clarity of the SOW and contract terms and conditions, and the experience and buy-in level of those involved.

- Contract administration activities include, but are not limited to:
  - Serving as the NRC technical representative for contract administration
  - Serving as an interface between the contractor and DC, as well as other offices
  - Conducting monitoring/surveillance activities and tracking contractor performance and achievement of deliverables, milestones and results
  - Supporting CO actions and decisions
  - Maintaining a filing system
  - Preparing and maintaining a project log
  - Providing a complete background for decisions at each step in contract administration

- Maintaining a current set of drawings and specifications, as applicable, by noting all changes or deviations, and corresponding dates of changes made
- Determining and listing the number and types of submittals required from the contractor
- Coordinating and attending post-award kickoff meeting with contractor, CO, CS, DFS, and other required officials
- Ensuring that the contractor obtains security badges for appropriate personnel requiring onsite access to NRC facilities
- Approving work plans or implementation plans described in the contract (that do not alter contract requirements or terms & conditions)
- Ensuring that the contractor complies with the SOW and that costs expended are authorized in the contract budget
- Tracking contractor progress in achieving established contract milestones and/or deliverables
- Ensuring EEO posters are prominently displayed at the job site or otherwise provided by the contractor to its employees
- Ensuring that the contractor is paying blue collar (wage) employees appropriate compensation, in accordance with U.S. Department of Labor issued wage determinations attached to the contract
- Monitoring the accuracy of the contractor's time and attendance and general record keeping
- Reporting violations of fair labor standards to the CO
- Identifying performance problems in a timely manner and determining appropriate course(s) of action, in collaboration with the Contracting Officer
- Referring the contractor to the CO if a disagreement regarding contract performance has reached an impasse
- Being proactive in preventing or mitigation performance problems
- Collaborating with program office representatives and other internal and external stakeholders on performance matters
- Monitoring the contractor's use of Government Furnished Property and Contractor Acquired Property, and ensuring proper inventory and accountability
- Providing technical direction and guidance, within authorized constraints and limitations under his/her CO delegation
- Informing DC CS/CO of important meetings, unauthorized spending and other issues concerning contractor performance
- Representing the NRC in meetings and conferences with the contractor, and document the outcomes
- Inspecting deliverables and work for full compliance with contract requirements and performance and quality standards

- Rejecting all work promptly that does not comply with contract requirements and immediately notify the contractor and CO, in writing, of defects or deficiencies
- Evaluating contractor performance on an annual basis
- Reviewing and verifying contractor invoices and provide NRC approval or disapproval for completed work, and forward to the CO for final review
- Advising the CO promptly if the contractor fails or refuses to remove, correct, or replace rejected work
- Preparing and maintaining a list of current items that remain unfinished or deficient with contract requirements, and inform both the contractor and the CO of corrective action required for each item
- Maintaining a master copy of the official list of defects, omissions, waivers and deviations
- Ensuring all defects and omissions are corrected or completed
- Ensuring the contractor provides formal proposals to the NRC for contemplated contract changes
- Reviewing proposed technical and scope changes, and submit recommendation to the CO for review and consideration
- Submitting requisitions to DC for changes to the contract requiring contract modifications
- Administering contract modifications as authorized by the CO
- Reviewing the contractor's proposed schedule and delivery dates, and forward a recommendation for acceptance or rejection to the CO
- Advising the Contracting Officer of any delays, and impact
- Reporting concerns in a timely manner to the CO and CS
- Monitoring contractor submission of required samples, shop drawings, reports, etc., for timeliness
- Monitoring the NRC's timely and complete response to contractor submission of samples, shop drawings, reports, etc.
- Maintaining a current record of submittals
- Approving or rejecting submittals as provided by contract documents
- Enforcing all safety and health requirements
- Enforcing environmental requirements, including Executive Orders
- Enforcing all physical, information, and personnel security requirements
- Coordinating with Division of Facilities and Security (DFS) on contractor security matters (i.e., changes in employees' access needs)
- Including necessary approvals from other Agency officials
- Providing information for reviews and investigations, including OIG audits
- Furnishing essential facts in the event of litigation or Congressional inquiry

(Reference: FAR 42)

<https://www.acquisition.gov/far/current/html/FARTOCP42.html>

### 3. Work Completion and Closeout Phase

The contract closeout process essentially begins when the contract is complete and all deliverables have been submitted and services rendered, and the COR (or other designated official) has inspected and accepted them. The contract is also considered over if the Contracting Officer has issued a Termination Notice or the contract's performance period has expired. However, contract closeout cannot commence until all administrative actions have been completed, claims or disputes resolved, and final payment made to the contractor.

The duration of the closeout process depends largely on the complexity of the contract and the contract type. That is, cost-reimbursement contracts typically take longer to closeout than fixed-price contracts due in part to auditing and finalization of the contractor's indirect cost rates. This process often requires close coordination between DC, finance, program office, and the contractor. Contract audits are often required to determine the reasonableness, allowability, and allocability of costs incurred under cost reimbursement contracts. Although there is a pre-award audit of the contractor's proposal, there is a cost-incurred audit of the contractor's claim of incurred costs and a closeout audit to reconcile the contractor's final claim under the contract to incurred costs previously audited. When there is a delay in completing the cost-incurred and closeout audits, DC cannot finalize the closeout process.

- Contract closeout activities includes, but are not limited to:
  - Inspecting and accepting final deliverables/services, including reports
  - Reviewing and approving the contractor's final invoice
  - Reviewing property and other final reports
  - Collaborating with DC on the disposition of Government titled property furnished or acquired under a contract
  - Ensuring that all contractor reports have been submitted
  - Responding to DC closeout requests
  - Assisting DC with any disputes or settlement matters
  - Liaisoning with DC, DCAA and contract with audits
  - Advising DFS that contract has ended in order to terminate any contractor access to NRC facilities, access to SGI, and/or access to NRC IT systems or sensitive information
  - Coordinating with the CO/CS for the completion of a final Contractor Performance Report at the end of the contract for submission to PPIRS

(Reference: FAR 4.804-5)

<https://www.acquisition.gov/far/current/html/Subpart%204.8.html#wp1108947>

## **Documentation**

CORs must maintain a file for each contract/order/agreement assigned. The file documents all actions taken in regard to the award. It includes, at a minimum, copies of the following:

- Delegation letter issued by a warranted CO
- Any correspondence from the CO which amends the delegation letter
- Copies of Requisitions
- Award document (contract/order/agreement) and any modifications thereto
- Minutes and any reports generated from the Post-Award Kickoff Meeting
- Correspondence initiated concerning performance of the contract
- Contractor periodic performance and financial reports
- Government Furnished and Contractor Acquired Property Inventory lists
- Correspondence to and from the Contracting Officer and the contractor
- Record of all inspections and testing performed, and the results
- Copies of Invoices (Approvals and Denials)
- Approval and denial letters to the contractor, including requests for travel, equipment purchases, changes in key personnel, etc.
- All memoranda or minutes for conferences, meetings, or discussions with the contractor, or others, pertaining to contractor performance and compliance

## **Technical Direction** *(by COR to the contractor)*

A means of directing contractor performance is through "technical direction", a concept used in cost-reimbursement contracts. Because work statements in cost reimbursement contracts are typically not specific enough in terms of approach or methodology, the Government needs to have the ability to work closely with and guide the contractor along the most beneficial lines of effort. Technical direction constitutes direction by the Government to the contractor as to which areas (within and without changing the description of work) the contractor is to emphasize or pursue, including prioritization of deliverables.

- Technical direction must not require the contractor to perform work different from that which he or she has agreed to do, nor may it change other provisions of the contract such as: deliverable due dates, total price or estimated cost, total period of performance, or any administrative provisions.
- Whenever the COR provides technical direction, it must be in writing, with a copy

provided to the Contracting Officer. It is good practice to coordinate such direction in advance with the contractor. If the contractor considers the direction an imposition of work that is over and above what the contract requires, the matter should be discussed with the Contracting Officer.

Technical direction is not used in a fixed-price contract, where the contractor properly resists any interference with his/her freedom to perform the contract as he/she chooses, with the objective of minimizing costs of performance and maximizing profit.

**Do 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 NRC to a change in contract cost/price, quality, quantity, or delivery schedule
- Sign any changes or modifications to contracts or delivery/task orders
- Direct the contractor on how to perform the work
- Interfere in the relationship between a prime contractor and its subcontractors
- Manage contractor employees in a way that could constitute personal services
- Use public office for gain
- Award, agree to, modify, increase the scope and dollar value of, or sign any contract or any other document that might serve to obligate the government
- Make commitments or promises (oral or written) to any contractor or person
- Issue instructions (oral or written) to a contractor to start or stop work
- Direct changes to the contract (oral or written)
- Authorize delivery or disposition of government furnished and contractor acquired property
- Grant deviations from or waivers to any contract terms and conditions
- Change the period of performance, scope of work, deliverables, performance milestones, performance targets/standards/incentives
- Authorize or approve the contractor's use of subcontractors or consultants
- Authorize the use of overtime or days in excess of established workweek
- Order or suggest that the contractor work outside the scope of the contract
- Create obligations in excess of obligated funds
- Instruct the contract to alter its budget
- Take actions that cause the Total Estimated Cost (TEC) to increase or decrease
- Change the contract's terms and conditions
- Terminate the contract, settle claims or disputes, or issue unilateral decisions

**SECTION V.****CONTRACTING OFFICER'S REPRESENTATIVE DUTIES**

<b>Duty</b>	<b>Duty Summary</b>	<b>Duty Standards</b>
<b>Requisitions</b>	Develop a procurement requisition with supporting documentation for transmittal to the Division of Contracts to initiate and facilitate procurement of an NRC requirement.	The COR supplies sufficient documentation to support the requisition, including:  Requisition, market research, SOW, IGCE, evaluation factors, security information (NRC 187 form), itemized list of Government property to be furnished to the contractor needed to perform the work
<b>Government Furnished Property</b>	Recommend whether to provide Government property.	The COR recommends the use of NRC property for a requirement and provides a justification.
<b>Post -Award Kickoff Meeting</b>	Assist and participate in the post-award orientation kickoff meeting.	Notifies parties of post-award responsibilities, milestones, and deliverables affecting performance;  All potential issues that may affect performance are identified, documented, and resolved;  The Contracting Officer is notified of any issues that were not resolved;  Discusses the logistics of any Government furnished property; and  The contractor is advised of procedures for documenting past performance and submitting final Contractor Performance Reports (CPR) to the Government-wide past performance portal - PPIRS.
<b>Monitor Contractor Performance</b>	Monitor contractor actions as authorized by the Contracting Officer; document contractor performance; and facilitate the successful resolution of performance problems.	All potential performance and delivery problems are reported to the Contracting Officer;  Any noncompliance with terms and conditions of the contract is identified

<b>Duty</b>	<b>Duty Summary</b>	<b>Duty Standards</b>
		<p>and reported to the Contracting Officer;</p> <p>Sufficient documentation of contractor performance exists to support payment of invoices under the contract; and</p> <p>Technical analysis is sufficient to support Contracting Officer's negotiations and decisions.</p>
<b>Inspection and Acceptance</b>	Inspect and accept contract deliverables; inform the Contracting Officer when rejecting or accepting nonconforming products or services.	<p>Supplies or services provided by contractors meet contract requirements; and</p> <p>Nonconforming products or services are rejected, or otherwise resolved.</p>
<b>Contractor Past Performance Information and Reporting</b>	Monitor and evaluate contractor performance, and submit Contract Performance Report to the Government's past performance portal - PPIRS.	<p>Past performance documentation accurately characterizes contractor performance; and</p> <p>Past performance information is complete and sufficient for use in pre-award source selection evaluations.</p>
<b>Contract Modifications</b>	Identify a need to change the contract; prepare a technical analysis to support a change to the contract; and provide support documentation.	<p>A technical analysis addressing quality, quantity, cost/price, and other factors impacting a contract modification is complete; and</p> <p>Any documentation necessary to support actions by the Contracting Officer to resolve a modification request is complete.</p>
<b>Exercise Contract Options</b>	<p>Recommend in writing whether an option should be exercised under the contract; and</p> <p>Submit market research data to support a recommendation to exercise an option.</p>	<p>The option is exercised within the timeframe established in the contract;</p> <p>Relevant market research data is submitted to support the recommendation to exercise an option; and</p> <p>The option represents the most advantageous offer available from the marketplace.</p>
<b>Excusable Delays</b>	Notify the Contracting Officer about a possible delay in the delivery or performance schedule under the	<p>Applicability of excusable delays; and</p> <p>Technical analysis is sufficient to support action taken by the</p>



<b>Duty</b>	<b>Duty Summary</b>	<b>Duty Standards</b>
	contract.	Contracting Officer to remedy a delay.
<b>Stop Work Order</b>	Assist in administering stop work orders or suspension of work orders <i>(for construction and A-E contracts)</i> .	The need for a stop work order is determined and documented; A stop work order is properly administered to avoid unnecessary costs; and Government risk is minimized.
<b>Contractor Claims</b>	Assist the Contracting Officer in analyzing claims; recommend a settlement position; and participate in the resolution process.	The validity of the claim is correctly determined; A proper and complete report is prepared that fully supports the Contracting Officer's actions; and Government interests are protected while treating the contractor fairly within terms of the contract.
<b>Remedies for Nonconforming Work or Other Violations</b>	Provide sufficient evidence of contractor nonconformance, breach of contract, or other violations of federal statute, law, or regulation, and suggest an appropriate contract remedy; and Assist in evaluating contractor responses.	An adequate, timely remedy notification letter is provided that supports the Contracting Officer's decision; and A remedy is recommended that safeguards the Government's interests and minimizes the impact of contractor performance problems on the contract.
<b>Termination for Default or Convenience</b>	Assist the Contracting Officer in determining whether to terminate a contract.	Determine risk to the Government; Research and document the facts; Coordinate issuance of cure and show cause notices; and Termination recommendation supports either a termination for convenience or a termination for default (or cause), when necessary.
<b>Payment - Invoice Review Process</b>	Recommend whether to approve or reject payment on an invoice.	Determine whether to approve payment in full or partly; Reject invoices for nonconforming products or services; and Sufficient information is provided to the Contracting Officer to approve or reject

Duty	Duty Summary	Duty Standards
		payment of an invoice.
<b>Closeout Procedures</b>	Assist in closing out contract files.	<p>Review contract file to determine if contract can be closed;</p> <p>Determine whether the contractor and Government have fulfilled their obligations under the contract;</p> <p>Contractor submitted final invoice;</p> <p>Final indirect cost rates and audits have been completed (for cost-reimbursement contracts); and</p> <p>All outstanding contract administration issues are resolved and all records are correctly stored.</p>

## SECTION VI.

# REQUISITION PACKAGE

A requisition is developed when an NRC need is identified and can be satisfied through establishment of a contract for goods or services. *Note: The terms “goods”, “products” and “supplies” are used interchangeably throughout this Guidebook.*

CORs are required to:

- Conduct and document market research
- Develop and finalize a Statement of Work (SOW)
  - If a performance-based contract is envisioned, a Performance Work Statement (PWS) is preferred
- Complete requisition information
- Prepare an Independent Government Cost Estimate (IGCE)
- Prepare evaluation factors
- Prepare other documentation, such as market research, justifications, and obtain necessary approvals
- Complete NRC Form 187, indicating the level and type of security access needed by the contractor to perform the work
- Indicate whether there is a need for Government furnished property
- Indicate possible members of a Sources Evaluation Panel (SEP)
- Indicate whether work is inherently government

Providing an adequate description of NRC's minimum needs or requirements is one of the COR's most important duties. These requirements are generally described in a Statement of Work (SOW), Performance Work Statement (PWS) or Statement of Objectives (SOO). These documents define and describe what the contractor is responsible for delivering and the terms of compensation for said services.

An SOW is the core or heart of a solicitation and resulting contract. It describes the supplies, commodities, products, services, outputs or results that the NRC needs. An SOW 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 the outputs or deliverables.

**The following items represent how a clear SOW can affect other aspect of the process:**

- Help shape the procurement strategy and influence the decision regarding the most appropriate contract type to utilize
- Could affect the number and type of vendors solicited or willing and able to respond to a solicitation
- Influences the quality of proposals
- Establish useful technical evaluation criteria
- Establish standards for measuring contractor performance and quality

## SECTION VI., PART A

### MARKET RESEARCH

CORs are encouraged to work with the Division of Contracts or ADM's Business Advisory Center (BAC) to discuss the requirements for market research and seek assistance, as necessary.

CORs are required to complete a Market Research Checklist, Market Research Narrative, and Summary Analysis of Market Research template for contracts and orders with an estimated value in excess of the simplified acquisition threshold (currently \$150,000). These market research documents have been developed to assist CORs in identifying possible sources of supplies or services capable of meeting the agency's minimum requirements while providing standardization to the process.

It is the policy of the NRC that CORs give proper consideration to the agency's Federally Funded Research and Development Center (FFRDC) with the Center for Nuclear Waste Regulatory Analyses (CNWRA), a division of Southwest Research Institute (SwRI), for all acquisitions. CORs are encouraged to contact NMSS for guidance in this regard.

CORs are required to conduct market research for new requirements (including exercising contract options), and submit related documentation with the requisition to the Division of Contracts (DC). The degree to which CORs research and document market research will vary based on the dollar size and complexity of the procurement.

The following major steps in the process are explained below with associated templates to assist the COR during the market research process:

1. Planning Market Research
2. Conducting Market Research Activities
3. Documenting Market Research

For procurements above the simplified acquisition threshold, the Government must conduct market research in accordance with Federal Acquisition Regulation (FAR) Part 10. Quality market research plays a key role in identifying potential sources of supply or services to meet the agency's requirements. At the NRC, the COR must document market research efforts conducted for each acquisition over the simplified acquisition threshold. The COR should coordinate efforts undertaken with the BAC, DC, and the SBCR/Small Business Program (SBP) official.

Market research is essentially to the foundation for an effective acquisition. Market research helps the Government assess current market conditions for the agency's needs and can, to the maximum extent practicable;

- Help shape a solicitation (RFP or RFQ) to ensure a clear definition and scope of the requirements.
- Tailor terms and conditions.
- Reduce unnecessary barriers to competition.

Market research should identify available supplies or services from Federally-mandated sources under FAR Part 8, including UNICOR and AbilityOne; NRC enterprise-wide contracts; NRC's Federally Funded Research and Development Center (FFRDC); Department of Energy (DoE) laboratory agreements; small business programs, including possible small business set-asides covered in FAR Part 19; government-wide contracts (GWACs); multi-agency contracts (MACs), and other sources of capable of meeting the agency's minimum requirements. The market research process is intended to reveal all available sources of supplies and services.

CORs use market research to obtain information about recent commercial market pricing and industry trends. Market research for a procurement helps determine whether sources of commercial items are available to satisfy the NRC's requirements and whether the NRC's requirement could be modified to allow use of commercial practices and industry norms.

When conducting market research, do **not**:

- ask for more than the minimum amount of information necessary.
- include any comparison evaluation of the information received, as that will occur at a later stage during proposal evaluation.
- request resumes, proposals, or technical solutions.
- disclose sensitive or proprietary information at any time about the pending procurement.

Market research must be completed before a solicitation is issued. If a significant change in the scope of work is identified prior to award, then additional market research may be required.

## PHASE 1: PLANNING MARKET RESEARCH

Market research yields the best results when there is timely and open communication between program offices, BAC, DC, SBCR's Small Business Program (SBP) office, NMSS, and other key agency stakeholders. SBCR/SBP is available to help facilitate the search for qualified small businesses. Therefore, CORs are encouraged to coordinate their efforts with these offices early in the market research process to maximize results.

During early planning, the COR, DC, and BAC should discuss market research objectives, planned activities, responsibilities, and timelines for conducting and documenting related tasks and activities.

Review of the NRC's market research checklist is a valuable first step in identifying not only sources of supplies or services, but also other important considerations such as the applicability of Section 508 standards (see Section 508 wizard at <http://www.BuyAccessible.gov>) and Federal environmental programs. Web links are provided that facilitate online searches expedite the market research process and contribute to the development of a quality acquisition strategy and plan.

## **PHASE 2: CONDUCTING MARKET RESEARCH ACTIVITIES**

The COR conducts market research to gain greater insight into commercial offerings, capabilities, and business practices. It is important that CORs understand the types of goods and services industry offers, what types of standards or practices apply and are followed, product limitations, what firms demand from Federal customers, and other key pieces of information.

The private sector sustains its competitive advantage through product innovation and ensuring efficiencies in their processes. So, the more the agency can understand how and why industry buys the way they do, the better we can be at creating innovative requirements packages and business solutions that will improve performance and reduce contract costs at the NRC.

The COR is the primary person who carries out market research activities, in coordination with DC, the BAC, and SBP, which includes a comparison of the agency's requirement with available those supplies or services offered by industry. Possible sources include those listed in FAR Part 8 as well as NRC enterprise-wide contracts, NRC's FFRDC, DoE laboratories, GWACs, MACs, small businesses, commercial firms, and other potential sources identified in the Market Research Checklist.

Other avenues for obtaining useful information may be through one-on-one or small group meetings with industry experts to solicit product or service information. Also, issuance of a Sources Sought Notice or Request for Information (RFI) by the CO may provide useful vendor information for potential suppliers.

### Procurements with an estimated value of \$3,000 and below (Micro-purchase Threshold)

- There is no FAR requirement for market research to be conducted for purchases under the micro-purchase threshold.

#### Procurements with an estimated value over \$3,000 to \$150,000 (Simplified Acquisition Threshold - SAT)

- New acquisitions are 100% set aside for small business, even if only one capable firm exists, unless a competition exception applies. (See FAR SubPart 6.3 at: [https://acquisition.gov/far/current/html/Subpart%206\\_3.html#wp1086841](https://acquisition.gov/far/current/html/Subpart%206_3.html#wp1086841)).
- The COR will conduct market research even when it is thought that adequate information may exist to ensure that other capable sources are identified.

#### Procurements with an estimated value over \$150,000 (Above the SAT)

- The FAR requires Federal agencies to conduct market research for acquisitions above the SAT. Market research efforts will help determine the presence of qualified small businesses and other entities in the marketplace to determine competition requirements. The COR's review of market and vendor information may help to determine current pricing estimates for similar supplies or services, product or service availability, key product attributes and characteristics, and other pertinent information.
- New acquisitions shall be set aside for small business if there are two or more qualified small businesses – “Rule of Two,” unless a FAR exception applies.
- Acquisitions may be offered to the SBA as a small business set-aside under the 8(a), HUBZone, service-disabled veteran-owned small business (SDVOSB), or woman-owned small business (WOSB) Programs. (See FAR Subpart 19.5, “Set-Asides for Small Business”: [http://www.acquisition.gov/far/current/html/Subpart%2019\\_5.html#wp1086824](http://www.acquisition.gov/far/current/html/Subpart%2019_5.html#wp1086824).)

### **PHASE 3: DOCUMENTING MARKET RESEARCH**

The results of market research must be appropriately documented based on the dollar size and complexity of the procurement. Market research documentation informs the agency and assists the CO in determining an appropriate acquisition plan, strategy, and contract type. Such documentation may also be important in explaining or defending the agency's position to internal and external stakeholders, including the General Accountability Office (GAO) in the event of a protest should a protestor allege inadequate market research on the part of the agency.

Acquisitions above the simplified acquisition threshold (currently \$150,000) must complete a Market Research Checklist, Market Research Narrative, and Summary Analysis of Market Research to document the process conducted and attach the document to the procurement requisition.



## MARKET RESEARCH DOCUMENTS

Checklists, templates and other documents available to support and facilitate the market research process are as follows:

A. The “**MARKET RESEARCH CHECKLIST, NARRATIVE AND RELATED TEMPLATES**” document includes:

- Market Research Checklist (*checklist required over \$150,000*)
- Market Research Narrative (*template required over \$150,000*)
- Summary Analysis of Market Research (*template required over \$150,000*)
- Additional Online Sources (*optional information*)
- Link:  
</Libraries/DocumentDownloadHandler.ashx?LibraryDocumentID=1069>

B. The “**MARKET RESEARCH TEMPLATE PACKAGE**” document includes:

- Talking Points for Early Market Research Planning (*optional template*)
- Sources Sought Notice Format (*optional template*)
- Request for Information (RFI) Format (*optional template*)
- Industry Form Letter (*for meetings with industry experts, either in group settings or on a one-to-one basis*) (*optional template*)
- Link:  
</Libraries/DocumentDownloadHandler.ashx?LibraryDocumentID=1070>

## STATEMENT OF WORK (SOW)

*(Note: The terms “Statement of Work” and “Scope of Work” are used interchangeably throughout this Guidebook)*

The Statement of Work (SOW) is the heart of any solicitation or contract. Completing a quality SOW can require the expertise of both Government and industry personnel with diverse backgrounds in engineering, science, accounting, law, acquisition and other disciplines and fields. Therefore, an SOW must be written so that all potential offerors (technical and non-technical, alike) can understand the general requirements in the solicitation and contract.

An initial investment of time and effort to write a clear and high quality statement of work will:

- Enable offerors to clearly understand the requirements and needs of the NRC;
- Allow offerors to more accurately cost or price their proposal and submit higher quality technical proposals;
- Provide a baseline for the development of other parts of the solicitation, particularly the evaluation criteria, proposal instructions and independent government cost estimate;
- Minimize the need for change orders which can increase the cost or price and delay contract performance;
- Permit both the Government and contractor to accurately assess performance ; and
- Reduce contract claims and disputes.

## TYPES OF STATEMENTS OF WORK

There are three major types of Statements of Work (SOW), which include:

- **Performance-based** (*completion-type; most preferred by Government*)
  - **Level of effort** (*term - not results oriented*)
  - **Design/detailed specifications** (*prescriptive*)
- 

- **Performance-based**

Writing performance-based Statements of Work is the preferred method of stating needs or requirements in the Government. A performance-based Statement of Work organizes all aspects of an acquisition around the work to be performed and does not dictate or prescribe how the work is to be accomplished. These SOWs are developed to ensure that offerors (contractors) are given wide latitude and freedom to provide innovative, creative and cost-effective solutions to address the Government's problems or needs (stated as performance objectives). The contractor is compensated only when the results rendered meet or exceed the stated performance objectives. Performance-based SOWs maximize the contractor's control over work processes and allows for innovation in approaching the Government's work requirements.

Performance-based SOWs emphasize performance so that requirements can be contractually defined and the results of the contractor's effort can be measured in terms of technical quality, schedule, or cost performance.

- **Level of Effort**

*(For use in cost reimbursement, Time-and-Materials and Labor Hours contracts.)*

Level of Effort (LOE) Statements of Work can be written for almost any type of service unless it is an inherently governmental function. Essentially, the real deliverable in legal terms under this type of contract is hours worked. These SOWs are normally associated with task order and delivery order contracts. Services or products are acquired via individual orders issued by the Contracting Office. The SOWs are usually broad and only describe the general nature, scope or complexity of the services or products to be procured over a given

period of time. These SOWs should be written to ensure that all work requirements and deliverables are sufficiently covered and spelled out.

➤ **Design/detailed Specification**

*(For use in contracts for products and A-E services, especially in sealed bidding.)*

Design/detailed specification Statements of Work tell the contractor how to do the work. It may include precise measurements, tolerances, materials, quality control requirements, and other Government requirements that control the processes of the contractor. The Government, to a large degree, requires the contractor to follow the Government's approach to performing the work or making a product. This causes the risk of performance to shift to the Government.

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## **General Information**

- Statements of work must:
  - Be definitive enough to protect the Government's interests;
  - Serve as a basis for contractor responses, evaluation of proposals, and source selection; and
  - Provide a meaningful measure of performance so both the Government and the contractor will know when the work is satisfactorily completed.
- The SOW will be read and interpreted by a variety of people from diverse disciplines, so it is imperative that the words be understood and that there be only one interpretation of terms.
- The SOW, as a central part of the contract, is subject to contract law. A fundamental legal principle is that because the Government is the drafter, any ambiguities confusion due to vague language is typically held against the Government. It is tempting to include vague language in SOWs to provide added flexibility to later loosely interpret the contract. However, the drafter (Government) would lose should a contract dispute arise based on an ambiguity in the SOW. Also, ambiguous work statements result in protests, unsatisfactory contractor performance, delays, claims, disputes, and increased contract costs.
- Simple words, phrases, and sentences are used for clarity. Well understood words and phrases improve the SOW by minimizing ambiguities. Be concise,

precise, and consistent. Careful and exact descriptions will avoid misunderstandings before and during the life of a contract. Keep sentences concise and to the point.

### Choice of Verbs

- Use **Active verbs**. Examples include: analyze, audit, calculate, create, design, develop, erect, evaluate, explore, interpret, investigate, observe, organize, perform, and produce (work words).
  - Avoid **Passive verbs** that can lead to vague statements. For example, the phrase "the contractor shall perform," is preferred in lieu of "it shall be performed" because the latter does not definitively state which party shall perform. Avoid "should" or "may" because they leave the decision for action up to the contractor. Use "shall" when describing a provision binding on the contractor. Use "will" to indicate actions to be undertaken by the Government.
- To reduce the possibility of misinterpretation, terminology must be consistent. The same words and phrases must be used when describing the same requirement.
  - Avoid redundancy. Redundancy can reduce clarity, thereby increasing the possibility for ambiguity and contradiction.
  - Vague/inexact words and generalizations are open to so many interpretations that they become meaningless. Avoid catch-all and open-ended phrases, such as "is common practice in the industry," "as directed," or "subject to approval."
  - Note that common industry or NRC terminology is not always as universally defined as might be assumed. Technical terms must be specifically defined since judges settling disputes lean toward the "ordinary and usual" meaning and usually interpret the meaning against the drafter. If the writer is unable to define the term, potential offerors will have the same problem understanding the meaning.
  - Avoid using "any," "either," or "and/or" unless NRC wants to give the contractor a choice in what must be done. Also, avoid the use of "etc.," because the offeror (contractor) doesn't have any idea of the items that could be missing or might be envisioned.

- Include definitions that provide a common basis for understanding between the contractor and NRC. Ensure each "term of art" has only one universally understood meaning; otherwise specifically define it.
- Use abbreviations or acronyms only after spelling them out the first time they are referenced. When there are many, it is advisable to provide an attachment of terms and definitions.
- Any document referenced in the solicitation must be either furnished with the solicitation on FBO.gov (preferably) or available at a location identified in the solicitation, accessible to the public. The date or version of each document must also be specified, not listed as "version in effect on date of award."
- Coordinate with the Contracting Officer to determine which portions of the SOW are better stated in other sections of the solicitation to avoid duplication.

### **Contract Deliverables**

- This section contains information on what the contractor is to provide NRC and when it is required.
- Clearly state which party will perform each task by delineating a division of responsibilities between NRC, the contractor, and other stakeholders.
  - If review and approvals are required by NRC, due dates must be established within which review/comment must be provided by the contractor. Each time the contractor is forced to delay work to wait for NRC's response, time and money are expended. To avoid a breach of contract by the NRC, the contract should state *"the contractor shall proceed with contract performance if comments are not provided by NRC within x days" (specify date) of submission to the Agency.*
  - Statements that make contractor performance dependent upon NRC actions should be avoided. Courts have generally held that an approval transfers responsibility to the approving party.
- Provide a realistic delivery schedule for contract performance and completion. Schedules that are unnecessarily short or difficult to attain may restrict competition and result in higher contract prices and increase the likelihood for contract administration problems and contractor default.

- Permit offerors to establish their own milestones against which their performance can be measured. Be sure this section is consistent with the rest of the solicitation.

### **Government Property**

- FAR Subpart 45.3 requires that contractors provide all facilities required for performance of Government contracts unless an exception applies.
- Providing equipment to contractors must be done sparingly since the contractor will be dependent upon the Government for care and maintenance. This dependence may hinder the ability of contractors to be fully accountable.

### **Links:**

#### **Contracts:**

PWS: </Libraries/DocumentDownloadHandler.ashx?LibraryDocumentID=966>

LOE: </Libraries/DocumentDownloadHandler.ashx?LibraryDocumentID=975>

Completion: </Libraries/DocumentDownloadHandler.ashx?LibraryDocumentID=973>

#### **Task Orders:**

PWS: </Libraries/DocumentDownloadHandler.ashx?LibraryDocumentID=977>

SOW: </Libraries/DocumentDownloadHandler.ashx?LibraryDocumentID=878>

QASP: </Libraries/DocumentDownloadHandler.ashx?LibraryDocumentID=883>

## SECTION VI., PART C

### REQUISITION

CORs are responsible for developing a requisition for each procurement, and submits to the Division of Contracts. This includes funded and unfunded actions as well as administrative actions, including corrections to funding or appropriation data, address changes, and COR name/office location changes.

- To avoid delays in processing of your procurement request, requisitions must contain:
  - Required approvals
  - Funds certification from FCO (for funded actions)
  - Advance Procurement Plan (APP) number
  - Required Justifications or Deviations
  - If recommending a small business set-aside, indicate your preference, including:
    - Section 8(a) small business program
    - HUBZone small business
    - Service-disabled veteran-owned small business
    - Women-owned small business
    - Economically disadvantaged women-owned small business

[https://www.acquisition.gov/far/current/html/Subpart%2019\\_5.html](https://www.acquisition.gov/far/current/html/Subpart%2019_5.html)

[https://www.acquisition.gov/far/current/html/Subpart%2019\\_8.html](https://www.acquisition.gov/far/current/html/Subpart%2019_8.html)

- If the action is for a delivery/task order or contract modification, include the “base” contract number related to the action
- Indicate the type of procurement (i.e., contract, grant, order, interagency agreement, etc.)



- Attachments to the requisition are crucial in providing rationale to support the procurement request and to facilitate mutual understanding among Agency counterparts. The attachments include:
  - Statement of Work (SOW), Performance Work Statement (PWS), or Statement of Objectives (SOO);
  - List of Deliverables;
  - Required delivery dates and period of performance;
  - Independent Government Cost Estimate (IGCE);
  - Draft evaluation factors for award and/or standards of acceptability;
  - Suggested evaluation panel members;
  - NRC Form 187 – “CONTRACT SECURITY AND/OR CLASSIFICATION REQUIREMENTS”; and
  - Justification for Other Than Full and Open Competition - JOFOC
    - CORs should leave the JOFOC unsigned and DC will work with program office to finalize
  - Monitoring Plan or Quality Assurance Surveillance Plan (QASP) that outlines steps that NRC will take to monitor contractor performance in delivering products or services

Note: Please do not solicit quotes or proposals before submitting a procurement requisition to DC and do not send quotes with the requisition package. DC will solicit vendors and quotations as part of the acquisition process, as deemed appropriate. However, market research is encouraged (see Section VI., Part A).

## SECTION VI., PART D

### INDEPENDENT GOVERNMENT COST ESTIMATES (IGCE)

Contracting Officer's Representatives (CORs) are required to develop and submit an Independent Government Cost Estimates (IGCE) as part of a requisition package, including: a) new requirements, b) actions that cause an increase or decrease in the estimated cost of the contract, c) an action that has a cost impact, and d) a change in a contract that results in significant budget realignments and reallocation of funds.

**1.0 Introduction:** Federal Acquisition Regulation (FAR) 7.105(b)(5) requires that each government requirement's package (requisition) and contract file be properly supported by detailed budget estimates, how they were derived, and source of funding. Government estimates must be developed independently PRIOR to seeking proposals or quotations from eligible contractors. In no event may a contract be awarded on the basis of contractor provided estimates.

This process necessitates some type of cost estimation for all acquisitions vis-à-vis an Independent Government Cost Estimate (IGCE) or "Government Estimate", regardless of the complexity or expected cost of the acquisition. An IGCE is required as part of the requisition submitted to the Division of Contracts (DC). Properly developed IGCEs provide program staff with an important tool to make informed decisions and manage their acquisitions in a more structured manner.

The independent Government cost estimate is a detailed assessment of what NRC expects to pay for work described in an SOW or PWS. It is developed by the COR, in collaboration with other NRC or 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.

#### **The COR should ensure that the IGCE:**

- Covers all necessary programmatic or technical needs to achieve mission objectives.
- Identifies and organizes tasks to accomplish each objective.
- Identifies needed resources or inputs.
- Estimates length of time and cost per task.

- Reflects cost/price data obtained through market research for similar projects.
- Lists possible contract line items (CLINs) and probable cost and quantity for each.
- Describes assumptions made in developing the estimates.

1.1 Definition: The IGCE is a cost estimation tool developed by the requisition office, based on Agency requirements [i.e., Statement of Work (SOW), Performance Work Statement (PWS), Statement of Objectives (SOO)], and historical experience, without the undue influence of potential vendors. The IGCE is a “**should cost**” assessment, which is used for cost comparison with contractors’ proposals, and to support the contracting officer’s price reasonableness determination. The IGCE can be used to determine: 1) the contractors’ responsiveness to the SOW requirements included in the RFP/RFQ, and 2) reasonableness of proposed cost elements.

1.2 Background: Cost estimation can be fairly straightforward or very detailed and intricate, depending on the complexity of the requirement. Cost estimates for commercial items (FAR Part 12) often come directly from published price lists or catalogues obtained during market research. Cost estimation methods in larger acquisitions, such as EIT systems or construction are typically complex and require well-defined technical requirements, extensive cost/price data from similar programs, and assistance from experienced cost analysts as well as guidance from subject matter experts in the Division of Contracts (DC).

1.3 Purpose: This guidance provides CORs with a sample template for developing Independent Government Cost Estimates (IGCEs), as required in the acquisition process, for attachment to requisition packages submitted to DC.

1.4 Application: This guidance applies to all acquisitions, including requirements below the simplified acquisitions threshold. However, an IGCE is required for any acquisition over the simplified acquisition threshold.

**2.0 Best Practices**: The following are a set of practices relevant to the formulation of IGCEs:

2.1 Form a Team Early: For complex acquisitions, assemble a team of stakeholders and experts, with guidance provided by the Division of Contracts, as soon as practical. Seek the guidance and assistance of your program office colleagues, OGC and DC in the development of your IGCE and requirements package, to the extent required. Aside from providing functional expertise, team members such as users and technical experts are an excellent source of historical data and projections critical in developing your IGCE.

2.2 Use a Structured Approach: Define and document a structured approach to gauge the size your acquisition [e.g., use of a Work Breakdown Structure (WBS)]. This structure provides the baseline for many acquisition decisions, including method and level of competition required. The IGCE should document the work included in the SOW/PWS, and may be a very useful tool: (a) in developing NRC spend plans; (b) for cost comparisons during the proposal evaluation phase; (c) during contract negotiations; and (d) in support of technical/cost tradeoff decisions.

2.3 Fully Document Assumptions and Basis of Estimates: Undocumented assumptions for cost estimates can lead to misunderstandings or confusion between the program office and members of the Division of Contracts. Always fully document and explain your underlying assumptions that form the basis for your cost estimates, and attach to the requisition. In large, complex procurements, separate rationale should be developed that explains exactly how the Government estimate was crafted, and can be useful to DC during contract negotiations. The rationale should address the following:

- How the estimate was calculated, including any formulas used
- What methodology was used, several approaches are listed below:
  - Historical data
  - Published catalogue prices or commercial list prices
  - Average costs of the same or similar goods or services
  - Standard cost calculations based on NRC's technical approach
  - Industry experience/ engineering estimates for construction services
  - Software development models
  - Information from other contracts or an independent professional judgment
- What information, calculations, rates, factors, tools, and models were used
- What information was obtained and from what sources (i.e., other federal agencies, Fedbizopps (FBO), SBCR, internet searches, etc.)
- If the current procurement is a follow-on to a previous contract, how do the cost estimates compare with actual cost expenditures of the previous contract

2.4 Understand and Apply the IGCE Results: Disparity between the offeror's cost proposal and the IGCE should serve as a potential "Red Flag": Significant differences between the offered price and the IGCE may indicate a serious misunderstanding or disconnect between what is being offered and the requirement. In these cases the IGCE is one more indicator that may prompt contracting officers to hold discussions. Also, significant cost disparities may warrant internal discussions with CORs that may include reassessing the requirements in the SOW, seeking additional funding, amendment of the RFP/RFQ, modification of the contract, or cancellation of the

requirement. Simply revising IGCE without exploring the root causes of the disparities (e.g., confusing or conflicting SOW requirements) may only mask the immediate problem and cost the government and taxpayers significant sums of money during contract administration.

**3.0 IGCE Template:** Develop realistic IGCEs by tailoring the attached sample spreadsheet. Use this as your starting point while seeking guidance from your assigned DC contracting officer or contract specialist. Larger acquisitions generally require unique combinations of: expertise, supplies, equipment, commodities, utilities, hardware/software, technological capacities, intellectual property, and services. To adequately display costs for any specific situation, you will need to tailor the sample template to meet your needs. For example, you may need to use more labor categories than are provided for, or you may need extensive ODCs.

#### **Standard Templates:**

IGCE format for cost-reimbursement and fixed-price contracts and orders:

</Libraries/DocumentDownloadHandler.ashx?LibraryDocumentID=1051>

IGCE format for time-and-materials, labor-hour, and fixed-price contracts and orders where the COR is using established fully-loaded (burdened) labor rates from NRC or other Government contracts:

</Libraries/DocumentDownloadHandler.ashx?LibraryDocumentID=1054>

IGCE format for time-and-materials, labor-hour, and fixed-price contracts and orders where the COR is using unburdened labor rates or would like to establish a labor multiplier:

</Libraries/DocumentDownloadHandler.ashx?LibraryDocumentID=1060>

IGCE format for supply or equipment contracts or orders:

</Libraries/DocumentDownloadHandler.ashx?LibraryDocumentID=1055>

### 3.1 Coordination Information:

- Project Title
- Brief Description of Acquisition
- Name of COR
- Reference Budget Assumptions, Source Data and Attachments

3.2 Structure of the Template: The IGCE should use a systematic approach and in cases where there is little or no historical pricing information, a more bottoms-up analysis (Work Breakdown Structure - WBS) of labor and other costs may be required. An IGCE can be as simple as reviewing the last price paid for an item and adjusting it for time and quantify, comparing a commercial item to others in the market, or a comparison to an awarded contract with similar scope of work and dollar magnitude.

Contract Line Item Numbers (CLINs) may be used, as authorized in FAR 4.10, in government contracts to more clearly identify and separate goods or services. If using Contract Line Items for budgeting purposes, each CLIN should provide a unit price or lump sum price for each contract deliverable or set of deliverables, with supporting cost estimates, delivery schedules and funding appropriation data. CLINs can be very useful in identifying, organizing and tracking work requirements throughout the project life cycle. Also, budgeting tasks individually allows the NRC to assess and track costs by tasks during contract administration.

Budgets should include all periods needed to obtain the product or service. Therefore, IGCEs should be broken out by each year (including options) of the project, and include necessary cost escalations for each period.

3.3 Standardized Approach: Use standard labor categories throughout the IGCE, to the extent practicable. Determine all necessary labor categories and associated rates in advance and replicate for all tasks. Show the specific effort (hours/days) for each task. This approach allows the estimator to provide totals by task and by individual labor category. The following are standard cost elements:

3.3.1 Assumptions: The IGCE process begins with certain assumptions, such as (but not limited to):

- Desired Delivery Dates and Period of Performance
- Location where work will be performed
- Standard work week/month/year - especially in construction services
- Anticipated delays - including security clearances, work permits or other approvals needed
- Local travel costs
- Airline travel costs
- Government per diem rates - [www.gsa.gov/portal/content/104877](http://www.gsa.gov/portal/content/104877)

- Transportation costs - When shipping of supplies will be required, delivery may be: **Free on board (FOB) at origin** where the cost of shipping and risk of loss are borne by the Government or **FOB destination** where the cost of shipping and risk of loss are borne by the contractor
- Telephone costs
- Reproduction and mailing costs
- Ready access to materials or commodities
- Source(s) of labor and rates (low to high range)
- Annual cost escalations in labor and materials during out years of contract, including option periods
- Historical cost experience with fringe (FR), overhead (OH), and general and administrative (G&A) expenses
- Expected level of risk, as it relates to profit margins
- Expected use of subcontractors, including small and disadvantaged businesses
- Lease versus purchase options
- Installation
- Maintenance
- Warranty protection or repair
- Training
- Technical manuals
- Spare parts
- Supplemental supplies
- Use of averages

All assumptions should be clearly listed on an assumptions section of every IGCE, with supporting documentation attached.

**3.3.2 Range of Estimates:** The IGCE may include a high and low range of labor rates/ ODC unit costs and corresponding amounts, or reliable averages derived from a range of estimates.

### **3.3.3 Labor:**

The COR must estimate expected labor usage (hours/days) for each labor category. Use data from similar acquisitions, solicit expert advice from NRC or other government officials, build team estimates, or validated estimation models. Separately identify labor estimated for work completed at the contractor's site and at Government facilities, as the overhead expense will vary. Be sure to document the source data for all estimates for clarity and completeness. Multi-year acquisitions (FAR Subpart 17.1) will require a more detailed IGCE that assigns labor hours to each task in each of the contract years (up to five years), which mitigates risk on the part of the government in the event of contract termination and assures value to the NRC for services procured.



Direct Labor (DL) is the cost of labor directly applied to producing the requirement. There are two types of DL: unburdened which includes only salary; and burdened (fully loaded), which includes salary plus an allocation of costs for overhead (OH), general and administrative (G&A), profit (fee), and any escalation for option years, as applicable. Using burdened rates can simplify the cost estimation process, and are commonly used in many GSA Government wide Acquisition Contracts (GWACs).  
<http://www.gsa.gov/portal/content/104874>

**IGCE Spreadsheet Completion** - Enter all proposed labor categories for the project, e.g., Project Director, Senior Analyst, scientist, clerical, etc., and the estimated hours for each related Tasks/Subtask. The estimated cost for each labor category equals the estimated hours, times the hourly rate for the labor category.

In general, pricing direct labor at total available person-hours per year (2080) includes costs for vacation, holidays, and sick leave. As benefits including leave and holidays are part of a contract, they must be included in the cost of any Government contract. To develop costs for a typical service contract year, use the average work year of 2080 hours (40 hours/week, 52 weeks/year). These are available hours – that is what will be estimated and paid to the employee under the contract. However, recognize the work effort needs to also consider productive hours to determine number of contract employees required. Productive hours are the number of hours an employee actually performs his/her duties. When full time employees are anticipated, a good rule of thumb is to use 1880 hours (2080 hours less 80 hours holiday, 80 hours vacation, and 40 hours sick leave) as productive hours.

For a current progressive annual salary and hourly rates schedule for Federal employees in the GG-12 through GG-15/SES range, refer to NRC MD and Handbook 10.41, "Pay Administration," Office of Personnel. Use this table in establishing contractor direct labor rates. For example, journeyman engineers would be in the GG-12 range, senior engineers would be in the GG-13/14 range and supervisory personnel would be in the GG-15/SES range.

**Escalation Considerations for the IGCE** - The impact of inflation should be considered when developing an IGCE. First develop the base year estimated costs, inflating as necessary a realistic price/cost. To forecast the option year(s) cost, appropriate escalation factors are applied to the previous cost elements to bring them up a realistic value. If the contract performance involves more than one year, different escalation factors may be applied dependent on the labor/material mix as appropriate.

For contracts that exceed 12 months, an annual labor escalation factor should be added to each subsequent 12-month period for increases in cost of living. The Department of Labor's cost-of-living index is a theoretical price index that measures relative cost of living over time or regions. (See [www.bls.gov/cpi/tables.htm](http://www.bls.gov/cpi/tables.htm).)

- The Department of Labor Consumer Price Index (CPI) provides data and percentage of change in inflation/escalation factors. CPI information is available at <http://www.bls.gov/cpi/>.
- Market trends should be considered when projecting option year(s) escalation rates and should be justified in a short narrative. A market survey will provide information on current market prices and potential volatility of prices in the market place.

#### 3.3.4 Fringe Benefits Rate (FR):

Fringe benefit packages among companies vary, but typically include (but not limited to) items such as sick and vacation days, accident and health benefits, and life insurance. Contractors typically have an established Indirect Cost Rate for fringe benefits that includes its pool of fringe costs.

The fringe benefits rate is based on estimated costs to support vacation, holidays, and health & welfare, and is applied against direct labor.

#### Examples of fringe benefits include:

- Health & Welfare (H&W) includes life, accident and health insurance plans, pension plans, civic and personal leave (vacation and holidays), severance pay, savings and thrift plans, etc.
- Federal Insurance contributions Act (FICA) is a tax for Social Security and Medicare.
- Federal Unemployment Taxes (FUTA) is a tax set by the Federal Government.
- State Unemployment Taxes (SUTA) is set by individual state governments.
- Workers' Compensation (WC) is insurance designed to cover injuries and associated benefits that arise from work related injuries.

**IGCE Spreadsheet Completion** - A generic fringe benefits rate has been **pre-loaded** in the spreadsheet for budgeting purposes so the COR does not have to complete this item. However, if the acquisition is sole source, contract the assigned contract specialist for guidance on adding the applicable fringe benefit percentage to the IGCE based on information included in the firm's indirect cost rate agreement, if any. When preparing the cost estimate, use known commercial contractor rates if available from recent proposals. This information may be obtained from review of a current proposal from a commercial contractor on another project. Otherwise, generic rates are already pre-loaded in the spreadsheet for use.

### 3.3.5 Other Direct Costs (ODC):

Other Direct Costs (ODC) include all costs (other than labor) critical in satisfying the government's requirement, such as: equipment, software/hardware, materials, supplies, and travel.

Document the need for and source or basis of your ODC estimates. There must be sufficient backup information to support the validity of the estimates. Supporting information should include: detailed equipment lists, average costs of comparable equipment (from your market research), number and destination of travel requirements, airline cost, per diem, etc. Cost estimates made by analogy to similar programs should identify the other programs and the basis for, or logic behind, the estimate.

Some contracting agencies may charge a fee (surcharge) for acquisition support. This surcharge and related information must be included as a component in the IGCE and included with the requisition package. These costs are not directly attributable to the contractor. However, if a specific contracting agency will be supporting the acquisition, and that agency charges a surcharge, the amount of the surcharge should be recorded as a cost to the NRC in the IGCE.

**IGCE Spreadsheet Completion** - Follow this general format when providing cost estimates for vary types of Other Direct Costs:

#### MATERIALS/SERVICES

List supplies, equipment and services, such as printing, necessary to complete the project, excluding electronic and information technology (EIT).

#### ELECTRONIC INFORMATION TECHNOLOGY (EIT)

List supplies, equipment, software services and support services necessary for performance of the project.

Offices must request and obtain approval from the NRC's IT/IM Board before they submit a requisition to DC to procure any electronic and information technology solutions (e.g., hardware, software, upgrades, VTC, cell phones, fax machines, copiers, scanners) regardless of the value of those items. They also need to provide a copy of the ITB approval with their requisition when they submit it. Procedures for requesting and obtaining that approval are on the ITB's SharePoint site at:  
<http://portal.nrc.gov/edo/ois/bpiad/EASB/ECCB/default.aspx>

## TRAVEL

Use an overall estimated cost for travel combining such elements as air fare, per diem and local travel. It may be useful to arrive at an average cost per trip and multiply this cost by the number of estimated trips. Current per diem rates are found at:  
[www.gsa.gov/portal/content/104877](http://www.gsa.gov/portal/content/104877)

## OTHER DIRECT COSTS (ODCs)

Itemize any additional Other Direct Costs on a separate sheet. These costs may include items such as supplies, special test equipment, reproduction costs, telephone charges, etc.

Normal office supplies are generally included in overhead as well as vehicles, office furniture, and equipment leasing, so these types of ODCs should not appear here unless they are purchased for sole use of the contract.

### 3.3.6 Overhead Rate (OH):

Overhead costs represent the cost operating a business, usually includes Operating Expenses. Overhead costs are necessary for the continued operation of the business, but cannot be broken out and assigned to a particular product or service being offered. Overhead expenses include accounting fees, advertising, depreciation, insurance, interest, legal fees, rent, repairs, supplies, taxes, telephone bills, travel, utilities costs, and support staff. Contractors typically have an established Indirect Cost Rate for overhead that includes its pool of overhead costs.

Types of overhead include: material overhead, operations overhead (manufacturing, engineering, field service, and site operations), and subcontract management. Overhead pools are selected based on the nature of the organization. As an example, operations overhead includes: indirect labor and supervision, perishable tooling, employees related expenses (shift & overtime premiums, employees taxes, fringe benefits), indirect material & supplies, fixed charges (e.g., depreciation, insurance, rent, property taxes), downtime of direct employees (training, vacation pay, regular pay) when not working on a specific contract/job.

**IGCE Spreadsheet Completion** - A generic overhead rate has been **pre-loaded** in the spreadsheet for budgeting purposes so the COR does not have to complete this item. However, if the acquisition is sole source, contract the assigned contract specialist for guidance on adding the applicable fringe benefit percentage to the IGCE based on information included in the firm's indirect cost rate agreement, if any.

### 3.3.7 Subcontracting:

The IGCE should include all anticipated levels of subcontracting, including use of small and disadvantaged business concerns.

Subcontracting is the practice of assigning tasks/activities under a contract to another entity/party. Subcontracting is especially prevalent in large, complex projects, such as construction and information technology. The cost estimator or team should be aware of and document the differences in labor and indirect cost rates for any known organization to ensure greater accuracy in the estimation process.

### **IGCE Spreadsheet Completion**

#### **SUBCONTRACTOR(S)/CONSULTANT(S)**

List any items or services that might be subcontracted, if applicable. Drawing on past experience, you may deduce that a particular Task or Subtask may be subcontracted because of the highly specialized nature of the work or perhaps special equipment or facilities may be required that the prime commercial contractor may not have. If consultants are likely to be utilized, itemize estimated costs for specific consultant services.

### 3.3.8 Facilities Capital Cost of Money:

The purpose of Facilities Capital Cost of Money (FCCoM) criteria is to improve contractor cost measurement by providing for allocation of the cost of contractor investment in facilities to negotiated contracts. FCCoM is allowable when all of the following criteria are met: (a) The contractor's capital investment is measured; (b) allocated to contracts; and (c) costed in accordance with CAS 414. The contractor maintains adequate records to demonstrate compliance with the requirements of CAS 414.

**IGCE Spreadsheet Completion** - Generally speaking, this item does not need to be completed for the IGCE. However, if the acquisition is sole source and the contractor traditionally includes FCCoM, contract the assigned contract specialist for guidance on adding this cost to the IGCE budget format based on information included in the firm's indirect cost rate agreement.

### Web links for FCCoM:

<http://www.dtic.mil/whs/directives/infomgt/forms/eforms/dd1861.pdf>  
[http://www.easc.noaa.gov/apg/bcm/BCM\\_Docs/DD\\_1547-DD\\_1861-Calculation-Tool.xls](http://www.easc.noaa.gov/apg/bcm/BCM_Docs/DD_1547-DD_1861-Calculation-Tool.xls)  
[http://www.hq.nasa.gov/office/procurement/regs/1830.htm#30\\_7001](http://www.hq.nasa.gov/office/procurement/regs/1830.htm#30_7001)  
[http://www.acq.osd.mil/dpap/cpf/docs/contract\\_pricing\\_finance\\_guide/vol3\\_ch10.pdf#page1](http://www.acq.osd.mil/dpap/cpf/docs/contract_pricing_finance_guide/vol3_ch10.pdf#page1)

### 3.3.9 General and Administrative (G&A):

G&A represents the costs necessary for continued operations, but not directly associated with a product or service. These are the expenses related primarily to whatever costs are need for the actual operation of a company. The activities include, but are not limited to: general supervision; bookkeeping; electronic and information technology (EIT); auditing; to the extent that these costs are not directly charged to the services being provided. Contractors typically have an established Indirect Cost Rate for general and administrative that includes its pool of G&A costs.

The rate is based on an estimated cost to support various departments, such as Accounting, Personnel, Contracts, Legal, etc. These are management, financial, and other expenses related to the general management and administration of the business unit as a whole. To be considered a G&A expense, the expenditure must be incurred by, or allocated to, the general business unit. Examples of G&A expense include: salary and other costs of the executive staff of the corporate or home office, salary and other costs of such staff services as legal, accounting, public relations; corporate or home office; independent research and development; bid and proposal (B&P); selling and marketing expenses; and other miscellaneous activities related to overall business operations.

**IGCE Spreadsheet Completion** - A generic G&A rate has been **pre-loaded** in the spreadsheet for budgeting purposes so the COR does not have to complete this item. However, if the acquisition is sole source, contract the assigned contract specialist for guidance on adding the applicable fringe benefit percentage to the IGCE based on information included in the firm's indirect cost rate agreement, if any.

### 3.3.10 Fee or Profit:

Generally, fee or profit is the amount awarded to a contractor in exchange for undertaking the requirement and providing goods or services to the government. Fee or profit is generally regarded as remuneration for the risk involved in undertaking the work. Profit or fee is expressed as a dollar amount which equates to a percentage of the estimated cost.

Cost-type contracts are appropriate where the effort is unique to NRC, complex, or performance uncertainties and the likelihood of changes make it difficult to estimate performance costs in advance. A contract that includes a fixed-fee (such as Cost-Plus-Fixed-Fee) provides payment to the contractor of a negotiated fee that is fixed for the life of the contract.

Fixed price type contracts are used primarily for commercial-type products or for services with reasonable definite functional or detailed specifications. A contract that includes profit, such as Firm-Fixed-Price, provides an overall price for the contract that is not subject to any adjustment. Profit is awarded to the contractor for assuming greater risk and responsibility for contract completion and achievement of all required deliverables in the SOW. Profit provides great incentive for the contractor to perform and control costs while minimizing risk and burden on NRC staff.

Generally speaking, no more than 7% should be used for routine efforts under a cost reimbursement contract and not more than 13% for routine efforts under a fixed price contract. Add 1 % for moderately complex work and 2% for highly complex work (e.g., state-of-the-art).

**IGCE Spreadsheet Completion** – A generic profit/fee rate has been **pre-loaded** in the spreadsheet for budgeting purposes so the COR does not have to complete this item. However, the contract specialist may revise the IGCE using a weighted guidelines approach using the form below (or similar format) to derive a more precise profit/fee percentage to fine-tune the budget.

(See template at:

</Libraries/DocumentDownloadHandler.ashx?LibraryDocumentID=862>

### 3.3.11 General Guidelines:

Include all required tasks including any optional tasks specified in the SOW/PWS. For these optional tasks, include all Other Direct Costs (ODC): Materials & Supplies, Equipment, Travel, EIT, and Other (specify).

Avoid the use of "lump sum" estimates. These estimates do not demonstrate IGCE validity and are useless in making program tradeoffs or evaluating proposed alternates.

The IGCE serves as NRC's basis for funding the SOW requirement and must include all known and reasonably anticipated costs.

### 3.3.12 Requirement Development:

When developing a requirement, it is important that the COR identify as many costs as possible necessary to perform each deliverable and reflect them in the IGCE.

- Preparation of an estimate of costs to perform the effort is a responsibility of the COR, with support from other technical experts, budget and DC contracting personnel.
- The level of documentation required is dependent on the complexity and dollar value of the procurement.
- Estimated costs must be computed for each service or output based on available data (including historical information). These costs are used in preparing the government estimate, evaluating proposals, and determining positive and negative performance incentives.
- For commercial services, the marketplace should provide a sufficient baseline for cost estimating. In the development of independent government estimates, NRC should include consideration of commercial costs of performing work in the private sector.
- Cost estimates (labor hours, material costs, software requirements, training, etc.) developed by the COR should be reviewed by anyone who has contributed to the tasks in the SOW. Such reviews will permit early trade-off consideration on the desirability of NRC requirements that are not directly related to technical objectives.
- These estimates will also be used to assist technical and cost evaluators in determining if proposal costs and cost elements are realistic.

### 3.3.13 Information Integrity:

Using cost/price data from a single contractor or source, without scrutiny may devalue the relevancy of your IGCE as a useful and meaningful tool during contract negotiations. If competition is limited to one or several sources, the IGCE must be without bias and dependence on any one particular vendor(s).

A carefully prepared IGCE may be used by the contracting officer in determining a fair and reasonable price and when necessary a “cost realism analysis”.



#### 3.3.14 Source Selection Information:

IGCEs are considered to be source selection information and should be appropriately marked **“SOURCE SELECTION INFORMATION – SEE FAR 3.104”**.

## EVALUATION FACTORS

The following are helpful hints intended to aid the COR in developing and utilizing evaluation information:

### Technical Evaluation Criteria/Factors

- Indicate relative importance of technical factors when compared to one another (e.g., approximately equally important; listed in descending order of importance), and indicate importance of technical factors, when combined, vs. cost/price (significantly more important than cost/price; approximately equally important to cost/price)
- Technical criteria should be limited to those that provide the best discriminators or measures of a good contractor. Factors that cannot be measured or are not likely to distinguish one contractor from another should not be used. As an example, evaluating communication skills of key personnel may not be the best factor to use in evaluating the ability and credentials of contractor staff.
- Evaluation criteria must be explicit and clear of any ambiguities. This will reduce: a) the number of questions raised by potential offerors, b) the need for RFP/RFQ amendments, c) the chance of proposal evaluation errors; and d) the overall risk of a GAO bid protest.
- When developing and defining evaluation factors, keep the process as simplified as possible. Technical evaluation criteria should not be lengthy, wordy or overly reliant on technical jargon that could be misunderstood or misinterpreted. Factors should be limited to four or five that provide the best discriminators. The use of sub-factors should also be limited to the extent possible.
- Limit information, to the extent possible, requested of offerors in the section of the solicitation that provides proposal submission instructions (Section L in RFPs) because everything the Government requests must be reviewed and evaluated (i.e., implementation plans, resumes, and other attachments)

- Cost/price must be a factor, and must be evaluated separately from other factors

**Illustrative Examples of Non-Price Evaluation Factors include:**

- Past performance  
*(required for any procurement over the Simplified Acquisition Threshold amount of \$150,000)*
- Understanding of NRC's requirement
- Technical approach to performing the work
- Experience in performing similar [relevant] work
- Qualifications of technical personnel or key personnel
- Quality and suitability of the facilities to be used for performing the work
- Management capabilities
- Organization for the proposed work
- Scheduling and delivery-related controls
- Subcontracting
- Make-or-buy plans
- Environmental and energy objectives, including consideration for environmentally preferred or energy savings products
- Quality control programs and plans

As an example, a Quality Control Plan (QCP) may be required by an offeror (contractor) informing the Government how it will ensure acceptable quality and performance under the contract

## SECTION VI., PART F

### CONTRACTOR SECURITY ACCESS

In accordance with Management Directives (MD) 11.1 and 12.3, CORs are required to complete NRC Form 187, "Contract Security and/or Classification Requirements" and submit to the Division of Facilities and Security (DFS), if contract will involve:

- unescorted access to nuclear power facilities,
- access to SGI,
- access to NRC IT systems or sensitive information, or
- building access

The COR prepares Form 187 and submits to the office director (or designee), and includes signed form as part of requisition submitted to the Division of Contracts.

Specifically, the COR must indicate on Form 187 which of the following security access types is required during contract performance:

1. Access to Foreign Intelligence Information
2. Receipt, Storage or Other Safeguarding of Classified Matter
3. Generation of Classified Material
4. Access to Cryptographic Material or Other Classified COMSEC Information
5. Access to Classified Matter or Classified Information Processed by Another Agency
6. Classified Use of an Information Technology Processing System
7. Other

In addition, the COR must indicate whether a facility clearance is required, and select the appropriate security access requirement(s):

1. Unescorted Access is Required to Protected and Vital Areas of Nuclear Power Plants
2. Access is Required to Unclassified Safeguards Information
3. Access is Required to Sensitive IT Systems and Data
4. Unescorted Access to NRC Headquarters Building

## SECTION VI., PART G

### CONTRACT FUNDING

It is important that CORs understand key appropriation concepts including the “bona fide needs rule”, which is the bedrock of appropriations law, and the differences between “severable” and “non-severable” services.

In general:

In a **fully funded contract**, funds are obligated to cover the price of a fixed-price contract or the estimated cost and any fee of a cost-reimbursement contract.

An **incrementally funded contract** can be provided for progress payments based on costs and payments under cost reimbursement contracts. If incremental funding is considered for a requirement, the Contracting Officer will provide additional guidance.

Incremental funding **allows severable** cost-reimbursement type contracts awarded for more than one year to be funded from succeeding fiscal years’ appropriations.

A contract funded by annual appropriations may not cross fiscal years with the exceptions of:

- Contracts calling for end products (non-severable) that cannot feasibly be subdivided for separate performance in each fiscal year, or
- Basic contracts, options, or orders for “severable” services for a period that begins in one fiscal year and ends in the next, for a period of performance not exceeding 12 months.

#### ***The Bona Fide Needs Rule and Severability of Services.***

The Bona Fide Needs Rule is one of the fundamental principles of federal appropriations law. Simply stated, a “fiscal year appropriation may be obligated only to meet a legitimate, or bona fide, need arising in, or in some cases arising prior to, but continuing to exist in, the fiscal year for which the appropriation was made.” The general rule is that services acquired by contract generally are chargeable to the appropriation current at the time the services are rendered. However, the Comptroller General has held that the question of whether to charge the appropriation current on the date the contract is executed, or to charge funds current at the time the services are performed, depends upon whether the services are severable or entire (i.e., non-severable).

The Government Accountability Office (GAO) considers services to be “**non-severable**” when they constitute an entire job or single undertaking with a defined end-product that cannot feasibly be subdivided for separate performance in each fiscal year.

GAO’s Principles of Federal Appropriations Law presents a contract to conduct a study and prepare a final report as an example of non-severable services and concludes that non-severable services must be funded entirely out of the appropriation current at the time of award, notwithstanding that performance may extend into future fiscal years. Following that logic, GAO has further determined that contracts for non-severable services cannot be incrementally funded.

Severable services are continuing and recurring in nature (e.g., systems development support provided on a level-of-effort basis). “**Severable**” means tasks can be separated into components that independently meet a separate and ongoing need of the Government. When the need for a discrete portion of the services arises in a subsequent fiscal year, that portion is considered severable and chargeable to appropriations available in the subsequent fiscal year. A notable exception to this general rule was authorized when Congress passed the Federal Acquisition Streamlining Act (FASA) in 1994, which gave agencies greater flexibility in their use of fiscal year appropriations. As a result, agencies may enter into a contract for severable services beginning in one fiscal year and ending in the next fiscal year and fully fund the contract from the initial year’s appropriation, provided that the period of the contract awarded, option exercised, or order placed does not exceed 1 year.

While services may be classified as either severable or non-severable, it is possible for a single contract to contain a significant portion of both types. In such cases, they must be structured as separate contract line items and funded in accordance with appropriations law. However, in a situation where the contract requirement is primarily for one type of service (e.g., non-severable), but contains incidental services of the second type (e.g., severable) that cannot be feasibly separated, the contract should be managed and funded consistent with its core services. Consider, for example, a 24-month contract for a non-severable research project that includes a requirement for ongoing analysis of drug compounds as a minor component. There is no need to artificially separate the severable drug analysis activity from the core contract requirement for non-severable research services. This contract would most appropriately be considered and managed as a contract for non-severable services given that the severable component is incidental to the contract’s primary purpose.

## SECTION VII.

### PERFORMANCE-BASED ACQUISITION (PBA)

*The terms “Performance-based Acquisition” and “Performance-based Contracting” are used interchangeably throughout this Guidebook.*

CORs are encouraged to utilize Performance-Based Acquisition (PBA) methods and techniques in developing results-based Statements of Work (SOW) or Performance Work Statements (PWC) to meet NRC requirements.

The Federal Acquisition Regulation (FAR) requires that all contracts be considered for PBA and focus on outcomes or results and not methods of performance or processes. PBA methods help reduce risk by using performance-based specifications and standards. In exchange, the contractor is compensated and rewarded, as appropriate, for providing the required product or service, assuming the risk for meeting performance requirements, and seeking innovations to control or reduce costs and efficiently and effectively achieve performance objectives. Contractors are given wide latitude for determining methods of performance, with more responsibility for performance quality. The use of PBA should lead to more cost-effective acquisitions and better value and savings to the NRC.

Performance-based contracting represents a method wherein the NRC can systematically document its needs and enhance its ability to acquire those goods or services. PBA maximizes contractor control of work processes and allows for innovation in approaching various work requirements. PBA emphasizes performance that can be contractually defined so that the results of the contractor's effort can be measured in terms of technical and quality achievement, schedule progress, or cost performance. PBA is an inter-disciplinary process requiring a team-oriented approach throughout, with input from the technical (requirement) office, budget, finance, Division of Contracts, and other offices. Without a coordinated approach, PBA is unlikely to yield maximum results for the Agency.

#### **The goal of PBA is to:**

- a. save money by reducing contract costs by eliminating unnecessary effort, through innovation by the contractor, and also by reducing NRC surveillance;

- b. enable NRC to shift its emphasis and resources from processes to outputs and results;
- c. hold contractors accountable for meeting contractual requirements and end results; and
- d. ensure that contractors are given the freedom to determine how to meet NRC's performance objectives.

**Key aspects of the PBA process include:**

- a. emphasizing contract performance requirements that can be measured;
- b. including clear work requirements and performance standards;
- c. providing positive financial incentives to reward good performance and negative financial incentives for poor or unacceptable performance;
- d. determining appropriate contract type in accordance with anticipated risk;
- e. performing contract surveillance for key areas of contractor performance, only;
- f. reducing barriers to competition, including those with small business;
- g. giving contractors ample latitude to develop effective solutions to problems;
- h. encouraging contractor ingenuity and innovation to achieve cost savings and other efficiencies; and
- i. conservation of resources.

**Reference websites:**

**(FAR Subpart 37.6—Performance-Based Acquisition)**

[https://www.acquisition.gov/far/current/html/Subpart%2037\\_6.html#wp1074195](https://www.acquisition.gov/far/current/html/Subpart%2037_6.html#wp1074195)

**("Performance standard", as defined by OMB.)**

[http://www.whitehouse.gov/omb/circulars\\_a119](http://www.whitehouse.gov/omb/circulars_a119)



## SECTION VII., PART A

### PERFORMANCE WORK STATEMENTS (PWS)

CORs are encouraged to develop Performance Work Statements (PWS) to reflect NRC needs.

This information serves as general guidance to NRC CORs in developing a PWS that focuses on results.

According to 48 CFR 2.101, a PWS means ***“a statement of work for performance-based acquisitions that describes the required results in clear, specific and objective terms with measurable outcomes.”***

Federal Acquisition Regulation (FAR) Subpart 37.6 delineates the requirements for performance-based acquisitions. The FAR requires that PBA methods be used to the *maximum extent practicable*. The use of PWS is the preferred method of stating needs or requirements in the Federal Government. A PWS describes the needs or results that the Government is trying to achieve, and gives prospective offerors (contractors) wide latitude in proposing unique or innovative solutions to meet the Government’s needs.

A Performance Work Statement (PWS) may be prepared by the Government or result from a Statement of Objectives (SOO) prepared by the Government where the offeror proposes the PWS.

A PWS organizes all aspects of an acquisition around the purpose of the work or major objectives to be performed and does not dictate how the work is to be accomplished. It is written to ensure that contractors/vendors are given the freedom and leverage to determine how to meet NRC’s performance objectives, and provides for compensation only when the contractor’s results meet or exceed the stated contract objectives or specified products and services.

Requirements are expressed in terms of ***minimum acceptable performance standards*** and places maximum responsibility for performance and risk on the contractor. A PWS is used to identify and describe products or services needed to be procured by the NRC, with measurable performance standards and financial incentives. In accordance with the FAR, performance standards (i.e., in terms of quality, timeliness, quantity, etc.) establish the performance level required by the Government to meet the contract requirements.

Since the requiring activity (technical office) has the technical expertise, it is responsible for developing the PWS, and should coordinate with other offices including the Division of Contracts (DC). Having more than one functional area involved will help to guard against a solicitation that lacks critical elements of PWS and limits or precludes competition. The PWS should be drafted as soon as the need is identified, as practical, and revised during the acquisition process, as necessary, particularly after conducting market research.

A performance specification also requires results, with criteria for verifying compliance without stating methods for achieving the required results.

The PWS should be a stand-alone document, with minimal references to regulatory or other guidance. Only mandatory requirements should be referenced.

Performance-based contracting means structuring all aspects of an acquisition around the purpose of the work to be performed as opposed to the manner by which it is to be performed. A PWS for services describes tasks to be performed in terms of required outcomes or expected results. A PWS for equipment, as an example, should describe the equipment in terms of the function that it must perform, rather than the components or atheistic features of the equipment.

A PWS must be accurate, complete and thorough to enable a contractor to perform the required work without significant NRC direction or intervention during contract administration. When preparing a PWS, the language used should be clear and free of confusing Government terminology or speak and written in plain English. The words, acronyms, and abbreviations need to be clearly articulated and well understood by offerors and the Government, alike, and only one interpretation should exist. Simple words, phrases, and sentences are used for clarity. Well-understood words and phrases improve the PWS by minimizing ambiguities. Be concise, precise, and consistent. Careful and exact descriptions will avoid misunderstandings before and during the life of a contract. Keep sentences short and to the point. To reduce the possibility of misinterpretation, terminology must be consistent. The same words and phrases must be used when describing the same requirement. A PBS must use directive language, such as “the contractor shall ...” rather than “the contractor may” so there is no question about what the contractor is expected to do. The PBS must inform the contractor what it is required to do and not how the work is to be accomplished.

When drafting a PWS, the COR should be specific enough that a prospective contractor can identify the resources necessary to do the job. Include measurable performance standards so NRC can later assess the contractor's progress in meeting stated objectives. Performance standards used in a PWS are those standards to which the contractor is held accountable and must be met before the product or service can be accepted by the NRC. COR's must ensure that performance standards are appropriate, realistic and achievable, by the contractor.

Performance-based acquisitions include incentives that typically provided for additional financial payments made (funded at time of award) to reward the contractor for good performance or time added to the performance period of the contract if the performance exceeds the performance standards set forth in the PWS. Negative incentives could represent a decrease in the amount paid to the contractor and may result in an increase in the level or type of surveillance employed by the NRC to minimize risk (i.e., additional reporting requirements or performance metrics).

If delivery dates are critical, the COR should consider including positive incentives for early delivery and negative incentives for late delivery. Negative incentives in this case could be reduced fee or profit, or even liquidated damages, as appropriate.

For supplies, describe the NRC's minimum need, which in most cases will be the minimum that the Agency can accept. Do not describe a requirement which is written around the supplies or services of a particular company, including brand name, as this would unnecessarily limit competition and gives an unfair competitive advantage to a particular company. If any documents are referenced in the PWS, make sure they are properly cited, conform to the requirements of the work description, and either have them included in the solicitation or let the offerors know where to obtain them (i.e., website).

### **Deliverables:**

The PWS describes, at the highest practicable level, what the end product must do (performance) and any critical constraints (e.g., size, weight). It eliminates process-oriented (how to) requirements and includes only minimally essential reporting requirements. The contract requirements and incentives (positive and negative) are clearly communicated in the solicitation. Actual demonstrated performance of the end item is normally one of the measures or the only measure in the contract.

Provide a realistic delivery schedule for contract performance and completion. Schedules that are unnecessarily short or difficult to attain tend to restrict competition

and result in higher contract prices. Provide sufficient information for the contractor to establish its own milestones against which its progress can be measured. Be sure this section is consistent with the rest of the solicitation. Also, clearly state which party will perform each task in the PWS by delineating a division of responsibilities between NRC, the contractor, and other key stakeholders.

**Contractor Incentives:** *(positive and negative)*

The FAR requires that the Government, to the maximum extent practicable, include financial incentives (positive and negative) to encourage acceptable performance and foster innovation, cost effectiveness and creativity.

Incentives should be used when they will result in better quality performance and may be either positive, negative, or a combination of both. They should be applied selectively to motivate contractor efforts that might not otherwise be emphasized, and to discourage inefficiency and waste. Incentives should apply to the most important aspects of the work, rather than every individual task, and incentives should correlate with results.

Incentives are especially useful in efforts that are complex, have a high-dollar value, or have a history of performance or cost overrun problems. Where negative incentives are used, the deduction should represent as close as possible the value of the service lost.

**Government Furnished Property:**

FAR 45.3 – “Authorizing the Use and Rental of Government Property” - Providing equipment to contractors on-site must be done sparingly since the contractor will be dependent upon the Government for care and maintenance. This dependence may hinder the ability of contractors to be fully accountable.

<https://www.acquisition.gov/far/current/html/Subpart%2045.3.html#wp1024534>

**PWS Guidelines:**

- The contract will be a completion contract (something that is accomplished) as opposed to a term or level-of-effort contract.
- A PWS describes the work broadly by form, fit, and function instead of using detailed drawings, specifications, and standards. FAR 11.002 stipulates that, to the maximum extent practicable, the Government must state its requirements in terms of:

- Functions to be performed,
- Performance required, or
- Essential physical characteristics.

*Note: The PWS must include performance requirements that are measurable or quantifiable, and appropriate verification requirements (i.e., sampling methods).*

Without specifying how to perform the work, the PWS must clearly indicate the expected outcomes, outputs or results from the contractor such that contractor performance can be measured against the performance standards in the PWS. The definitions of standard performance, maximum positive and negative incentives, and the units of measurement will be established in the solicitation.

## **Advantages**

CORs are encouraged to work closely with the Division of Contracts (DC) to determine whether there is a need to release a draft SOW and/or solicitation documents for industry comment. The early release of a draft solicitation may result in the following advantages:

- permits early industry review and comment on complex Performance Work Statements
- promotes competition by not specifying an approach in manufacturing, design, or quality control to be used by the contractor, it permits a wide variety of contractor methods; thereby potentially increasing the number of contractors who can satisfy the requirement and increasing the number of possible solutions
- takes advantage of marketplace innovation and competition and gives prospective offerors flexibility in responding to the NRC's requirements
- identifies whether there is small business interest
- encourages teaming among large and small businesses, as necessary
- encourages informal resolution of procurement concerns
- improves industry's understanding of NRC's requirements and evaluation criteria

- provides NRC with pertinent information regarding industry's concerns and willingness to accept the Government's terms and conditions, as set forth in the draft solicitation
- offerors are generally free to meet the requirements in any way they can, within the confines of the solicitation. This increases the NRC's access to commercial, state-of-the-art technology
- offerors can maximize their creative and innovative skills and utilize their valuable experience gained in the marketplace to arrive at acceptable methods and solutions to meet the Government's needs
- only necessary performance standards and measurement tools or techniques are selected that do not unduly burden contractor performance to avoid increased contract costs

**While writing Performance Work Statements, "avoid":**

- Performance specified at the subsystem or component level when it could be more appropriately specified at a higher level (e.g., the reliability of the system or vehicle should be specified instead of specific components with the system)
- Requirements that cannot be reasonably measurable or verifiable
- Statements that constrain the solution, thereby creating barriers to competition
- Requirements that are not linked to a specific performance objective in the PWS
- Requirements that are not appropriate for a given phase of the procurement (i.e., development or production)
- Requirements relying solely on directives to define performance
- Citing standards and processes when performance standards can be developed
- Citing mandatory standards without adequate justification or rationale

- Requirements that are vague (e.g., "in accordance with commercial practices" in lieu of citing a specific commercial standard)
- Over-defining the contractor's responsibilities in terms of methods, processes or procedures
- Requiring excessive reports or reporting requirements
- Requiring excessive testing that adversely affects contractor performance

**The following are basic elements typically included in a performance-based contract:**

### **Contract Elements**

- Description of supplies or services, or clear identification of the requirement;
- Deliverables/results;
- Performance standards;
- Acceptable error rate;
- Incentives (positive and negative) for identified critical performance requirements to motivate the contractor;
- Delivery Dates for deliverables and contract Period of Performance;
- Inspection and acceptance information;
- Packaging and marking requirements;
- Contractor's Quality Control Plan (QCP) (as an attachment to the contract);
- Place of delivery and Free on Board (f.o.b.) origin or destination; and
- Other information as necessary.

## WORK BREAKDOWN STRUCTURE (WBS)

CORs may utilize work breakdown structures to assist in the development of Performance Work Statements (PWS) for each contract or segment of new work.

A work breakdown structure (WBS) is generally a tool used to define and group a project's discrete work elements in a manner that organizes and defines the total Statement of Work (SOW)

A WBS is a diagram illustrating the key or essential contract deliverables and organizes the team's work into manageable sections. The WBS is also a tree structure, which shows a subdivision of effort required to achieve work (i.e., objective, deliverables or tasks). The WBS is essentially a map of what is to be produced and what major steps are necessary to achieve success.

**The role of the WBS is to:**

- **Separate the major contract deliverables into smaller tasks or components to improve the accuracy of cost estimates**
- **Provide a mechanism for collecting and organizing actual costs**
- **Provide a mechanism for performance measurement and control**

A work breakdown structure element may be a product, data, a service, or any combination. A WBS provides the necessary framework for detailed cost estimating and control along with providing guidance for schedule development and control. Additionally, the WBS is a dynamic tool that can be updated as necessary by the NRC COR to address changes in the Agency's requirement.

A WBS provides a common framework for the development of the overall planning and control of a contract, and is the basis for dividing work into definable parts from which the SOW can be developed and technical, schedule, cost, and labor hour reporting can be established.

A work breakdown structure permits accumulating costs for tasks, materials, etc., into their successively higher level "parent" contract deliverables. For each element of the WBS, a description of the task to be performed is provided.



The WBS is organized around the primary planned contract deliverables (i.e., performance) instead of the work needed to produce the products or services. Since the planned deliverables are the desired ends of the project, they form a relatively stable set of categories or elements in which the costs of the planned actions needed to achieve them can be collected and reported. A well-conceived WBS makes it easier to assign project activities to individual elements of the WBS. The element can be the overall project objective or the discrete contract deliverables necessary to achieve the objectives. The use of Contract Line Item Numbers (CLINs) may be useful by assigning each contract deliverable a number (0001, 0002, 0003, etc.) and each lower-tier deliverable a corresponding and similar numerical scheme (0001AA, 0001AB, 0001AC, etc.). The CLINs can be used in Statement of Work and contract budget to account for deliverables to track performance and the accumulation of costs against those outputs in the contract.

The WBS expresses the scope of a project in simple graphic terms (see sample attachments). It represents the project in terms of the hierarchy of deliverables it will produce. The WBS starts with a single box at the top which represents the whole project. The project is then divided into its components with lower level boxes.

CORs should **avoid** laying out too many deliverables and tasks. The WBS is a "to do", but not intended to be a "laundry list". It is easy to get caught up in the notion that a project plan should detail everything everyone is going to do on the project, but that is not the intent of a WBS, which focuses instead on higher level contract deliverables and major tasks under each deliverable.

- First, the laundry list approach leads to, and even encourages, micro-management of the people working on the project. The majority of your project team members will not thrive under micro-management. This style tends to encourage dependency on the COR rather than independence where people are held accountable for their results.
- Second, CORs tend to be more effective when they hold people accountable for reaching measured achievements rather than simply completing a list of tasks. When we base our assignments and monitoring on well conceived and measurable achievements, project members tend to stay focused on the desired end result and do not get lost in the everyday activities and lower level tasks.
- Third, the laundry list approach is hard to maintain. People have to report on many tasks which may decrease the probability of receiving accurate and timely reports and information. The COR has a great deal of work to do and must track status and enter data. Amid the pressure of on-going

multiple projects, tracking can fall behind and may even be dropped because the amount of effort is too large and becomes unmanageable.

Generally speaking, the majority of contract deliverables in a project plan should have significant durations relative to the contract's overall period of performance and/or bear significantly to the overall success of the project.

Weekly status reporting of hours worked, percentage of work completed, and an estimate of the hours of work remaining to complete the assignment can be useful information. This combination allows the COR to maintain good control while placing the responsibility for achievements and results on individual team members.

### **Using WBS When Developing a PWS**

When developing a PWS, it is also important to follow a methodical approach to identifying NRC requires.

A WBS is used to identify all levels of work associated with achieving desired outcomes or results. The WBS is refined until a project is completed, the WBS serves as a flexible working tool for the life of the acquisition.

One method to accomplish this analysis is a tree diagram. It is a chart that divides a job into parts and subparts, each of which contributes to a final result or output, and demonstrates its relationship to the others.

Identifying all outputs from tasks and subtasks required of the contractor is important. Failure to do so will result in incomplete or ambiguous contractual requirements that may be difficult to enforce or lead to contractor misinterpretation and inadequate performance.

- a. It includes all effort required to achieve an end objective (i.e., product or service). It encompasses total project requirements by relating the elements of work to each other and to the end product. A WBS, which describes inputs, covers both NRC and contractor-related efforts.
- b. It is developed by displaying and defining the total effort to be performed in identifiable and measurable elements. A WBS element can represent varying levels of individual jobs or tasks, and no task should be overlooked.
- c. It provides the framework for planning and control and also for making decisions conducive to effective use of contractor support.
- d. It provides a means for integrating and assessing technical, schedule, and cost.

- e. It provides a framework for performance measurement.
- f. It provides all quality control requirements, as well as definition of the type and extent of control to be exercised on subcontracts.
- g. It provides information on the degree to which NRC quality surveillance is required.
- h. All element descriptions of jobs, tasks and sub-tasks are concise and clearly understood.

### **Common Terminology:**

- Level of Effort: Level of Effort (LOE) is how much work is required to complete a task.
- WBS Code: A unique identifier or number assigned to each element in a Work Breakdown Structure for the purpose of designating the elements hierarchical location within the WBS.
- Work Package: A Work Package is a deliverable or work component at the lowest level of its WBS branch.
- WBS Component: A component of a WBS which is located at any level. It can be a Work Package or a WBS Element as there's no restriction on what a WBS Component is.
- WBS Element: A WBS Element is a single WBS component and its associated attributes located anywhere within a WBS. A WBS Element can contain work, or it can contain other WBS Elements or Work Packages.

### **Website References:** (WBS sample templates)

<http://www.netmba.com/operations/project/wbs/>

<http://pma.doit.wisc.edu/plan/2-1/tools.html>

<http://www.bing.com/images/search?q=work+breakdown+structure+template&qvpt=work+breakdown+structure+template&FORM=IGRE>

## SECTION VII., PART C

### QUALITY ASSURANCE SURVEILLANCE PLAN (QASP)

CORs are required to develop Quality Assurance Surveillance Plans (QASP) to accompany performance work statements, to assist in contract monitoring.

In accordance with Federal Acquisition Regulations (FAR) 46.401: “Government contract quality assurance shall be performed at such times (including any stage of manufacture or performance of services) and places (including subcontractors’ plants) as may be necessary to determine that the supplies or services conform to contract requirements. Quality assurance surveillance plans should be prepared in conjunction with the preparation of the statement of work.”

Quality Assurance Surveillance Plan (QASP) is generally developed by the requiring activity (program or technical office) and defines what the NRC will do to ensure the contractor has performed in accordance with the Performance Work Statement’s performance standards. The Agency drafts a QASP to monitor contractor performance and to determine whether incentives/disincentives apply to critical performance requirements. The QASP is included in the contract file, but not attached to the contract, unlike the contractor’s Quality Control Plan (QCP) which is affixed to the contract.

A QASP is required when developing a performance-based acquisition, in order to document and plan the required surveillance of the contractor’s performance by the Government. The plan can be simple or complex but must specify what the performance outputs or results of the PWS, and describe the methodology to conduct the inspections (i.e., random sampling). This saves time and resources because the COR is not monitoring the everyday, routine aspects of the contractor’s activities; rather the COR is focusing on the major outputs and results of the contract.

Development of a plan is important since it provides a systematic structured method for the COR to evaluate contractor goods and services furnished to the NRC. The QASP should focus on the quality of the product delivered by the contractor and not on the steps taken or procedures used to provide that product. It includes appropriate use of

pre-planned inspections, validation of complaints (i.e., customer questionnaires) and random unscheduled inspections.

The QASP is needed to ensure that NRC receives the quality of services called for under the contract and the contractor is compensated only for an acceptable level of service. It can range from a one-time inspection of a product or service to periodic inspections of an on-going product delivery or service. A quality surveillance plan includes a schedule and surveillance methods to be used by the COR in determining the quality, quantity and timeliness of the performance outputs or results to be delivered or performed by the contractor. Selecting the appropriate surveillance methods is important.

CORs should consider:

- a. all requiring surveillance (particularly those tasks critical to the achievement of objectives);
- b. the surveillance period;
- c. surveillance and inspection methods (should be reasonable and practical);
- d. place of inspection (at source or destination);
- e. the performance requirements and standards;
- f. error rate;
- g. the need to inspect subcontractors' deliverables (see FAR 46.405); and
- h. the availability and time constraints of the person(s) inspecting performance on behalf of the Government.

Examples of surveillance are: 100% inspection, random sampling, periodic inspection, testing, input from users of the service, etc. The surveillance methods should be reviewed with the contractor to make sure the methods are well understood and do not unreasonably impede the contractor's performance. A detailed discussion could be held during the Government's post-award conference with the contractor.

If the contractor's performance is deficient, the COR must contact the Contracting Officer immediately. The Contracting Officer will notify the contractor of the alleged deficiency and seek necessary recourse to ensure compliance with the contract.

## SECTION VIII.

### TECHNICAL EVALUATION PROCESS

The COR is responsible for assisting the Contracting Officer with the evaluation of offeror (contractor) technical proposals, by performing the following delegated tasks:

The COR must ensure that:

- Technical evaluation rating sheets are in conformance with evaluation factors for award and quotation/proposal submission instructions set forth in the solicitation, including any solicitation amendments.
- Quotation/proposal rating system (preferably adjectives) listed in the solicitation are applied precisely and consistently by all evaluators against each quotation/proposal.
- Individual rating sheets and consensus rating sheets are supported by detailed narrative explanations rather than incomplete sentences or fragmented thoughts.
- Rating sheets are divided by each criterion with narrative detailing, as applicable: (a) strengths, (b) weaknesses, (c) significant weaknesses, (d) deficiencies, and (e) clarifications.
- SEP rating documentation represents a consensus of the voting SEP members and incorporate original and revised ratings.

The purpose of establishing a SEP is to ensure efficient expenditure of funds, maximize competition, minimize the complexity of the acquisition, ensure impartiality and ensure the selection of the best offeror.

- When evaluating proposals, panel members should: be unbiased and impartial, evaluate against RFP evaluation factors only, maintain procurement integrity; document comments and questions for offerors; provide input to the Competitive Range Determination and Final Source Selection Decision and report.

- All source selection sensitive or proprietary data should be marked and protected accordingly.
- NOTE: **Do not** compare proposals with each other under any circumstances. The only exception to this rule is if the Contracting Officer requests assistance from evaluators while conducting a cost realism analysis. The cost realism process occurs after technical proposals have been rated and ranked.

### **Proposal Evaluation Tips**

- Strictly follow the evaluation criteria and instruction in your solicitation.
- Do not evaluate what you did not request in your solicitation.
- Do not request information you do not intend to evaluate.
- Provide complete sentences with detailed rationale in your evaluation rating sheets, not simple one word adjectives responses such as “good” or “bad.”
- The narrative assessment contained in the evaluation rating sheets is one of the most important elements in the evaluation record, and must be defensible.
- The preference at the NRC is to use adjectival ratings in technical evaluations. However, if using numerical scores, avoid using formulas or averaging techniques which tend to complicate the process.
- Assume absolutely nothing.
- Evaluate each proposal based upon what is explicitly contained in the written proposal (or provided during oral presentations), and official information gathered from past performance references and databases (i.e., Past Performance Information Retrieval System (PPIRS)).
- Be consistent, accurate and fair (e.g., do not fault as a weakness a proposal for something while not faulting another proposal for the same thing).
- Avoid the appearance of personal bias or prejudice.



- Do not include unprofessional comments in your rating sheets or summary memoranda, particularly vivid descriptions about how bad you might perceive an offeror's proposal in response to solicitation requirements.
- The SEP needs to maintain strict records and security, and ensure that proposals and the evaluation record (rating sheets, memos, etc.) are not readily accessible nor viewed by unauthorized persons without a need-to-know the information.
- Include a technical tradeoff analysis where recommending a higher priced proposal for award.

### **Final Evaluation Recommendation Report (FERR)**

Upon completion of the evaluation of offerors' technical proposals, a Final Evaluation Recommendation Report is generated and submitted by the Chair of the SEP to the Contracting Officer. This report details the consensus findings of the SEP and includes rankings, ratings, and a recommendation for award, based on the technical merits of proposals. The report should document the overall strengths, weaknesses, significant weaknesses and any deficiencies, as derived from the composite panel member score sheets. Also, it is important to annotate the need for clarifications of any technical responses.

This report is critical in determining whether the NRC should engage in discussions with offerors. If the decision is made to conduct discussions, then information contained in the SEP report would be used in the development of the CO's Competitive Range Determination.

## CONTRACT TYPES

### Type of Contract (FAR Part 16)

There is a wide selection of contract types available to NRC in order to provide needed flexibility in acquiring required supplies or services.

Contract types vary according to:

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

Contract types are grouped into two broad categories:

- Fixed-price contracts
- Cost-reimbursement contracts

The specific contract types range from firm-fixed price, in which the contractor has full responsibility for performance and resulting profit (or loss), to cost-plus-fixed-fee, in which the contractor has minimal responsibility for performance and the negotiated fee (profit) is fixed. In between are various incentive contracts in which the contractor's responsibility for performance and profit or fee incentives offered are tailored to the uncertainties involved in contract performance.

### Fixed-Price Contracts

Fixed-price types of contracts provide for a firm price, or, an adjustable price. Fixed-price contracts providing for an adjustable price may include a ceiling price, a target price (including target cost), or both. Unless otherwise specified in the contract, the ceiling price or target price is subject to adjustment or the revision of the contract price under stated circumstances. A firm-fixed-priced contract provides for a price that is not subject to any adjustment on the basis of the contractor's cost experience in performing the contract, so the contractor has the potential to make or lose money. This contract type places maximum risk on the contractor and full responsibility for all costs and resulting profit or loss. It

provides maximum incentive for the contractor to control costs and perform effectively while imposing a minimum administrative burden on the Government.

### **Cost Reimbursement Contracts**

Cost-reimbursement type contracts provide for payment of allowable incurred costs, to the extent prescribed in the contract. The contracts establish an estimate of total cost for the purpose of obligating funds and establishing a ceiling that the contractor may not exceed without the approval of the Contracting Officer. Cost-reimbursement contracts are suitable for use only when uncertainties involved in contract performance do not permit costs to be estimated with sufficient accuracy to use any type of fixed price contract.

**Reference website for detailed information about fixed-price or cost-reimbursement contracts:**

<https://www.acquisition.gov/far/current/html/FARTOCP16.html#wp226194>

## CONTRACT LINE ITEM NUMBERS (CLIN)

Contract Line Item Numbers (CLIN) may be used, as authorized in Federal Acquisition Regulation (FAR) 4.10, in government solicitations and resultant contracts to more clearly identify and separate goods or services.

If using contract line items for budgeting purposes, each CLIN should provide a unit price or lump sum price for each contract deliverable or set of deliverables, with supporting cost estimates, delivery schedules and funding appropriation data. CLINs can be very useful in identifying, organizing and tracking work requirements throughout the project life cycle. Also, budgeting tasks individually allows the NRC to assess and track costs by tasks during contract administration.

Contract line item numbers are commonly used for fixed-price or fixed-unit price contracts for supplies or services. However, CLINs may also be used for technical services under cost-reimbursement contracts where distinct contract deliverables or results can be clearly identified and defined.

### General Characteristics:

Contract line item numbers generally have four major characteristics -

1. Single unit price. The product or service has a single unit price or a single total price.
2. Separately identifiable. A contract line item is identified separately from other products or services on the contract.
3. Separate delivery schedule. Each contract line item for a product or service has its own delivery schedule, period of performance, or completion date expressly stated in the contract.
4. Single accounting code. Each contract line item has its own designated appropriations data and accounting code for payment and tracking.

## Numbering Process

### Primary CLINs

1. Contract line items consist of four numeric digits **0001 through 9999**. Within a given contract, the item numbers shall be sequential but need not be consecutive.
2. The contract line item number in the contract should match the solicitation line item number.
3. Once a contract line item number has been assigned, it may not be assigned to another, different, contract line item in the same contract.

### Optional CLINs

For optional CLINS, the option item shall be identified with a numeric digit as the first digit. For example, CLIN 1001 represents first Option Item/Period, CLIN 2001 represents the second Option Item/Period, CLIN 3001 represents the third Option Item/Period, etc.

#### Example:

ITEM NO.	SUPPLIES/SERVICE	QUANTITY	UNIT	UNIT PRICE	AMOUNT	ACCOUNTING DATA
0001	Automobile spare parts	1	EA	\$23,500.00	\$23,500.00	B&R No. _____ Job Code _____ BOC _____ Appropriation No. _____
0002	Automobile engine parts	1	EA	\$4,880.00	\$4,880.00	B&R No. _____ Job Code _____ BOC _____ Appropriation No. _____
0003	Automobile Engines	5	EA	\$5,000.00	\$25,000.00	B&R No. _____ Job Code _____ BOC _____ Appropriation No. _____

### Contract subline items

Contract subline items provide flexibility to further identify elements within a contract line item for tracking performance or simplifying administration.

*Separately identified subline items.*

1. Subline items will be used instead of contract line items to facilitate payment, delivery tracking, use of multiple accounting codes for deliveries, or other management purposes, such as reporting.
2. Each separately identified contract subline item should have its own:
  - a. Delivery schedule;
  - b. Period of performance or completion date; and
  - c. Dollar amount.

*Separately identified subline items.* Use alpha characters only for separately identified subline items, running **AA through ZZ**. For example, if the contract line item number is 0001, the first three subline items would be **0001AA, 0001AB, and 0001AC**. Use all 24 available alpha characters in the second position before selecting a different alpha character for the first position. For example, AA, AB, AC, through AZ before beginning BA, BB, and BC.

If a contract line item involves ancillary functions, like packaging and handling, transportation, payment of state or local taxes, or use of reusable containers, and these functions are normally performed by the contractor and the contractor is normally entitled to reimbursement for performing these functions, do not establish a separate subline item solely to account for these functions. However, do identify the functions in the contract schedule. If offeror separately prices these functions, then contracting officers may establish separate subline items for the functions.

**Example:**

ITEM NO.	SUPPLIES/SERVICE	QUANTITY	UNIT	UNIT PRICE	AMOUNT	ACCOUNTING DATA
<b>0001</b>	<b>Automobile spare parts</b>					
0001AA	Grill	10	EA	\$750.00	\$7,500.00	B&R No. _____ Job Code _____ BOC _____ Appropriation No. _____
0001AB	Spoiler	20	EA	\$300.00	\$6,000.00	B&R No. _____ Job Code _____ BOC _____ Appropriation No. _____
0001AC	Bumper and components	10	EA	\$1,000.00	\$10,000.00	B&R No. _____ Job Code _____ BOC _____ Appropriation No. _____
<b>0002</b>	<b>Automobile engine parts</b>					
0002AA	Spark plugs	25	EA	\$10.00	\$250.00	B&R No. _____ Job Code _____ BOC _____ Appropriation No. _____
0002AB	Radiator cap	10	EA	\$13.00	\$130.00	B&R No. _____ Job Code _____ BOC _____ Appropriation No. _____
0002AC	Strut assembly	50	EA	\$90.00	\$4,500.00	B&R No. _____ Job Code _____ BOC _____ Appropriation No. _____

## SECTION XI.

### POST-AWARD KICKOFF MEETINGS

The COR is responsible for assisting the Contracting Officer with the planning and execution of Post-Award Orientation Kickoff Meetings, by performing the following delegated tasks:

#### **Purpose**

Following the award of a contract and before the contractor initiates the implementation of a project, there should be a discussion to ensure that all parties involved have a common understanding of the goals and expected results, as defined in the contract. There should also be a consensus about the performance requirements and administrative procedures that must be followed in accordance with contract terms and conditions. Depending upon the complexity of the contract, generally a contract valued at above the simplified acquisition threshold, this discussion may form the basis for a kickoff meeting.

A post-award orientation (kickoff) meeting is a critical element of the procurement process, because this is the meeting in which NRC team members meet with the contractor for the first time. It is a valuable opportunity to set the stage and tone for the duration of the contractual relationship.

This meeting is an excellent opportunity for NRC employees to share their vision and concerns, and listen to the contractor's plan for managing for results and achieving project success. NRC should take full advantage of this one-time opportunity to motivate the team, set reasonable expectations, and establish guidelines that will help the contractor complete the project on time and within budget. This meeting is intended to provide a venue for the contractor to clarify issues in the contract that may leave room for different interpretations and seek clarification regarding contractual requirements to avoid possible misunderstandings in the future.

This meeting is not an appropriate forum to discuss or make change to any of the contract's terms and conditions.

A well planned and structured kickoff meeting forms the basis for the successful implementation of a project. This is why it is imperative that the meeting be conducted



based on a predefined agenda and script, which should be distributed to all participants prior to the meeting to give them the ability to properly prepare themselves.

The kickoff meeting agenda therefore becomes one of the first procurement planning documents to be shared and discussed among the parties. The meeting agenda provides an outline of what will occur during the kickoff meeting and is intended to establish clear roles and responsibilities for the timely completion of contract deliverables and clarify crucial aspects of the project, as articulated in the Statement of Work (SOW) or Performance Work Statement (PWS).

### **Meeting Objectives**

An effective kickoff meeting:

- Aligns a team quickly with the objectives of a project to ensure that all work performed by the contractor is based on a common understanding.
- Creates team synergy around a common project goal or objective.
- Provides an initial understanding of how each team member fits into the larger effort.
- Ensures that any issues and misunderstandings regarding project objectives or tasks be addressed immediately.
- Ensures that the team commences work as soon as possible towards meeting contract requirements and deliverable dates.
- Leaves the contractor and NRC staff with a clear understanding of what is expected of all concerned parties.

### **Participants**

A successful and comprehensive kickoff meeting should include the COR, Contracting Officer, cognizant OGC attorney, physical and personnel security representatives from the Division of Facilities Security, and budget or finance officer, as appropriate. It is important that various functions of the Agency be present at this meeting to ensure that the contractor gets off to a good start and fully understands its responsibilities, especially concerning the completion of required security application forms.

## **Preparation**

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

- Provides an issues paper to brief Contracting Officer (CO) and Contracting Specialist (CS) on performance risk factors, prior to formal kickoff meeting
- Participates in a preliminary meeting with CO and CS
- Participates in the kickoff meeting
- Reviews the items documented during the kickoff meeting
- Completes assigned action items

### **Develop Issues Paper Submitted to CO/CS *(prior to kickoff meeting with contractor)***

The COR should identify and prioritize all performance issues with potential risk to the contractor or NRC. A Potential Risk Worksheet can help identify and plan for mitigating risk. Issues of greatest risk are those that impact cost, schedule, technical requirements, and resources.

The risks and possible mitigation steps should be discussed by the NRC team before meeting with the contractor.

## **Kickoff Meeting Agenda**

A kickoff meeting agenda is used to inform NRC and contractor participants about the topics to be covered, the schedule, and the general intent of the meeting. It is generally helpful to provide the contractor an advanced copy of the draft meeting agenda for comment. This allows the contractor sufficient time to review the meeting outline and determine if there is any supplemental information they would like to see addressed during the meeting.

This meeting can be used to build a sense of enthusiasm and excitement about the project and ensure that the project's objectives are consistent with those of the contractor.

When the parties depart the kickoff meeting, everyone on the project team must be on the same page and share common understandings.

The information below gives the most common contents included in such an agenda. It is noted that these contents are not exhaustive and issues may be added or removed according to the situation, in order to cover the unique requirements of the specific contract.

Send an advanced agenda package with all materials to each participant, including:

- Meeting time and date with location and call-in phone number
- Meeting agenda
- Project participants' contact information
- Draft work plan, if any
- Copy of executed award document

Ask each meeting participant to carefully review the materials carefully. Indicate that additional information will be discussed at the kickoff meeting and everyone should be familiar with the basic requirements of the contract and preliminary work plan. Explain that there will be a Q&A session at the meeting to answer any questions.

**Participate in Preliminary Meeting with CO/CS** *(prior to kickoff meeting with contractor)*

The COR should coordinate with the CO/CS for a preliminary meeting, including any other subject matter experts, who will interact with the contractor during contract performance. The COR presents the issues paper that focuses on potential contract risk factors. The COR may need to lead resolution of issues or prepare a technical assessment of the problem and potential impact on contract performance, if requested by the CO.

Review the project's work plan prior to the kickoff meeting and identify key points that NRC wants to raise at the meeting. Pertinent items include security application process, potential bottlenecks, priority of tasks, risk areas, cost containment, Agency approvals, etc. It is suggested that NRC staff coordinate ahead of a kickoff meeting to ensure that offices are operating from the same understanding and resolve any internal differences.

**Participate in the Post-Award Kickoff Meeting** *(with CO/CS, cognizant OGC attorney, physical and personnel security representatives from the Division of Facilities Security, and budget or finance officer, as appropriate)*

The CO usually chairs the kickoff meeting, but may defer to the COR. Any presentation that the COR makes must be consistent with the contract requirements. Discussions at the

meeting can establish procedures or processes to ensure compliance with contract terms, but the COR must be careful that these discussions, and any subsequent to this meeting, do not alter the terms and conditions of the contract.

Handouts are permitted at the kickoff meeting, but should be discussed prior to the meeting with the CO/CS. Some handouts are required, such as Department of Labor posters and notices regarding minimum wage compensation for blue collar jobs. The COR must ensure that any information provided at the meeting complies with the contract.

Discussion issues that cannot be resolved at the meeting must be recorded for future follow-up action.

### **Meeting Minutes**

At the end of the meeting, a representative from the Division of Contracts prepares the minutes of the meeting which become part of the contract file. Meeting minutes should be developed that contains all information necessary to document the events of the meeting for the contract file. Any omissions, deficiencies, or disagreements should be documented and submitted to the CO.

The minutes must reflect the following information:

- The names and affiliations of all participants
- Topics discussed
- The main discussion points and critical decisions made
- Disagreements
- Areas requiring resolution
- Participants assigned responsibility for specific action items with target completion dates

### **Complete Assigned Action Items**

The COR should resolve each action item or issue in a fair and expeditious manner. If a contract change is needed, the COR must clearly define the change and promptly submit a requisition to the CO.

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

Link:

</Libraries/DocumentDownloadHandler.ashx?LibraryDocumentID=968>

## SUBCONTRACTING CONSENT

The COR is responsible for assisting the Contracting Officer with providing consent to subcontracts, in accordance with Federal Acquisition Regulation (FAR) Part 44, and monitoring overall performance, by performing the following delegated tasks:

- **Assist and facilitate Contracting Officer consent of subcontracts**
  - **Monitor overall performance**
- 

➤ **Assist and Facilitate Contracting Officer Consent of Subcontracts**

FAR Part 44 contains subcontracting policies and procedures for administering Government contracts, including consent to subcontracts. The prime contractor and the Government have a direct legal relationship, but no such direct legal relationship exists between the Government and the contractor's subcontractors.

The prime contractor, not the Government, is responsible for administering subcontracts. Even in acquisitions where the contract specified that the Government has a right to review and approve subcontracts, no direct legal relationship between the Government and the subcontractor is established. Essentially, the Government does not have privity of contract with subcontracts and avoids involve in the contractors relationship with its subcontracts.

FAR 44.202 requires that the CO and COR consider the following when contemplating consent for a prime contractor to enter into subcontracts:

1. Is the decision to subcontract consistent with the contractor's approved make-or-buy program, if any?
2. Is the subcontract for special test equipment or facilities that are available from Government sources?
3. Is the selection of the particular supplies, equipment, or services technically justified?

4. Has the contractor complied with the prime contract requirements regarding small business subcontracting, including, if applicable, its plan for subcontracting with small, veteran-owned, service-disabled veteran-owned, HUBZone, small disadvantaged and women-owned small business concerns?
5. Was adequate price competition obtained or its absence properly justified?
6. Did the contractor adequately assess and dispose of subcontractors' alternate proposals, if offered?
7. Does the contractor have a sound basis for selecting and determining the responsibility of the particular subcontractor?
8. Has the contractor performed adequate cost or price analysis or price comparisons and obtained accurate, complete, and current cost or pricing data, including any required certifications?
9. Is the proposed subcontract type appropriate for the risks involved and consistent with current policy?
10. Has adequate consideration been obtained for any proposed subcontract that will involve the use of Government-furnished facilities?
11. Has the contractor adequately and reasonably translated prime contract technical requirements into subcontract requirements?
12. Does the prime contractor comply with applicable cost accounting standards for awarding the subcontract?
13. Is the proposed subcontractor on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs?

<https://www.acquisition.gov/far/current/html/Subpart%2044.2.html#wp1075007>

➤ **Monitor Overall Performance**

It is the prime contractor's (100%) responsibility to ensure the performance of its subcontractors. Therefore, the COR **cannot** instruct or provide technical guidance to individual subcontractors. However, if subcontractors contact the NRC and allege that they are not being paid or there are clear performance problems involving subcontractors or consultants, the COR must raise such matters directly with the prime contractor (not the subcontractors) for resolution, and promptly inform the CO.

## MONITORING CONTRACTOR PERFORMANCE

The COR is responsible for assisting the Contracting Officer with monitoring and documenting contractor performance, by performing the following delegated tasks:

- **Respond to requests from contractors in a timely manner to ensure the NRC is responsible in properly administering its contracts.**
  - **Monitor, record, report, and store contractor performance information.**
- 

➤ **Respond to Requests from Contractors in a Timely Manner to Ensure the NRC is Responsible in Properly Administering its Contracts**

The COR reviews, approves, or takes other actions on contractor requests based on the type and nature of the contractual requirements. Contract terms and conditions and the Federal Acquisition Regulation (FAR) help guide Agency responses to contractor requests.

The COR should consider:

- A contractor's legal right under the contract to request Government action.
- Government responsibilities.
- The impact for not complying with a request.

Contract terms or clauses generally specify if the contractor is required to:

- Respond to issues in writing.
- Respond within a pre-established timeframe.
- Notify other Government personnel or stakeholders.
- Stop work.

Depending on the contract, the COR will either:

- Respond within the timeframe set by the contract; or
- Forward any request outside the scope of delegated authority to the CO 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 or significantly impact the contractor's performance. An untimely Government response may have major consequences. The contractor may legitimately point to the Government's inability or refusal to act on its request as a reason for not meeting delivery or performance requirements. Knowing in advance when and what a contractor should be requesting helps the COR better monitor contractor performance.

The COR must identify:

- Contractual terms that allow and require contractor requests or approvals.
- Government requirement to respond to such requests.
- Contractor's obligation and Government responsibilities for responding and taking action.

➤ **Monitor, Record, Report and Store Contractor Performance Information**

CORs are routinely delegated monitoring functions for:

- Contractor technical and schedule compliance.
- Costs in cost-type contracts.
- Financial condition of a contractor.
- Statutory, regulatory and legal compliance with contract.

***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 contractor deficiencies or delinquencies.
- Reveal problems with quality and non-conformance with contract quality standards.
- Support contractor requests.
- Indicate the need for Government assistance or intervention.
- Warn of actual or anticipated default.

Technical compliance is monitored through various techniques such as site visits, testing (sampling), 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 PERT or GANTT charts.

Contracts for commercial items generally rely on a contractor's quality control system as a substitute for Government monitoring, inspection, and testing.

### ***Monitor Costs***

Various procedures and techniques can be used to monitor and verify appropriateness of costs. Under cost-reimbursement contracts, payments based on incurred costs for labor, materials, other direct costs, and 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 business in a competitive marketplace.
- 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.

<https://www.acquisition.gov/far/current/html/FARTOCP31.html#wp253693>

Cost monitoring techniques include:

- Relying on the contractor's approved financial system.
- Analyzing invoice support documentation to verify accuracy and completeness.
- Periodically analyzing data obtained from the contractor through periodic report.
- Review Government reports.
- Make site visits.
- Request cost-incurred audits with CO and OIG.

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.

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

Financial monitoring means detecting and acting on changes in a contractor's financial condition that have the potential for endangering contract performance.

The COR should be aware of:

- Any indication that the contractor is in financial trouble (i.e., articles or news clips from reputable news agencies),

- How financial difficulties had by the contractor could adversely affect the Government, and
- Possible proactive steps the Government could take to protect its interests (i.e., Stop Work Order, changes in schedule, scope changes, termination).

The Contracting Officer must be notified when conditions may warrant intervention by the Government. This may include changes that affect the contract's terms and conditions or result in alert notices pertaining to the award of new contracts with the contractor during periods of financial instability, where the Government may make a determination of nonresponsibility.

<https://www.acquisition.gov/far/current/html/Subpart%209.1.html#wp1084058>

### ***Monitor Statutory, Regulatory, and Legal Compliance with Contract***

The COR must notify the CO should there be any potential or actual noncompliance issues with federal statutes, laws or regulations. Only the CO can resolve noncompliance issues related to law or regulation.

Steps involved in monitoring statutory and regulatory requirements include:

- Identify contract requirements and clauses involving statutory or regulatory compliance, such as those involving:
  - Labor law (DoL wage determinations).
  - Equal Employment Opportunity (The Civil Rights Act of 1964)
  - The Privacy Act of 1974.
  - Drug-Free Workplace.
  - Hazardous or recovered material, safety, and environmental requirements. (Executive Orders 13423 and 13514)
  - 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 approved Small Business Subcontracting Plan.
- Continue actions as needed to enforce statutory compliance, and keep others informed.

## **Techniques Used for Monitoring**

Monitoring contractor performance should be guided by the contract requirements and terms. The COR may likely use a combination of monitoring methods, such as:

### ***Meetings***

Periodic meetings with the contractor allows the COR to obtain and provide pertinent information on contract status and issues. Meetings should focus on preventing or mitigating problems. The CO should be apprised of any issues that may result in contractor delays or nonperformance.

### ***Site Visits***

Periodic site visits with the contractor allow the COR to monitor work first-hand. Meetings held at the contractor's facility or office also provides an opportunity to identify and resolve issues before they escalate and harm contract performance.

### ***Telephone or Email Contact***

Telephone or email contact with the contractor is a convenient and cost effective way to check on contract progress and identify problems. The COR should document these communications and discuss any concerns with the CO.

### ***Contractor Status Reports***

Performance and financial reports, status reports, daily logs, and other monitoring reports are normally required in Government contracts. 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 must notify the CO in sufficient time to resolve any performance issues.

### ***Contact Other Government Officials***

CORs should report to the CO any communications between the contractor and other Government officials that might affect a contract's cost/price, schedule, quality, performance, or other requirements. This is important to ensure that a contractor does not perceive that information from another Government agency somehow changes its obligations under an NRC contract, without the express written approval of an NRC Contracting Officer.

## ***Review Tracking and Management Systems***

For some contracts, the COR may informally verify that 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 (EVMS). Higher dollar value contracts may require EVM data for cost and schedule. The COR should review this data to track actual work accomplished against contractor milestones established at the beginning of the contract period for cost and schedule.

## ***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 CO as notification of a problem, or to include as part of the contract file.

Examples of documentation related to monitoring contractor performance includes: memorandum to the file, trip report, reports, meeting minutes and miscellaneous correspondence.

## **Reports**

Reports are generally required as a means of evaluating the contractor's work progress and utilization of resources. They are usually divided between a Technical Progress Report and a Financial Status Report. The COR must ensure that the contractor complies with reporting provisions that are in the contract. The Government may require in the contract document that the contractor provide progress or administrative reports. It must be remembered, however, that the contractor will charge the Government for all reports.

The COR must read and understand the progress reports to identify and initiate steps to deal with any threats to performance that they may disclose. Failure to read progress reports negates their value. Failure to read them promptly can diminish or destroy their value. Failure to understand progress reports can also render them useless. If the wording is vague or unclear, The COR should ask the contractor to clarify what he or she means. The contractor may be trying to gloss over a problem. If the technical content lies outside the COR's expertise, he or she should seek help from Department personnel who have the necessary technical qualifications to understand what the report is saying.

It is also important to take steps from time to time to check and verify what the reports say especially if couched in general terms. The COR can ask for copies of drafts, texts, or designs prepared to date, or for other data that should be in existence if work is

proceeding according to plan. Cases have occurred in which lower level contractor personnel have intentionally or unintentionally misled their superiors, who signed out a progress report that indicated far more progress than had in fact been achieved.

### ***Technical Progress Reports***

The technical progress reports should include all relevant details to provide the COR with information on the progress of the work. Progress report compares actual to planned performance and indicates the progress made in accomplishing each contract task. The report should include relevant details for assessing the status of performance, i.e., a brief, factual summary description of the technical progress made. The report should not be unduly burdensome to prepare and may submit them in letterform. Technical progress reports may be submitted in letter form and may include the number and names of persons working on the project; the facilities devoted to the work; the number of workdays expended; the direction of the work; and the latest observations, problems encountered, predictions, plans for the next reporting period, and actions required by the Government, if any.

The necessity for writing and analyzing progress reports provides both the contractor and the COR with an opportunity to periodically evaluate the work in relation to contractual requirements. As the contract progresses, unforeseen technical difficulties may threaten on-time completion of the contract. The progress report should indicate the specific task that is not progressing according to plan; the reasons for the difficulty; specific recommendations for remedial action, and the resources that will be required.

### ***Financial Status Reports***

Financial status reports (often used in cost-reimbursement type contracts) provide a means of monitoring the contractor's expenditures and comparing costs incurred with technical progress. Significant differences between technical progress and the expenditure of resources often indicate problems in contract performance. The amount of detailed financial information needed depends on the type of contract, the nature of the work, and the method of payment. Financial reports are especially important on cost-reimbursement contracts for determining contractor progress.

The amount of detailed financial information required will vary, depending on the type of contract involved, the nature of the work or services being procured, and the method of payment. Under a cost reimbursement contract, the contractor is entitled to full and prompt payment for all incurred allowable costs, unless specified in the contract, pending completion of performance. Therefore, cost-reimbursement contracts require close monitoring by the COR so that the Government does not pay excess costs for the end product either because of a contractor's inefficiency (e.g., missed schedules, unacceptable reports), or as a result of unforeseen problems which, if promptly addressed, could have prevented excess costs.

## **Site Visits**

If a contract is large and complex, a site visit may be indispensable to check contractor performance. Site visits should be conducted jointly by the Contracting Officer and the COR, however as a practical matter; site visits are often delegated to the COR. A site visit may be necessary to check actual against reported performance; inspect facilities and working conditions; and verify that personnel charged to a cost reimbursable contract are actually performing work under that contract. A site visit is usually arranged in advance with the contractor. Discretion should be used in conducting site visits so that Government personnel will not be perceived as interfering in the contractor's operation.

## GOVERNMENT FURNISHED AND CONTRACTOR ACQUIRED PROPERTY

The COR is responsible for assisting the Contracting Officer with monitoring Government furnished property, including contractor acquired property (with NRC funds), in accordance with Federal Acquisition Regulation (FAR) Part 45 and NRC Management Directive 13.1, by performing the following delegated tasks:

- **Coordinate the orderly and timely transfer of Government furnished property directly from the NRC or from an expiring contract to a new contract.**
  - **Monitor contractor use of Government furnished and contractor acquired property, and periodically review property inventory checklists.**
  - **NRC Reporting Requirements**
  - **Monitor proper disposition of Government property by the contractor, with instructions provided by the Contracting Officer.**
- 

- **Coordinate the Orderly and Timely Transfer of Government Furnished Property Directly from the NRC or from an Expiring Contract to a New Contract**

### ***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 the delivery of Government property to the contractor, the COR:

- Establishes an inventory list of the property.
- Sets up control requirements.
- Prepares NRC-managed site facilities, as applicable.
- Coordinates agency resources and procedures.
- Prepares an inspection report.



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

- Date/time for delivering property to the contractor.
- Location of the property.
- Logistics of the transfer.
- Condition of the property and any repair, correction, or other action necessary to ensure items are in working order.
- Any special instructions or limitations regarding use of the property, including shipment containers, fragile shipments, temperature controlled storage facilities, shelf life, and safety concerns, etc.

The COR must ensure any problems with property are fixable. 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.
- Is delivered without instructions 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 furnished property to the CO, in a timely manner.

### ***Monitor Contractor's Property Control System***

The CO may request the COR to review the contractor's property control system to ensure compliance with the Government property clause or requirements of the contract.

Once the contractor takes possession of Government furnished property, the COR should:

- Prepare a report on the contractor's property control system, and document and report any deficiencies.
- Perform periodic reviews of physical property and record-keeping.
- Record and report any contractor notification (verbal or written) that property is not in proper working order.
- Submit a written report of any shortages, losses, damage, destruction, or misuse of Government property. Document whether there is the presence of contractor negligence in each instance.

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

- Maintains and periodically updates the approved system.
- Obtains all required approvals for use of the property.
- Uses the property only for those purposes authorized in the contract, in performance of the required work.
- Separates and distinguishes Government furnished property from any contractor property.
- Makes reasonable attempts to maintain, protect, and preserve the property.
- Discloses the need for major repair, replacement, or other rehabilitation or refurbishment work, and how such repairs may impact the cost, schedule and performance of the contract.

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

If the contractor's property control system does not adequately maintain and monitor the Government's furnished property under the contract, the COR must immediately:

- Notify the Contracting Officer.
- Notify the contractor of deficiencies in the system.
- State, in writing, required corrections and establish a timeline for completion of actions, and monitor compliance with the schedule of corrective actions.

The COR must notify the Contracting Officer if the contractor fails to adequately correct any known deficiency.

### **➤ Monitor Contractor Use of Government Furnished and Contractor Acquired Property, and Periodically Review Property Inventory Checklists and Reports**

The COR is responsible for monitoring the contractor's use of Government furnished and contractor acquired property by conducting periodic inventory reviews at the contractor's facility or work site.

To ensure contractor use of property complies with the contract and is in accordance with industry standards and practices, the CO 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 CO'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, and by whom.
- Evaluate and document any evidence.
- Provide the contractor with an opportunity to present additional facts.
- Recommend to the CO an amount that should be billed to the contractor for the amount of the actual loss, if a finding of unauthorized use is determined. This step is typically coordinated with internal offices including OGC.

Normally, Government property is kept physically separate from contractor-owned property. However, when necessary or advantageous to the Government, and the contractor agrees, Government property may be commingled with contractor property. In this case, the COR should coordinate with the CO and the NRC property management office to determine if commingling is permitted, and what safeguards should be followed.

#### ➤ **NRC Reporting Requirements**

In accordance with Management Directive (MD) 13.1 – Property Management, contracts must provide reports that include property items with a value of \$50,000 or more to the Division of Contracts. DC will provide the contractor with an NRC bar code and Equipment Data Sheet to record detailed information for each item. The contractor has 10 workdays to return the required documentation to DC. Contractors must conduct an annual inventory and report at the end of each fiscal year all capital property in their possession that was purchased with NRC funds to DC. DC will remind CORs at least twice each year of their responsibilities to monitor contractor help property.

#### ➤ **Monitor Proper Disposition of Government Property by the Contractor, With Instructions Provided by the Contracting Officer**

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

- Identifies excess inventory.

- Prepares and documents inventory lists.
- Corrects inventory lists that are not accurate, current, or complete.
- Documents the condition and fair market value of each item.

When the contract is completed, the COR:

- Coordinates with the CO for issuance of formal disposition instructions regarding the outcome of Government property. These instructions may:
  - Permit the contractor to purchase or retain property at cost,
  - Request the contractor to return property to the NRC,
  - Request the contractor to deliver property to another federal agency,
  - Request the contractor to deliver property to another Government contractor,
  - Donate the property to eligible organizations (i.e., local schools, charitable groups)
  - Safely dispose property,
  - Liquidate the property and compensate the Government,
  - Abandon property, or
  - A combination thereof.

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

- Coordinating the transfer of Government property.
- Preparing a requisition, including funds, for transportation or storage, if necessary.
- Resolving property disposal matters.

## INSPECTION AND ACCEPTANCE

The COR is responsible for assisting the Contracting Officer by inspecting and recommending acceptance or rejection of goods and services.

As the official delegated by the CO, the COR performs inspection and acceptance actions on behalf of the Agency. The COR inspects contractor deliverables and performance against established contract quality standards, and informs the CO when rejecting or accepting nonconforming products or services under the contract.

The COR performs the following tasks to ensure acceptance/rejection is processed accurately:

- **Inspect products or services**
  - **Recommend acceptance**
  - **Recommend rejection and document deficiencies**
  - **Assist the Contracting Officer in evaluating a contractor's reply to a rejection notice**
- 

It is important that inspections be conducted in a timely manner in accordance with contract standards and requirements to determine if:

- Supplies or services performed by the contractor meet contract requirements, and
- Nonconforming supplies or services are rejected, or otherwise resolved.

**In conducting inspection and acceptance functions, the COR is responsible for the following tasks:**

- Inspect all work for full compliance with contract requirements.

- Promptly reject all work that does not comply with contract requirements and immediately notify the CO.
- Advise the CO 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 noncompliant with contract requirements, informing both the contractor and the CO of the need for corrective action.
- Maintain a master copy of the official list of defects, omissions, waivers and deviations.
- Ensure all defects and omissions are corrected or completed in a timely manner.

**There are four major tasks that the COR is required to perform to ensure that acceptance/rejection is processed accurately:**

➤ **Inspect Products or Services**

Inspections and acceptances are based on compliance with contract terms and conditions. Inspections are conducted in order to identify non-conformances with contract quality standards or other contract requirements. 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 SOW may also provide further clarification of inspection and acceptance requirements. A quality assurance surveillance plan (QASP) may have been developed specifically for monitoring and inspection requirements.

### ***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 to the contractor for deliverables 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 and stipulated in the contract
- 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 in the contract.
- Do not reasonably measure or gauge 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 CO must be involved in these cases. Inspections made by incompetent inspectors may result in the Government being negligent. If the negligence of a Government official causes damage to a contractor, then the Government may be held liable for those damages.



### ***Documenting Inspections***

The format to be used and the results of inspections that need to be documented should be specified by the contract and quality assurance surveillance plan (QASP).

#### ➤ **Recommend Acceptance**

Acceptance occurs when deliverables are produced that conform to contract requirements.

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
- Weight
- Appearance
- 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 nonconforming good or service on one contract does not provide relief for correcting similar defects on pending or future work nor does it establish any precedent upon which the contractor may rely.

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.
- A prescribed destination point.
- 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 (Free on Board -FOB Origin) for shipment or after shipment and at the final Government destination (Free on Board - 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* - This instrument, signed [electronically] by the COR and CO, 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* - Acceptance 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; 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. The COR should contact the CO/CS prior to issuing such a notice.

### ***Notices of Rejection***

Notices of rejection must be furnished promptly to the contractor and include the precise 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, as defined in the FAR.

[https://www.acquisition.gov/far/current/html/52\\_248\\_253.html#wp1123739](https://www.acquisition.gov/far/current/html/52_248_253.html#wp1123739)

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 of observed or documented deficiencies.

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, including timing and current status.

➤ **Assist the CO in evaluating the Contractor's Reply to Rejection Notification**

Advise the CO 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 money or non-monetary consideration.

A COR can assist the CO in evaluating the contractor proposal by:

- Provide advice concerning safety and performance
- Evaluate if acceptance of the supplies or services would be in the Government's best interest after repair, correction, or price adjustment is made
- Provide supporting rationale for rejecting or accepting the contractor's proposal
- Attend any negotiations to respond to the contractor's position
- Advise the CO on acceptability of non-monetary consideration, acceptance of nonconforming supplies, or impact of contractor's refusal to repair the work.

**Federal Acquisition Regulations (FAR) apply to inspection and acceptance clauses:**

**FAR 8.406-2** - Inspection of items acquired through the Federal Supply Schedule (FSS) program.

**FAR 8.705-4** - Inspection and acceptance of items ordered from AbilityOne participating, nonprofit agencies; resolving problems with the orders.

**FAR 13.101(a)(3)** - Providing for the inspection of federal acquisition supplies or services as prescribed in FAR 46.404.

**FAR 46.101** - Definitions of contract quality requirements, contract quality assurance, inspection, acceptance, and warranty.

**FAR 52.212-4(a) & (n)** - Acceptance terms of contracts for commercial items.

**FAR 52.246-1** - Contractor Inspection Requirements.

**FAR 52.246-2** - Inspection of Supplies, Fixed-Price

**FAR 52.246-3** - Inspection of Supplies, Cost-Reimbursement.

**FAR 52.246-4** - Inspection of Services, Fixed-Price

**FAR 52.246-5** - Inspection of Services, Cost-Reimbursement

**FAR 52.246-6** - Inspection--Time-and-Material and Labor-Hour

**FAR 52.246-7** - Inspection of Research and Development--Fixed Price

**FAR 52.246-8** - Inspection of Research and Development--Cost Reimbursement

**FAR 52.246-9** - Inspection of Research and Development (Short Form)

**FAR 52.246-11** - Higher-Level Contract Quality Requirement

## INVOICE REVIEW AND APPROVAL PROCESS

*For purposes of this Guidebook, the terms "voucher" and "invoice" are used interchangeably.*

### A. PURPOSE

The purpose of this document is to provide invoicing guidance and describe responsibilities, procedures, and instructions governing the review and approval of contractor invoices by the Contracting Officer's Representative (COR) and Contracting Officer (CO). This guidance will help ensure that invoices are properly and consistently reviewed and analyzed in a standardized manner prior to making payments to contractors. An audit report issued in September 2012 by the Office of the Inspector General (OIG) found various inconsistencies and irregularities in the COR invoice review and approval process, in particular, so this guidance seeks to bring greater clarity and continuity to the invoicing review process. However, the focus of this guidance is not to discuss the nuances of any NRC automated invoice approval system.

### B. APPLICABILITY

This guidance is applicable to contracts and orders above the micro-purchase threshold (currently \$3,000).

### C. POLICY

1. It is the policy of the U.S. Nuclear Regulatory Commission (NRC) to review invoices thoroughly to ensure adequate information (proper rationale and documentation) exists to support payment of contractor invoices in a timely manner. Adherence to this policy will result in payment of costs which are allowable, allocable, and reasonable; and avoid interest penalties due to late payments pursuant to the Prompt Payment Act (PPA), as implemented in FAR Subpart 32.9 – "Prompt Payment."
2. In accordance with FAR 32.905 - "Payment documentation and process," the following are **minimum** requirements for a valid invoice:
  - a. Complete contract number, including task/delivery order number (if applicable);
  - b. Name and address of contractor;

- c. Invoice date;
  - d. Invoice number;
  - e. Description of supplies/products/services provided;
  - f. Quantity of services/supplies provided;
  - g. Unit of issue – as specified in the “Schedule of Supplies”;
  - h. Manufacturer’s part number (as applicable), as specified in the contract;
  - i. Unit price and extended total, for each contract line item number (CLIN);
  - j. Invoice total;
  - k. Shipment number (as applicable);
  - l. Postage and transportation (as applicable), if authorized by the contract to ship “Prepay and Add” include the transportation cost as a separate line;
  - m. Required certification – as required by the contract (e.g., certification of conformance, CO approval, etc.);
  - n. Taxpayer Identification Number (TIN), if not required to be registered in the Central Contractor Registration (CCR);
  - o. Registration in the CCR, when applicable;
  - p. Electronic funds transfer (EFT); and
  - q. Any other contract-directed requirements.
3. The CO is responsible for protecting the Government’s interests and should conduct general monitoring of invoices and periodic post-payment invoice reviews to ensure compliance with contractual requirements. Periodic invoice reviews are strongly encouraged on at least an annual basis at the level and breadth determined to be appropriate by the CO. Invoice reviews provide assurances that paid invoices included adequate rationale and support documentation for proper payment to occur.

Major objectives of the invoice review process include, but are not limited to, determining whether:

- supplies or products delivered and/or services performed met contract requirements.
  - billed costs were for authorized work under the contract.
  - CO approvals were provided, as required, and documented in the contract file.
  - prices paid by the NRC were allowable, allocable, and reasonable.
  - invoices complied with DC Billing Instructions attached to the contract.
  - billed costs or invoices were duplicative, resulting in double billing.
  - any overpayments or underpayments were made to the contractor.
4. When incorrect or improper invoices (not in accordance with the terms of the contract or order) are received, they must be returned to the vendor within five (5) calendar days from invoice receipt.

## 5. Direct and Indirect Costs

Federal Acquisition Regulation (FAR) 2.101 defines direct costs as “any cost that can be identified specifically with a particular final cost objective.”

Contractors are expected to make every effort to identify all costs that are direct. The FAR defines indirect costs as “any cost not directly identified with a single, final cost objective. It is not subject to treatment as a direct cost.” Further, indirect costs must not be allocated to a final cost objective if other costs incurred for the same purpose in like circumstances have been included as a direct cost of that or any other final cost objective. Indirect costs are classified and grouped together into indirect cost pools, typically either an overhead cost pool or the G&A cost pool.

The COR and CO must each ensure that the contractor treats costs consistently when submitting invoices under a contract; however, this is the primary responsibility of the CO.

## 6. Contracting Officer (CO) Approval

COs (or CSs if delegated) must review contractors' invoices and supporting documentation once the COR has reviewed the information and provided comments.

Both positions have general responsibilities that include:

- Ensuring the accuracy and completeness of the invoice.
- Ensuring adequacy and relevancy of supporting documentation.
- Approving payment.

## 7. Documentation

All invoices certified, whether in hard copy or by electronic means, must be supported with sufficient documentation to enable the audit of the transactions. Documentation must include, but is not limited to:

- Contractor's proper invoice.
- Adequate supporting cost documentation, including source documentation as appropriate (i.e., receipts, logs, time sheets, payroll records, etc.).
- Monthly Letter Status Report (MLSR).



## 8. Internal Controls

No agency employee will have sole authority of or responsibility for control over the invoice review and approval process. Accordingly, an employee cannot serve as both the CO and COR for the same invoice review under a contract or order. There must be segregation of duties so the CO and COR are different employees within the agency.

## 9. Quality Assurance Process

Post-payment reviews should be conducted periodically to assure compliance with agency policies and procedures, which may include statistical sampling of paid invoices to determine proper payment and compliance. More targeted reviews may be conducted at the agency's discretion to address possible instances of improper payments to contractors or cases of suspected fraud.

DC and OCFO are both jointly responsible for ensuring that COs and CORs adhere to agency invoice review and approval policies and procedures.

## 10. Payment Approval

COs are ultimately responsible for approving proper payments from available appropriated funds to contractors or individuals for authorized work under valid contractors/orders. At a minimum, CO approvals will be based on a thorough review of the contractor's invoice, supporting cost documentation (including source documentation as appropriate), MLSR, and any information generated from the COR's review of the contractor's invoice.

## 11. Construction Payments

The Prompt Pay Act requires that construction contract progress payments be made within 14 calendar days after NRC receives a proper invoice from the contractor, unless a longer payment period is included in the contract. Interest payments are due if progress payments, approved as payable, remain unpaid for a period of more than 14 calendar days after receipt of an acceptable, proper invoice, unless a longer payment period is included in the contract.

When incorrect or improper invoices (not in accordance with the terms of the contract/order) are received, they must be returned to the vendor within five (5) calendar days from invoice receipt.

## 12. Accelerated Payments

NRC may use accelerated payment methods when processing invoices, including expedited payments intended to improve small business cash flow.

## 13. Contractor Claims

OCFO reviews claims made by contractors for non-receipt of payment and coordinates with the CO and COR, as necessary. NRC may recertify a payment from the appropriation from which the original payment was made. Any claims that result from contractor disputes will be addressed by the CO, only

## 14. Contract Completion Invoice

Upon completion of the contract, the contractor is required to submit a final invoice designated or marked as "completion voucher" together with such other documents as prescribed by the contract or agency guidance. Approval and payment by the Government of the contractor's final invoice constitutes complete and final payment to the contractor, except for any funds held in reserve pending submission of the contractor's signed Release of Claims. However, final invoices are typically forwarded to the Defense Contract Audit Agency (DCAA) for cost-reimbursement type contracts/orders, pending resolution of final indirect cost rates (i.e., Fringe, Overhead, G&A, etc.).

## 15. Withholding and Release of Contract Reserves

Contractual provisions covering fixed-fee (over 85% fee threshold), patents, royalties, etc., usually provide for the accumulation of a withholding reserve until certain contract requirements are met to the CO's satisfaction. Therefore the COR should ensure that adjustments are being made to the contractor's invoices to account for such withholdings, and coordinate with the CO and OCFO to ensure that the amounts are properly held in reserve.

## 16. Typical Invoice Problems

- a. Inflated/unrealistic labor hours.
- b. Unsupported other direct costs (ODCs).
- c. Unauthorized overtime charges.
- d. Incorrect labor category or level of expertise (i.e., Economist Level I versus II, etc.).
- e. Management oversight hours disproportionate to workers hours.
- f. Duplicate invoice.
- g. Wrong invoice assigned to a contract/order.
- h. Math errors.

- i. Error listing the complete contract/task order number.
- j. Wrong price (proposed vs. negotiated).
- k. Incorrect CLIN or SubCLIN identified.
- l. No point of contact listed.
- m. No date or period of time for which the work was accomplished.
- n. Incorrect/missing shipment information.
- o. No remittance address.
- p. Prompt pay discounts not offered.

#### **D. BACKGROUND**

Federal Acquisition Regulation (FAR) 1.604, "Contracting Officer's Representative (COR)" authorizes Contracting Officers to delegate oversight of contract administration to another individual, which includes the review and approval of contractor invoices. At the NRC, COs delegate CORs the invoice review function since they are more knowledgeable of the technical aspects of the contracts/orders and are responsible for the inspection and acceptance of deliverables received or services performed, as specified under NRC contracts/orders.

The invoicing processing is a critical aspect of contract administration. Contractors are permitted to submit invoices on at least a monthly basis and must follow NRC's established DC Billing Instructions for fixed-price, cost-reimbursement, and time-and-materials/labor-hour contracts. In response, NRC is expected to make timely payments to contractors in exchange for receipt of acceptable supplies and services required under agency contracts.

The contractor must meet its contractual obligations including quality, quantity and timeliness requirements for deliverables and contract performance in order to be compensated fully and timely. A process for effectively and efficiently meeting the agency's payment obligations is an essential part of the agency's responsibility, with DC and OCFO each fulfilling major invoice responsibilities and working together collaboratively.

COs must ensure that contractor invoice reviews are sufficiently performed in a manner that is thorough, complete, accurate, and consistent. Although recommendation for approval of payments to contractors is typically obtained from the COR, authority to approve or disapprove payment of invoices is ultimately the responsibility of the CO.

Quality communication and coordination between the CO, COR, and OCFO is key to the overall success of the invoice review and approval process and helps the NRC comply with the Prompt Payment Act.

The CO affixes NRC Billing Instructions as part of contracts and orders. The CO and COR should review these instructions with the contractor, especially at the Post-Award

Kickoff Meetings, to ensure mutual understanding of the requirements to avoid confusion and unnecessary payment delays during contract administration.

CORs are typically in a good position to assess the reasonableness of billed costs while COs determine the allowability and allocability of incurred costs with the contract's terms and conditions and Federal regulations (i.e., Federal Travel Regulations - FTR). Approval of an invoice and subsequent payment made to the contractor implies that work is progressing at a satisfactory level in accordance with the terms and conditions of the contract. Therefore, it is imperative that COs and CORs alike be aware of what the agency is receiving and that the deliveries and services meets contract requirements and prescribed quality standards.

The COR's recommended approval of a invoice implies that to the best of the COR's knowledge, the nature, type, and quantity of effort or supplies being received from the contractor are in accordance with the Statement of Work (SOW), deliverables, and contract terms and conditions,.

CORs provide support to the CO by monitoring the contractor's performance throughout the period of performance through a combination of periodic report reviews, site visits, quality testing (sampling), periodic meetings with contractor personnel, and other surveillance activities and methods.

## **E. GENERAL INVOICE REVIEW PROCESS**

The COR is delegated responsibility for assisting the CO with determining and authorizing payment, by performing the following major tasks:

1. Reviews Invoices
2. Determines Correct Payment Amounts
3. Approves Invoice Amounts
4. Makes Recommendations to the CO
5. Reviews Invoices Within NRC Established Time Parameters

### **1. Reviews Invoices**

#### ***Recommends Whether Payment Can be Made***

Before the COR can initiate the payment process, proper inspection and acceptance of the products or services must occur.

The COR may need to obtain necessary documentation from the CO or contractor in order to make this determination. They may include:

- Documentation to support successful delivery of products or completion of services, including inspection forms, receiving reports, commercial shipping documents, and/or packing lists, if the deliveries are made at remote locations.
- Documentation on suspension of performance.
- Documentation on remedies applied by the CO, such as liquidated damages against the contractor for late work or rejection of defective deliverables or inferior service.
- Reductions in progress payments.
- Interim or final adjustments to the contract price.
- Modifications to the contract.
- Termination settlements.

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

The COR is required to review the invoice and contact the CO immediately if a problem or deficiency exists which may preclude payment of the invoice in part or in full.

The COR should initially review the invoice to ensure the presence and accuracy of the information, including compliance with contract requirements and NRC Billing Instructions.

### ***Accept Invoice or Notify the CO of Defects Found in an Invoice***

Once an invoice is received, the COR evaluates the invoice and either accepts it or notifies the CO of any deficiency. CORs must notify contractors of invoice deficiencies in writing within **5 calendar days** after receipt of the invoice. Incomplete or incorrect invoices should normally be returned to the contractor by the CO. However, if the COR retains the invoice while the contractor attempts to correct the deficiency, a record should be kept of the number of days of delay caused by the contractor for the purposes of adhering to the Prompt Payment Act.

## **2. Determines Correct Payment Amounts**

### ***Identify Contract Terms and Conditions***

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

- Cost/Price of applicable work requirements and deliverables
- If performance-based, performance standards and incentives/disincentives

- Payment provisions (in-full, partial, performance, or progress)
- Period for acceptance
- Discounts
- Liquidated damages for prior defective products or inferior service or other contract deficiencies, to be applied to and deduction from contractor's next invoice

### ***Obtain Documents and Determinations***

Supporting information and documentation for invoices is essential when verifying contractor billing costs for:

- Work that has been completed
- Work in process

The need for supporting documentation will vary considerably depending on the type of contract and requirements, but the contractor must adequately support the amounts claimed on the invoice before payment can be approved.

### **Invoice Documentation**

Invoices submitted to the agency by the contractor should list corroborating documentation or information concerning all incurred costs. These may include:

- Contractor, subcontractor, or supplier billing statements
- Contractor internal cost documents or timesheets
- Referenced cost-expenditure files where detailed information or data are stored
- Inspection or receiving reports
- Commercial or Government shipping documents
- Determinations on billing rates, including indirect cost rates
- Reports on contractor indebtedness
- Status of Federal tax delinquencies
- Determinations for reductions in progress payments
- Determinations for the adjustment of liquidation rates for progress payments

### ***Identify Disapproved Costs***

The COR should determine when invoiced amounts cannot be paid. Reasons for nonpayment or disallowance 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 from an invoice for, say, unsatisfactory or missing work, unless a contractor provides appropriate supporting documentation for the reinstatement of any deducted amount.

#### Withholdings Cost-Plus-Fixed-Fee (CPFF) Contracts

- A withholding is generally related to an amount retained by the Government after the contractor has received 85% of its fixed-fee amount. (See FAR 52.216-8 – “Fixed Fee”)
- At the NRC, the 15% fixed-fee balance is withheld by the agency pending successful contract closeout.

#### Unallowable Costs in Cost-Type Contracts

In a cost-type contract, the COR should examine each cost (direct or indirect) billed to assess whether the cost is allowable and refers any questions to the CO. Invoice documentation, must support whether or not costs are allowable. These costs are subject to a determination of allowability by the CO, OIG or DCAA auditor. 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.
- Allocability. 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.
- Allowability. A cost that is reasonable, allocable, consistently treated, necessary, compliant with the contract, and incurred during the contract period for the intended purpose.
- Cost Accounting Standards (CAS).  
[https://www.acquisition.gov/far/current/html/Subpart%2030\\_1.html#wp1068566](https://www.acquisition.gov/far/current/html/Subpart%2030_1.html#wp1068566)
- Terms and Conditions of the contract.
- Office of Management and Budget (OMB) Circulars on cost principles.  
[http://www.whitehouse.gov/omb/circulars\\_default/](http://www.whitehouse.gov/omb/circulars_default/)
- Any other cost limitations as set forth in Government guidelines for cost principles.

### **3. Approves Invoice Amounts**

Once all appropriate withholdings and deductions are identified, the COR determines the amount due the contractor, and transmits the recommendation to the CO. If approved by the CO, the contractor will then be issued:

- Payment in full,
- Partial payment, or
- Non-payment (*typically due to nonconforming products or services*).

### **4. Makes Recommendations to the CO**

The COR notifies the CO if there are differences between the amount of the invoice and the amount the Government proposes to pay; and the CO notifies the contractor. The Government must accurately present all factual data that justifies the difference and the contractor should be provided with an opportunity to present its position for full payment.

Some reasons for the differences may include:

- Performance problems.
- Unallowable costs.
- Defective products or inferior service.
- Inexcusable delays.

If a contractor disagrees with the calculated amount, the COR should notify the CO who will make a final determination. This decision is transmitted by the CO to the contractor for formal reply.

### **5. Reviews Invoices Within NRC Established Time Parameters**

- CORs are the first agency officials required to review and respond to contractor invoice submissions. CORs have **7 calendar days** from the date of invoice receipt to respond to the CO with his or her recommendation for payment approval.
- If the COR recommends full or partial denial of payments, a reason for the denial must be provided to the CO.
- The CO has **3 calendar days** to approve an invoice, and forwards to the contractor.



- However, in the event that an invoice is “improperly” submitted (e.g., incorrect contract/order number, invoice amount, labor categories, contract rates, CLINs, etc., or no EFT, TIN), it must be rejected as an improper invoice and returned to the vendor by DOI/NBC within **5 calendar days** from the date of receipt (including weekends and holidays). Also, an invoice is considered improper if it is received before the product or service is inspected and accepted by the COR.
- Given the short timeframe, it is imperative that CORs and COs review the invoice information as soon as possible to at least ensure that a “proper” invoice has been submitted to the Agency.
- When returning an improper invoice, the CO should deny the invoice and must convey all defects in the invoice to the contractor with the denial decision.
- If the COR is unsure about the allowability or allocability of billed costs or contractor compliance issues, he or she must immediately contact the CO to seek guidance.
- *Note: The Prompt Payment Act (31 U.S.C. § 3901 et seq.) requires Federal agencies to pay interest penalties when payments are more than 30 days after the agency receives a proper invoice for payment.*

Website References:

<http://www.fms.treas.gov/prompt/index.html>  
<http://www.fms.treas.gov/prompt/questions.html#invoice>

## **F. AUTHORITY GOVERNING CONTRACT INVOICING RESPONSIBILITIES**

The Office of the Chief Financial Officer (OCFO) is responsible for overseeing all financial management activities relating to NRC’s programs and operations, as required by the Chief Financial Officers Act of 1990 and 38 U.S.C. 309. OCFO collaborates with DC to implement the invoice review and approval process. NRC Management Directive 11.1 provides general policy guidance for the review and approval of contractor invoices.

To perform quality contract administration, the COR should have sufficient technical knowledge and expertise in the work covered by the contract. For more complex requirements, the COR may have to consult with other Federal personnel on technical issues, but remains the official liaison of the CO for any technical communications with the contractor, including technical interpretations and direction.

Payment to a contractor implies work is progressing according to the contract's terms and conditions and any established contract milestones. Therefore, CORs must ensure the Government is getting what it is paying for when the supplies or services are needed. CORs should monitor contractor performance through review of Monthly Letter Status Reports (MLSR) and other reports, onsite visits, surveillance, visual inspection, testing, and/or sampling methods to evaluate the quality of work products. It is vital that CORs review invoices thoroughly and in a timely manner. If problems are identified in performance of the contract or during the CORs review of an invoice, the COR must immediately convey those concerns to the CO so they can be appropriately considered and resolved. COR approval of an invoice implies that, to the best of the COR's knowledge, the nature, type, and quality of effort and/or materials being expended are in accordance with the expected progress and contract requirements. The COR assists the CO by ensuring that recommended payments to the contractor are for deliverables or services performed that meet contract/order requirements.

## **G. PRIMARY ROLES AND RESPONSIBILITIES**

**Office of the Chief Financial Officer (OCFO)** - oversees all financial management activities relating to NRC's programs and operations, as required by the Chief Financial Officers Act of 1990 and 38 U.S.C. 309.

**Contracting Officer (CO)** – serves as a certifying officer with the responsibility for “approving payments” to contractors by verifying the accuracy and propriety of all documents and records upon which payment to the contractor is based and ensuring that the payment is legal, correct, and proper. The CO is responsible for ensuring that contract invoices are properly reviewed and analyzed, and that the Government makes payments to contractors only for goods and services received, inspected, and accepted pursuant to contractual terms and conditions. *(Note: The CO may delegate this function to the CS, but is still ultimately responsible for making proper and timely payments to contractors regardless of any delegations of authority.)*

**Contracting Officer's Representative (COR)** – receives written delegated authority from a Contracting Officer to provide contract oversight during contract administration for responsibilities including invoice reviews. The COR does not actually approve invoice payments to contractors, but he or she makes recommendations to the CO for approvals.

**Funds Certifying Official** – is responsible for certifying funds availability and ensuring that the correct appropriation and funding are used.

## **H. CONTRACT INVOICE REVIEW AND APPROVAL RESPONSIBILITIES**

The Contracting Officer has ultimate responsibility for invoice processing under individual contracts/orders. Under FAR, the Contracting Officer may delegate authority to make certain decisions (FAR 1.102-4), including authority to review and approve contract invoices. At the NRC, the COs delegate invoice reviews to CORs who make approval recommendations to the CO. The table below includes invoice review activities performed by the COR and CO to successfully carry out the invoice review and approval function.

While this list of contract invoice review activities is not all-inclusive, it gives a good indication of consistent steps necessary to follow during the contractor invoice review process for products/services inspected and accepted in accordance with contract terms and conditions. Each of the activities listed below are shared responsibilities, but primary and secondary responsibility designations are provided.

P – Primary Responsibility

S – Secondary Responsibility

MAJOR INVOICE REVIEW ACTIVITES		
<i>Verify the following:</i>	COR	CO
1. Invoice complies with the format included in the DC Billing Instructions affixed to the contract/order.	P	S
2. Invoice information is accurate and complete.	P	S
3. Invoice includes sufficient explanation of billed costs.	P	S
4. Invoice period is within the period of performance of the contract.	P	S
5. Services performed and/or deliverables received are in accordance with the contract.	P	S
6. Services and/or deliverables were inspected and accepted by NRC.	P	S
7. Billed costs are consistent with authorized work covered in the Monthly Letter Status Report (MLSR) for that time period.	P	S
8. Costs were not paid in a previous invoice.	P	S
9. Costs are allowable, allocable, and fair and reasonable.	S	P
10. Costs do not exceed contract ceilings or contract line item number (CLIN) amounts.	P	S

11. Appropriate labor categories are used in accordance with the contract.	P	S
12. Approved work was performed by qualified contractor personnel in accordance with contractual requirements, as applicable.	P	S
13. Labor is billed in accordance with established/negotiated contract labor rates.	P	S
14. Other direct costs (ODCs), equipment, and travel costs were authorized or approved in advance.	P	S
15. Subcontract costs were consented to and authorized in advance.	P	S
16. Invoice includes adequate support documentation, including source documents to substantiate billed costs.	P	S
17. Progress payments based on cost must comply with contract terms and conditions.	S	P
18. Performance-based payments comply with contract terms and conditions.	S	P
19. Cost discounts provided in the contract are honored.	P	S
20. Indirect cost rates included in the contract are billed appropriately.	S	P
21. Mathematical calculations are understandable and accurate.	P	S
22. Appropriate invoice deductions are made.  Examples include, but not limited to: (a) fixed-fee holdback amounts if fee exceeds 85% threshold for CPFF contracts	P	S

(b) performance-based deductions (c) overpayment on prior invoices (d) unallowable costs (See FAR Subpart 31.2, "Contracts with Commercial Organizations" <a href="http://www.acquisition.gov/far/current/html/Subpart%2031_2.html#wp1095567">http://www.acquisition.gov/far/current/html/Subpart%2031_2.html#wp1095567</a> .)		
23. Whether to suspend costs.	S	P
24. Whether to disallow costs.	S	P
25. Whether correct and sufficient appropriated funding is available to pay the invoice.	P	S
26. Contractor overpayments.	P	S
27. Whether adequate internal controls are maintained by the agency to ensure proper payments are made.	S	P
28. Frequency and parameters of CO periodic post-payment invoice reviews.	S	P
29. Invoice review checklists.	P	S
30. Invoice files.	P	S

Each activity listed in the table above has an explanatory note below for clarification.

## EXPLANTORY NOTES:

### NOTE 1:

1. **Invoice complies with the format included in the DC Billing Instructions affixed to the contract/order.**

The COR has primary responsibility for ensuring that the contractor complies with NRC billing instructions affixed to the contract. If the contract includes an outdated version of the agency's billing instructions, the COR should consolidate this request for inclusion of updated billing instructions with other necessary contract modification actions at the earliest possible time, as opposed to initiating a separate requisition. Indefinite Delivery Contracts (IDCs) or Blanket Purchasing Agreements (BPAs) that authorize multiple contract types for task orders should include each set of billing instructions that apply to the contract type authorized under the base contract. The CO is responsible for executing a contract modification with the contractor to ensure current billing instructions are used and ensure the contractor's proper compliance with such instructions.

#### References:

Billing Instructions for Cost-Reimbursement Contracts:

[Libraries/DocumentDownloadHandler.ashx?LibraryDocumentID=732](#)

Billing Instructions for Fixed-Price Contracts:

[Libraries/DocumentDownloadHandler.ashx?LibraryDocumentID=739](#)

Billing Instructions for Time-and-Materials and Labor-Hour Contracts:

[/Libraries/DocumentDownloadHandler.ashx?LibraryDocumentID=747](#)

Billing Instructions for Fee Recovery:

[/Libraries/DocumentDownloadHandler.ashx?LibraryDocumentID=735](#)

### NOTE 2:

2. **Invoice information is accurate and complete.**

The COR has primary responsible for verifying the accuracy and completeness of invoices. The COR will review all aspects of the invoice including, but not limited to, the use of appropriate functional labor categories listed in the contract; expertise levels (as applicable); labor rates; labor hours expended; relevancy of other direct costs; approved travel; indirect cost rates match Rate Agreement; profit/fee calculations; sufficiency of cost narrative; and supporting documentation. CORs must perform basic math checks on billed costs and

gauge accuracy, which could range from general spot checking to a full-scale detailed review of all cost calculations, depending on the size of the invoice and apparent quality of the information, as well as the contractor's history of submitting accurate and complete invoices under the contract/order.

Ultimately the CO is responsible for taking any and all contractual actions necessary to ensure the accuracy of the invoice process. Therefore, the COR must communicate any errors, omissions, or other concerns to the CO in a timely manner. Inaccurate or incomplete invoicing may constitute an improper invoice and must be returned to the contractor for corrective action.

### **NOTE 3**

3. **Invoice includes sufficient explanation of billed costs.**

The COR has primary responsibility for reviewing each invoice for proper rationale supporting appropriate cost expenditures. The COR will obtain any missing information or explanations needed to conduct a thorough review. Lack of explanation to justify costs could result in disallowed costs or rejection of the invoice in its entirety; thus requiring resubmission by the contractor.

Insufficient explanation of billed costs could result in the CO suspending or disallowing billed costs or rejecting the invoice. The CO is encouraged to communicate any pending action with the contractor in advance and seek necessary clarification, information, or documentation to facilitate proper resolution of agency concerns.



**NOTE 4:**

4. **Invoice period is within the period of performance of the contract.**

The COR has primary responsibility for confirming that the work performed is within the period of performance (PoP) of the contract. Any work that falls outside of that time period, unless authorized by the CO, is unallowable. The COR will not compensate the contractor for any billed costs that fall outside of the PoP. If there is an issue with billed costs for periods before or after the contract PoP, the COR will confirm with the CO whether there is documentation of any CO-approved pre-award costs or a CO-approved modification extending the contract PoP.

The CO will facilitate this process by providing the COR copies of any CO approval letters or modifications that extend the PoP.

**NOTE 5:**

5. **Services performed and/or deliverables received in accordance with the contract.**

The COR has primary responsibility for receiving deliverables from the contractor. The COR must take great care to ensure that the contractor has provided the agreed upon deliverables or services in accordance with the contract and should consult with the CO if there are any concerns. The CO will review the contract's terms and conditions and any attachments, such as a Performance Requirements Summary – PRS (if performance-based), to ensure proper compliance with the contract.

**NOTE 6:**

6. **Services and/or deliverables inspected and accepted by NRC.**

The COR has primary responsibility for inspecting and accepting deliverables and services provided by the contractor in a timely manner. The COR will not recommend reimbursement to the CO for any billed costs where deliverables or services have not been properly inspected and accepted and do not meet contractual requirements, including minimum quality standards. If performance-based, the COR will review the PRS for established quality standards and deductions for less than satisfactory performance. The COR will recommend any deductions to the CO and provide rationale. In addition, the COR will communicate any contractor compliance matters with the CO for delinquent or defective products or services. The CO will in turn engage the contractor to

compel performance, subject to the terms and conditions and limitations of the contract.

**NOTE 7:**

7. **Billed costs are consistent with authorized work covered in the Monthly Letter Status Report (MLSR) for that time period.**

The COR has primary responsibility for ensuring that invoice submissions are consistent with MLSRs. The COR will analyze all billed costs to verify that the work performed was authorized and commensurate with the MLSR for the invoiced period.

The COR is responsible for reviewing the invoice for consistency with the corresponding MLSR for that period, including adequacy of progress. Any discrepancies between the invoice and MLSR should be immediately shared with the contractor for clarification. Issues that cannot be resolved in a timely manner must be raised with the CO. The CO may suspend or disallow any questioned until such time as the costs are fully explained and documented, and determined to be allowable under the contract.

**NOTE 8:**

8. **Costs were not paid in a previous invoice.**

The COR has primary responsibility for tracking invoices and ensuring that costs are not paid more than once. If costs are double billed, the COR will share the information with the contractor. If double billing is confirmed, the COR will recommend disallowance of the cost(s) to the CO and deducted from the invoice. Instances of double billing may give rise to greater scrutiny of contractor invoices and increased file reviews to determine the accuracy of paid invoices.

**NOTE 9:**

9. **Costs are allowable, allocable, and fair and reasonable.**

The CO has primary responsibility for verifying whether billed costs are allowable, allocable, and fair and reasonable.

The CO is responsible for ensuring that indirect cost rates are billed and applied to direct costs on a consistent basis in accordance with the company's negotiated indirect cost rate agreement and the contract's terms and conditions.

While fixed labor rates, fixed-prices, and negotiated fee/profit are determined to be fair and reasonable at time of award, it is important to ensure that the contractor is billing these charges at the correct contract rates, for the right personnel, and for the right work.

Reimbursable costs, such as labor, ODCs, travel and transportation, subcontractor costs, consultancy costs, etc. should be reviewed carefully to ensure that costs were billed appropriately for authorized work and were approved in advance of cost occurrence. The CO confirms that billed travel related expenses are in compliance with Federal Travel Regulations (FTR) and General Services Administration (GSA) established CONUS (US) per diem rates and U.S. Department of State (DOL) foreign per diem rates.

**NOTE 10:**

10. **Costs do not exceed contract ceilings or contract line item number (CLIN) and SubCLIN amounts.**

The COR has primary responsibility for reviewing and monitoring invoices to ensure compliance with contract ceilings, labor hour ceilings, CLINs, and SubCLINs. The COR must question any billed cost exceeding specified contract ceilings and consult with the CO for any CO-approved contract modification. Otherwise, the billed cost(s) must be disallowable.

**NOTE 11:**

11. **Appropriate labor categories are used in accordance with the contract.**

The COR has primary responsibility for confirming that the labor categories used by the contractor were included in the contract and appropriate to the work performed. The COR will seek immediate clarification from the contractor if there are positions listed on the invoice that do not appear in the contract. If this is no more than a clerical error or no modification or CO-approval exists, then the COR will recommend that the cost be disallowed.

**NOTE 12:**

12. **Approved work was performed by qualified contractor personnel in accordance with contractual requirements, as applicable.**

The COR has primary responsibility for verifying that the contractor used personnel who meet prescribed labor requirements set forth in the contract, especially for key personnel. Costs billed for contractor personnel used not meeting contract minimum personnel requirements, if any, is subject to

disallowance. The COR must discuss the matter with the CO to seek resolution with the contractor.

**NOTE 13:**

13. **Labor is billed in accordance with established/negotiated contract labor rates.**

The COR has primary responsibility for verifying that labor rates billed conform to those listed in the contract. The COR will recommend disallowance of any dollar amounts billed by the contractor that exceed contract rates for that period. It is the responsibility of the CO to contact the contractor and seek explanation for overbillings and obtain assurance that the problem is not repeated.

**NOTE 14:**

14. **Other direct costs (ODCs), equipment, and travel costs were authorized or approved in advance.**

The COR has primary responsibility for verifying that billed costs for ODCs, equipment, travel and transportation costs, subcontractors, and consultants have the necessary prior approvals. The COR will contact the CO if the approvals are not readily accessible and seek guidance. If the contractor billed the agency for costs that were not approved, the costs must be disallowed.

**NOTE 15:**

15. **Subcontract costs were consented to and authorized in advance.**

The COR has primary responsibility for verifying that billed costs for subcontracts have the necessary prior written approvals. Prime contractors must obtain written consent to subcontract from the CO for subcontracts in accordance with FAR 44.201 if not originally consented to by the CO as part of the contract award.

Upon reviewing the invoice for payment of subcontractor costs, the COR must verify whether the subcontractor was listed by named in the contract at time of award or if the CO provided subsequent written consent. A copy of any CO consent letters and fully executed (signed) copies of subcontracts should appear in the official contract file. The COR should contact the CO if he or she does not have records of such documents to determine whether they are in the official contract file. If there is no evidence of consent being granted, the COR should contact the contractor immediately to seek an explanation and report the information to the CO. If no consent, the COR will recommend disallowance of

such costs. The CO should apprise the contractor of the problem and indicate disallowance of the costs. The CO should communicate with the contractor to determine if any mitigating circumstances existed and resolve the matter.

The prime contractor is responsible for submitting proposed subcontracts to the Government after reviewing costs and determining fairness and reasonableness. Any costs incur prior to CO consent are subject to disallowance.

The responsibility of the prime contractor for managing its subcontractors is stated in FAR 42.202(e)(2). The prime contractor is responsible for subcontract awards, technical and financial performance monitoring, ensuring that indirect rate proposals and annual rate adjustments are submitted to cognizant Federal agencies and DCAA in a timely manner, and payment to the subcontractor for the work accomplished under subcontract terms and conditions.

The contract between the Government and the prime contractor should require appropriate flow down clauses into subcontracts, such that subcontracts:

- Provide either the Government or the contractor access to the subcontractor's books and records for the purposes of performing the annual incurred cost audit,
- Require that billings include only allowable costs pursuant to FAR 52.216-7, and
- Require the subcontractor to submit annual incurred cost proposal pursuant to FAR 42.7.

If the contract does not include requisite flow down clauses, the CO is responsible for ensuring that the contract requires them and that the contractor complies.

**NOTE 16:**

**16. Invoice includes adequate support documentation, including source documents to substantiate billed costs.**

The COR has primary responsibility for verifying that the contractor submits adequate supporting documentation to justify their costs and certifies to the accuracy of all billed costs. Supporting documentation includes, but is not limited to, MLSRs, purchase receipts, timesheets, and personnel logs.

Contractors are required to prepare and maintain official timesheets for their employees and segregate them by contract and major cost objective. In the case

of **cost-reimbursement contracts**, CORs will periodically request copies of contractor timesheets to compare hourly rates charged to the NRC under a contract with those rates appearing on company records. This will help ensure that contractor's are providing accurate billings to the agency, not overcharging for labor costs, and not underpaying where labor costs where Department of Labor Wage Determinations are affixed to the contract. The frequency of review checks may vary depending on the compliance history of the company in meeting contractual requirements, with those firms with higher instances of noncompliance issues receiving greater scrutiny.

If the contractor did not provide an adequate explanation for billed costs with sufficient supporting documentation to facilitate the COR's invoice review, then the COR will immediately contact the contractor and request the necessary information. If the COR is dissatisfied with the contractor's response, he or she will contact the CO for assistance with receiving the requested information.

The COR has responsibility to apprise the contractor that since reimbursement of billed costs cannot be paid unless costs were pre-approved and can be verified. Cost verification and insufficient supporting documentation may result in disallowance of such costs until such time as satisfactory documentation can be provided to the NRC substantiating questioned costs.

**NOTE 17:**

**17. Progress payments based on cost must comply with contract terms and conditions.**

The CO has primary responsibility for ensuring the accuracy and appropriateness of progress payments made by the contractor when such payments are authorized in the contract. The COR will review the contractor's request for progress payments and refer any questions to the CO.

Progress payments are a form of Government furnished interest-free financing applicable to undelivered and unbilled items. Progress payments are made to the contractor as work progresses, but not more frequently than monthly.

(See FAR Subpart 32.5:

<http://www.acquisition.gov/far/current/html/Subpart%2032.5.html#wp1047463>.)

**NOTE 18:**

18. **Performance-based payments comply with contract terms and conditions.**

The CO is responsible for ensuring the accuracy and appropriateness of performance-based payments made by the contractor. The COR will review the contractor's request for performance-based payments and refer any questions to the CO. The COR's input is especially important concerning the contractor's progress in meeting contractual requirements, established contract milestones or other performance indicators included in the contract, as applicable.

The contractor's invoice must specify the event or measurable criterion of performance in the contract that has been successfully met in order to receive payment. This may be: (a) performance measured by objective, quantifiable methods, (b) accomplishment of defined events, or (c) other quantifiable measures of results. Payment must be commensurate with the contractor's achievements.

The CO is responsible for authorizing performance-based payments in the contract, but cannot approve performance-based payments unless the contractor has demonstrated accomplishment of the work.

(See FAR Subpart 32.10:  
[http://www.acquisition.gov/far/current/html/Subpart%2032\\_10.html#wp1028960](http://www.acquisition.gov/far/current/html/Subpart%2032_10.html#wp1028960).)

**NOTE 19:**

19. **Cost discounts provided in the contract are honored.**

The COR has primary responsibility for verifying that any cost discounts in the contract are adhered to. Failure on the part of the contractor to provide agreed upon cost discounts must be communicated to the CO. Refusal by the contractor to provide contractual discounts is considered a breach of contract and will be addressed by the CO and funds should be subtracted from the invoice and withheld pending resolution.

**NOTE 20:**

20. **Indirect cost rates included in the contract are billed appropriately.**

The CO has primary responsibility for confirming that indirect cost rates are billed accurately and consistently based on type of indirect rate, cost pool, and base of allocation. The COR will review the contractor's billed amounts for indirect costs and refers any questions or concerns to the CO, especially if there are

revisions to rates that do not coincide with the contractor's rate agreement and/or contract.

The CO is responsible for periodically monitoring contractor invoices to ensure that rates charged to the contract are correct. Any changes to rates must be verified by the CO with the cognizant Federal agency or DCAA. Affected contracts should be modified to reflect changes in rate information.

FAR 42.704 provides the cognizant CO (which may be at another Federal agency) or auditor responsible for establishing the final indirect cost rates also responsible for determining the billing rates. Provisional billing rates may be established for interim reimbursement purposes until settlement is reached on final rates after the end of the contractor's fiscal year. Billing rates may be prospectively or retroactively revised by mutual agreement, at either the Government's or contractor's request, to prevent substantial overpayment or underpayment. Once the final rates are established, an adjustment is made for any variance between the billing and final rates.

**NOTE 21:**

21. **Mathematical calculations are understandable and accurate.**

The COR has primary responsibility for verifying that total and cumulative costs billed are summed correctly and rates included are correctly multiplied to arrive at direct and indirect costs. The CO and COR will perform this verification at the level necessary to ensure calculations are accurate and complete.

**NOTE 22:**

22. **Appropriate invoice deductions are made.**

The COR has primary responsibility for recommending invoice deductions in contractor invoices. The COR will monitor and track deductions made and communicate such matters with the CO. The CO ultimately approves deductions in invoice amounts and provides rationale to the contractor for any suspended or disallowed costs.

Examples of invoice deductions include, but are not limited to:

- Under cost-reimbursement contracts, payment of fixed-fee amounts above the 85 percent fee threshold, not to exceed 15 percent of the total fixed-fee or \$100,000, whichever is less.



- Amounts for performance-based service contracts where performance does not meet contractual requirements and/or minimum quality standards for deliverables or services provided by the contract.
- Erroneous overpayment amounts paid to the contractor on a prior invoice(s).
- Unallowable costs paid to the contractor on a prior invoice(s). (See FAR Subpart 31.2, "Contracts with Commercial Organizations.")
- Unauthorized or unapproved costs.
- Incorrect or unsupported costs.

**NOTE 23:**

23. **Whether to suspend costs.**

The CO has primary responsibility for suspending payment of inaccurate, unauthorized, unexplained, or unsupported costs, as well as costs that are not allowable, allocable or reasonable. In situations where there are significant math errors, incorrect indirect cost rates, lack of available funding (due to limitation of funds or limitation of cost clauses in the contract), costs not satisfactorily explained, insufficient supporting documentation, unapproved work, or other invoice irregularities, costs may be recommended for suspension by the COR.

If the COR objects to a cost, including work not previously approved, and the contractor disagrees, the CO may suspend payment of those specific costs until the contractor submits information showing the costs were valid, at which time the CO may lift the suspension.

If work was requested by the COR but not authorized in the contract or by the CO, it may result in the COR being held personally liable for the cost. The CO may pursue a ratification action if it is in the best interests of the agency to compensate the contractor for unauthorized or out-of-scope work. The CO may suspend costs on the invoice until the matter is resolved.

Contractor resubmissions of any previously billed costs that were suspended by the CO should be delineated as a separate item on the invoice so that it is easily recognized and not confused with other billed costs.

**NOTE 24:**

24. **Whether to disallow costs.**

The CO has primary responsibility for disallowing payment of questioned costs described above. The COR will review the contractor's invoice to verify costs and immediately report any irregularities or discrepancies to the CO that might warrant disallowance.

If the contractor is unable to sufficiently demonstrate and validate the incurrence of costs, the CO may disallow those costs. If the CO determines that billed costs are unallowable, the CO is expected to communicate the matter with the contractor for resolution. Contractor resubmissions of any previously billed costs that were disallowed by the CO should be listed as a separate item on the invoice so that it is easily recognized.

The CO must provide written notification of his or her final decision to the contractor for disallowed costs and apprise the contractor of its right to file a claim under the Disputes clause of the contract.

In the case of Federal cost-reimbursement contracts, the cognizant audit agency (usually DCAA or OIG) performs annual incurred cost audits of direct and indirect costs. These audits are typically performed several years after the contractor's fiscal year is over. Disallowed costs under the contract should be mentioned to the cognizant auditor to ensure that those costs are not mistakenly paid later by the DCAA or OIG auditors.

(See FAR Subpart 31.2, "Contracts with Commercial Organizations.")

**NOTE 25:**

25. **Whether correct and sufficient appropriated funding is available to pay the invoice.**

The COR has primary responsibility for ensuring that funds are available in the contract to pay for billed costs prior to recommending payment to the CO.

If the contract has insufficient funds to pay an invoice, the CO must suspend payment for the dollar shortage until adequate funds are obtained and obligated to the contract through a contract modification. In order to prevent this situation from occurring, CORs should regularly monitor the status of available contract funding as compared with authorized future expenditures and with the contractor's typical monthly burn rate.

**NOTE 26:**

26. **Contractor overpayments.**

The COR has primary responsibility for avoiding overpayments made to contractors. If overpayments are identified, the COR will communicate such matters with the CO to facilitate a prompt return of overpayment amounts. Typically, the COR will contact the contractor about the discrepancy and provide notification that a deduction will be made from future invoices submissions under the contract, and afford the contractor an opportunity to respond as appropriate. If the contractor disagrees with the invoice deduction, the CO will attempt to resolve the matter with the contractor.

**NOTE 27:**

27. **Whether adequate internal controls are maintained by the agency to ensure proper payments are made.**

The CO has primary responsibility for ensuring that adequate internal controls are maintained to avoid erroneously payments to contractors for unallowable costs and avoid overpayments. The CO will coordinate with the COR to ensure that proper invoicing procedures are consistently followed and that invoice reviews are documented to ensure sufficiency. The CO and COR comply with agency invoice review and approval policies and procedures and conduct periodic invoice reviews to ensure contractor compliance.

**NOTE 28:**

28. **Frequency and parameters of CO periodic post-payment invoice reviews.**

The CO has primary responsibility for conducting periodic monitoring of paid invoices to ensure that the contractor and agency are fulfilling their respective invoicing roles fully and properly. CO monitoring should be at the level and frequency necessary to ensure that all billed costs paid were done so in accordance with FAR and agency policies and procedures. Periodic monitoring may include one or more detailed reviews of paid invoices during each contract year. However, the nature of the CO reviews will depend on issues such as number and nature of problems encountered, contract type, and contract complexity, and is at the CO's discretion. Ultimately, the CO is responsible for taking necessary actions to ensure the accuracy and completeness of the invoicing process, in collaboration with OCFO.

## **NOTE 29:**

### 29. **Invoice review checklists.**

The COR has primary responsibility for completing and submitting any required invoice review checklists to the CO to serve as adequate review of a contractor's invoice and file documentation. Invoice checklists are used to demonstrate that an invoice review was properly and thoroughly conducted, noting what was reviewed on each invoice including discrepancies or irregularities. Invoice checklists are intended to assist CORs with their invoice review and approval process and if necessary accompanied with supplemental documentation such as spreadsheets, tables, notes, etc. to demonstrate that invoices were properly reviewed. *Note: The Division of Contracts will issue separate guidance regarding the required use of invoice review checklists and their applicability.*

## **NOTE 30:**

### 30. **Invoice Files.**

The CO has primary responsibility for maintaining an invoice log and copies of paid invoices as part of the contract file. Both the CO and COR share in this important responsibility to ensure that there is a complete and accurate record of invoices paid, including discounts taken, suspended or disallowed costs, requests for reimbursement of overpayments, and refunds made to the contractor. Invoice records will eventually be used to support the close-out process as well as any formal contractor claims for disallowed costs.

## **I. DEFINITIONS**

**Approval** – A favorable decision made by an authorized individual (Contracting Officer) for payment of a submitted invoice in return for the delivery of acceptable goods or satisfactory service performance.

**Billed Costs** – Costs included in a contractor's invoice.

**Certification** – The act of verifying the legality of the obligation to be paid under the particular appropriation, the correctness of the information contained in the invoice and supporting records, and the accuracy of any computations.

**Certifying Officer** – An individual who has been charged with “approving payment” by certifying invoices for payment and who is responsible for verifying the accuracy and propriety of all documents upon which payment is to be based and certifying that that payment is legal, correct, and proper.

**Correct Payment** – Means the payee (contractor), address and payment amount are accurate, and it is not a duplicate payment.

**Discount for Prompt Payment** – An invoice reduction offered by the contractor for payment prior to the due date.

**Improper Payment** – Any payment that should not have been made or that was made in an incorrect amount (including overpayments and underpayments) under statutory, contractual, administrative, or other legally applicable requirements, and includes any payment to an ineligible recipient, any payment for an ineligible good or service, any duplicate payment, any payment for a good or service not received (except for such payments where authorized by law), and any payment that does not account for credit for applicable discounts. (See Public Law 111-204, Improper Payments Elimination and Recovery Act of 2010, dated July 22, 2010.)

**Internal Controls** – The organizational policies and procedures used to reasonably ensure:

- Programs achieve their intended results;
- Resources are used consistent with the agency mission;
- Programs and resources are protected from waste, fraud, and mismanagement;
- Laws and regulations are followed; and
- Reliable and timely information is obtained, maintained, reported and used for decision making.

**Invoice** – A bill, written document, or electronically transmitted document provided by a contractor requesting payment for goods received or services rendered.

**Invoice Review** – An examination of an invoice with supporting documentation prior to payment for receipt of a good or service.

**Legal Payment** – The payment is permitted by law and is consistent with the purpose of the appropriated funds.

**Payment Date** – The date which a check for payment is dated or, for an electronic funds transfer (EFT), the date when payment is credited to the contractor's financial institutions.

**Proper Invoice** – An invoice that contains necessary information as delineated in FAR 32.905, "Payment documentation and process," and adheres to NRC-specific billing instructions, format, and documentation requirements.

**Proper Payment** – Means that appropriated funds are available, the contract or order is valid, goods have been received or services performed, goods or services

have been accepted, the invoice is proper, the invoice is properly supported by sufficient documentation or records, and payment is made by an authorized official.

**Payment Review** – Examination of a transaction after its occurrence. A post-payment review determines if NRC's policies and procedures have been properly followed. This may include verification if paid invoices have necessary documentation and approvals.

**Procurement Contract** – Means any valid and enforceable agreement, rental and lease agreement, purchase order, delivery order, task order, or contract (including indefinite-delivery contracts).

**Receipt of goods and services** - The acknowledgement (usually identified with a signature) that goods have been received or services have been performed. This acknowledgment is the basis for approval of an invoice.

**Segregation of Duties** – The assigning to different individuals the responsibilities of authorizing transactions, recording transactions and maintaining custody of assets. Segregation of duties reduces the opportunities for one person to both perpetrate and conceal instances of fraud and reduces the risk of error, waste, and wrongful or inappropriate acts.

## CONTRACT MODIFICATIONS

The COR is responsible for assisting the Contracting Officer with the planning and execution of contract modifications, by performing the following delegated tasks:

- **Identify the need to change the contract**
  - **Prepare a technical analysis to determine impact on contract and the Government**
  - **Prepare and Submit a Requisition Package with Support Documentation for Proposed Change**
  - **Assist in negotiations of contract modification**
- 

- **Identify the Need to Change the Contract**

Some circumstances that can prompt a change the contract include:

- A change in NRC requirements or higher level programmatic needs.
- Insufficient or vague SOW or PWS, including: confusing or unclear work requirements; responsibilities of parties unclear; insufficient deliverables, inadequate measuring/testing methods or techniques; and ineffective performance standards.
- A need to increase or decrease contract funding
- A need to increase or decrease the contract's Total Estimate Cost/Ceiling Amount/Price.
- A need for funded or unfunded extensions to provide additional time and resources for completion of work.
- Suspension of work (i.e., Stop Work Order).
- Required revisions to the contract's terms and conditions in the contract.
- A change in performance requirements.

➤ **Prepare a Technical Analysis to Determine Impact on Contract and the Government**

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

- Correctly interpret a request by the contractor, if any
- Notify the Contracting Officer (or designated Contract Specialist) of the apparent need for a change
- Gather information for a change request
- Determine impact on contract scope and budget (cost impact)
- Recommend to CO whether the change is in the Government's best interest
- Prepare and submit requisition package with support documentation for proposed change
- Assist the CO/CS in processing the procurement action and facilitating any dialogue with the contractor, as necessary

***Correctly Interpret a Request by the Contractor***

The COR should carefully analyze correspondence submitted by the contractor to accurately assess the request for contract changes, and assess the legitimacy of the request, including the contractor's rights under the contract

***Notify the Contracting Officer of the Apparent Need for a Change***

The COR should notify the CO in a timely manner to ensure that the Government does not:

- Jeopardize its mission or objectives.
- Delay the contractor from performing under the contract.

At a minimum, the COR's requisition package should contain the following items:

- Memoranda to the file, letters, or other correspondence. These are used to request, explain, and justify the contract modification request.
- Proposed changes to the SOW or contract, including changes to cost, schedule and performance.
- A requisition with the appropriate approvals and funds certification.



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

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

- Description of the proposed change.  
Chronology of events.
- Justification for change.
- Pricing or budgetary information.
- The need for the change and adverse impact on the Government if change is not made.

The COR should also obtain information from other NRC and Government personnel. This may include:

- Statement of facts.
- Any correspondence or communication with the contractor.
- Reaction to the requested change.
- Impact of the change request on its operations or mission.

### ***Determine impact on contract scope and budget (cost impact)***

The effects of the proposed change on the original budget and technical proposal should be carefully considered, weighed and addressed. Pricing considerations should consider the significance of the change to the contract, historical cost experience under the contract, and other market research on current market prices for similar goods and services. This information is vital and must be submitted to the CO as part of the COR's requisition package.

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

- Background of the issue and reason for the change.
- Whether the issue is already covered by the contract's scope or terms and conditions.
- 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.

### ***Contract Scope***

Determine whether any change, initiated by either the contractor or Government, is within the scope of the contract and not a “cardinal” out-of-scope change. 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 of the work is proportionate to the overall cost/price of the original contract.
- Is consistent with competitive factors and circumstances of the original competition.
- Changes to SOW are not significant or extensive enough as to alter the nature of the requirement.

### ***Budget (cost impact)***

Although the CO is the person ultimately responsible for all decisions on contract modifications, he/she relies heavily upon the COR, CS 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 (new work)* - 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 or little change in contract price.

### ***Recommend to CO Whether the Change is in the Government's best interest***

Prior to the submission of the requisition package, the COR should discuss the change request with the CO/CS, all things considered, and make a recommendation. The COR should call upon all information based upon his/her knowledge that supports or opposed the change request, including market research and real impact on contract performance and results.

➤ **Prepare and Submit a Requisition Package with Support Documentation for Proposed Change**

The COR is the responsible official at the NRC for developing and submitting a requisition package that includes all relevant information regarding a requested change. The elements of a requisition package are described, in detail, other sections of this Guidebook. However, the basic elements of a requisition package include:

- Requisition
- Attachments to the requisition include:
  - Revised SOW or PWS
  - Changes in Deliverables and Delivery Dates
  - Change in Performance Period
  - Independent Government Cost Estimate (IGCE) for new work
  - JOFOC, if applicable
  - Market research, as necessary

➤ **Assist in Negotiations of Contract Modification**

The COR may be required to:

- Research information in preparation for informal or formal negotiations
- Serve as a subject matter expert in addressing technical issues that may arise
- Evaluate contractor proposals for proposed changes

The COR may be required to evaluate contractor proposals, and:

- Provide supporting rationale for rejecting or accepting the contractor's proposal.
- Provide advice concerning health and safety of contractor's methods and performance.
- Provide guidance on whether acceptance of previously [rejected] defective products or inferior service would be in the Government's best interest "after" needed repairs or corrections are made.
- Whether adjustment to the contract's total estimate cost or price is advantageous to the Government.
- Attend any negotiations or be accessible to respond to the contractor positions.

The CO makes a final decision at the conclusion of negotiations.

**Examples of Contract Modification types include:**

- Administrative changes;
  - Change orders;
  - Changes authorized by clauses other than a changes clause; and
  - Termination notices.
- 
- Name changes (COR, CO, CS)
  - Address/office changes
  - Appropriation data changes/corrections
  - Scope changes
  - Changes in contract clauses (typically clause updates)
  - Exercise options (negotiated at time of award)
  - Add new funds and new work, as authorized by FAR
  - Incremental funding
  - Assignment of Claims
  - Novation or Change-of-Name Agreement Modification
  - Modification in response to Value Engineering Change Proposal
  - Ratification of Unauthorized Commitments

## EXERCISE OPTIONS

The COR is responsible for assisting the Contracting Officer with planning and preparing support documentation for option modifications, by performing the following delegated tasks, in accordance with FAR 17.207 - Exercise of options:

- **Identify available contract options**
  - **Determine the need for additional supplies, services, or time**
  - **Research the marketplace for current pricing information**
  - **Provide support documentation (requisition) to the Contracting Officer**
- 

- **Identify Available Contract Options**

The COR should understand the requirement, pricing information, terms and conditions of the contract, and timeframe needed to exercise an option, and determine if it is in the Government's best interest. The COR should begin this step in sufficient time to enable the CO to make an informed decision and before the period to exercise an option expires (typically within 60 days of the option date).

The COR should ensure that:

- Funding is available.
- The requirement covered by the option fulfills an existing, bona fide Government need.
- Exercising the option is the most advantageous method of fulfilling that need.
- The option represents a discrete and severable contract activity(ies) or task(s).

➤ **Determine the Need for Additional Supplies, Services, or Time**

As part of a requisition package, the COR submits a recommendation that includes information concerning:

- Government requirements supporting the need to exercise the option.
- Advantages of exercising the option.
- The technical impact and value of the option (*per the negotiated contract*).
- Funding availability for the option (*which should be fully-funded at time of execution by the CO, in accordance with appropriations law*).

➤ **Research the Marketplace for Current Pricing Information**

The COR submits to the CO market research data, as a part of the requisition package, which confirms:

- The option price would be lower than current prices likely to be offered by other vendors in the open market.
- 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
- Performance of the incumbent contractor

The COR uses market research to obtain information on the latest commercial market pricing and industry trends. The COR notifies the CO when information is not available through market research or information is too old or not relevant enough for an “apples to apples” comparison.

➤ **Provide Support Documentation (requisition) to the Contracting Officer**

COR documentation, including market research, assists the CO in making an accurate and timely decision about the use and value of contract option.

COR documentation should include a requisition package with the following:

- A rationale for exercising the option, with the option period and clauses, as stated in the contract;
- The technical evaluation that indicates the option meets the Government requirement, as articulated in the SOW; and

- A requisition with funds certification for the full option services.

After review, the CO sends a written notice to the contractor advising of the Government's intent to exercise the option.

## EXCUSABLE DELAYS

The COR is responsible for assisting the Contracting Officer with issues concerning contractor delays and matters applicable to FAR 52.249-14 – “Excusable Delays”, by performing the following delegated tasks:

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

**All contractor delays are not excusable.** The FAR specifies that failure of the contractor to perform is excusable only if such failure “arose out of causes beyond the control and without the fault or negligence of the contractor”.

Examples of these causes are:

- (1) acts of God or of the public enemy,
- (2) acts of the Government in either its sovereign or contractual capacity,
- (3) fires,
- (4) floods,
- (5) epidemics,
- (6) quarantine restrictions,
- (7) strikes,
- (8) freight embargoes, and
- (9) unusually severe weather. In each instance, the failure to perform must be beyond the control and without the fault or negligence of the Contractor.

[https://www.acquisition.gov/far/current/html/Subpart%2049\\_4.html](https://www.acquisition.gov/far/current/html/Subpart%2049_4.html)

➤ **Identify and Verify a Delay in Contract Performance**

A contract includes a delivery or performance schedule.

To assist the CO, the COR:

- Identifies and verifies the existence of a 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 (e.g., issuance of a Stop Work Order).

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 CO.

The COR confirms the delay by:

- Obtaining feedback from any other NRC personnel responsible for monitoring performance or delivery under the contract.
- Reviewing the correspondence and notice and supporting documents from the contractor regarding the delay.
- Reviewing any contractor claim regarding the delay.
- Coordinating with the CO or CS regarding contract requirements and applicable Federal Acquisition Regulation (FAR) governing excusable delays.

### ***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 and provide approvals
  - Obtain required contract funding
  - Issue changes or provide contract modifications in a timely manner
  - Respond completely to contractor requests
  - Furnish Government property when required under the contract
  - Inspect or accept goods or services 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 CO in developing the Government position on the delay matter. Documentation should include facts and relevant information about the delay such as:

- List of persons with factual or first-hand knowledge of the delay.
- Description of the delay.
- Chronology of contract performance, indicating the date:
  - When work under the contract was initiated,
  - 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 contractual obligations.
- Estimate of a reasonable period of additional time to perform.
- Potential alternatives and resolution, and pros and cons of each alternative (price, quantity, and quality).

➤ **Assist the Contracting Officer in Evaluating Contractor Responses**

CORs may be asked to assist the CO in evaluating contractor responses. As part of their response, contractors may be requested to:

- Provide and substantiate the evidence supporting or explaining the delay.
- Explain and substantiate the costs associated with the delay.
- Demonstrate that the delay was beyond its control.
- Demonstrate the delay was not associated with any other delays.

Before allowing a contractor to recover costs as a result of a delay, the contractor's response must provide verifiable evidence and sufficient documentation demonstrating the incurrence of otherwise allowable expenses under the contract during the period in question. The CO, with the assistance of the COR, considers each itemized expense and determines whether the contractor should receive consideration. Consideration may be monetary or non-monetary. Compensation commonly is either dollars or contract time extensions.

<b>EXAMPLES OF RECOVERABLE EXPENSES</b>	
<b>Possible Contractor Expenses</b>	<b>Government Verification Review</b>
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 company. 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: <ul style="list-style-type: none"> <li>• Interviewing contractor employees.</li> <li>• Examining payroll records in an audit.</li> </ul>
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 may be lost. This is the most difficult expense to document, although it is also one of the most common delay and disruption costs.
Insurance and bond coverage	If the contractor extended this coverage for the period covered by 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, transportation and storage facility 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.

## CONTRACTOR CLAIMS

The COR is responsible for assisting the Contracting Officer, in collaboration with the Office of General Counsel (OGC), in analyzing contractor claims and making reasonable recommendations for supported settlement positions, by performing the following delegated tasks:

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

- **Notifies the Contracting Officer of Potential Disputes**

Disagreements between the Government and a contractor can evolve into contract disputes.

For instance:

- Difficult or complex projects may result in strained relationships.
- Lengthy contractual documents with numerous revisions may lead to misinterpretations or misunderstandings.
- Unforeseen conditions may cause disagreements (e.g., changed weather conditions or patterns may disrupt scheduling or unknown underground rock formations or archeological finds could delay digging and construction).
- Well-intended actions or confusion may result in out-of-scope (cardinal) changes.

A CO 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.
- Rejection of defective products or inferior service, in nonconformance with contract requirements or accepted industry standards, as applicable.

The COR should be aware of warning signs of a potential dispute and should notify the CO as soon as it is known. Disagreements not addressed early may turn into

legal 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 may include one or a combination of the following:

- Lack of specific information from a contractor during a pre-award orientation kickoff meeting about how the job will be completed, and absence of an approved work plan.
- 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 contract 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 of rejected products or inferior service.
- Complaints from site workers to Government personnel about safety or health conditions, or being paid less than established Department of Labor wage rates.
- Refusal by a contractor to sign bilaterally negotiated contract modifications.
- Letters from a contractor alluding to performance problems without specific details regarding those problems or remedies for resolving them.
- Numerous correspondence from a contractor requiring written replies to very insignificant matters, creating a backlog of unnecessary paperwork, distractions and frustration.
- Persistent or unreasonable complaints from a contractor concerning the behavior, motives, or requirements of an inspector or contract administrator that are found to be without merit.
- Receiving complaints from subcontractors concerning late payments or nonpayment.

### ➤ **Assists in Responding to Valid Contractor Claims**

#### ***What Constitutes a Valid Claim by the Contractor***

All claims by a contractor against the Government relating to a contract must be in writing and submitted to the CO for a decision. As defined in Federal Acquisition Regulation (FAR) 2.101, "...a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain [precise dollar amount], the adjustment or interpretation of contract terms, or other relief arising under or relating to the contract." As per FAR 2.101, a written demand or written assertion by the contractor seeking the payment of money exceeding \$100,000 is not a claim under the Contract Disputes Act (CDA) until it is certified.

A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim. However, the invoice submission may be converted to a claim, by written notice to the CO as provided in FAR 33.206(a), if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

### ***Prepare Supporting Documentation***

When possible, the CO makes should make all reasonable attempts to informally resolve disagreements with the contractor, facilitated by the knowledge and experience of the COR.

The COR submits supporting data to the CO that:

- Describes and details the dispute.
- Sites relevant contract terms and conditions.
- 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, both internal and external to the Government.

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, 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 on contract performance.
- Evaluating project and contract file documentation.
- Performing a cost/price analysis and damage assessment.
- Preparing a report for the CO.

The COR provides technical analysis to assist the CO in analyzing the validity and nature of the contractor's claim. A technical analysis should be submitted in writing and include:

- Background information (including information used to support the dispute).
- Contract/order number and dates.

- Estimated contractor claim amount, the amount the contractor may be entitled to, and any differences or discrepancies.
- Contractor labor and equipment usage, and associated cost.
- Idle time, wasted time, or dragged-out time.
- 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.

### ➤ **Assists in Resolving Claims**

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

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

ADR procedures are used when:

- A serious disagreement exists between the Government and the contractor.
- Both parties voluntarily participate with officials authorized to resolve the issue.
- Both parties agree on procedures and terms of the ADR process.
- Formal litigation is not underway by either party, and information gained in ADR cannot be used in any future litigation proceedings initiated by either party.

#### ***Participate in Formal Proceeding***

Should the contractor submit a contract dispute to the NRC, the CO may request the COR assist with preparation or assembly of:

- The contract specification and drawings, including all modifications.
- COR correspondence and contract 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 kickoff meeting minutes and report. These may establish expectations and understandings of both parties concerning a provision of the specification or SOW, or anticipated problems foreseen by the parties.
- 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 Contractor Performance Reports (CPRs).

If the result of formal proceeding favors a contractor, the CO, in collaboration with OGC, may request assistance from the COR in establishing and negotiating an equitable adjustment. After successful negotiation, the CO issues a contract modification formally documenting the equitable adjustment.



## UNSATISFACTORY PERFORMANCE

The COR is responsible for assisting the Contracting Officer with addressing unsatisfactory contractor performance, by performing the following delegated tasks:

- **Initiate Corrective Action**
  - **Address Delinquencies**
  - **Address Cost Overruns**
  - **Document Poor Performance**
- 

In a delinquency or default situation, contractor performance is delayed, inadequate, or both. CORs must understand the rights and responsibilities of both the Government and the contractor and should not take any actions that might be considered prejudicial to either party.

Two principles govern conduct in these situations. First, when a delinquency appears imminent, prompt action must be taken to protect the Government's rights; and second, in administering a delinquent contract, NRC personnel should do nothing that might waive the Government's rights.

The COR should notify the Contracting Officer at the earliest moment when, as a result of monitoring the contractor's progress, it appears that the contractor may become, or is in fact, delinquent. The CO will thus be prepared to take formal action dependent upon the facts.

Silence on the part of the Government could be interpreted by the contractor as revised Government expectation of performance, differing from that stated in the contract. This could adversely affect the Government's right to withhold payments, terminate for default, or otherwise exercise certain rights under the contract.

Unsatisfactory performance is often a matter of degree. The Government's actions can be directed towards correcting the unsatisfactory performance. The Government's actions can also be directed towards protecting the Government's interests in the event of the contractor's default.

➤ **Initiate Corrective Action**

The COR must take appropriate action to enforce any contract requirements that are not being met. The following are steps the COR should take if the contractor is not complying with a specific requirement called for in the contract.

- Call the contractor's attention to the discrepancy and seek the contractor's voluntary commitment to remedy the failure. Then follow-up in a reasonable period to see if remedial action was taken.
- If the contractor disagrees that contract requirements are not being met, discuss the matter with the contractor to determine the basis for the contractor's position. Also, discuss the matter with the CO to see what course of action should be taken to resolve whether or not the contractor is complying with the contract. If it is clear that the contractor's position has no reasonable basis, direct the contractor to take corrective or other action necessary to meet the requirements of the contract.
- Such directions, if oral, are confirmed in writing, with a copy provided to the Contracting Officer. The giving of such directions is representative of the COR's primary responsibility of seeing that the contractor does what it promised to do in the contract. By the same token, the COR must not direct the contractor to do anything more than or different from what the contractor agreed to do. Such a direction would violate the limitation of the COR's delegated authority.
- If, however, the contractor fails to comply with a contract requirement within a reasonable time after having been directed to do so, then the COR may recommend that the CO send a letter pointing out the failure of performance and its importance to NRC, and directing that the deficiency be "cured" within a specified time period -- usually 10 calendar days. This letter is called a "cure notice". Such a letter can be beneficial in assuring that top management in the contractor's organization is aware of the problem and in enlisting their support for corrective action.
- If the departure from contract requirements continues, and if it appears that the contractor will not remedy his or her failure to do what the contract requires, then the COR should consider recommending that the Contracting Officer terminate the contract for default.

➤ **Address Delinquencies**

A delinquency occurs when a contractor fails to deliver products or make progress in accordance with the schedule set forth in the contract, or fails to correct nonconforming products or services.

When an actual or threatened delinquency occurs, the COR must:

- Promptly notify the CO.
- Determine the reason for the delay, and discuss it with the CO. Based on the facts, the CO will decide if the delay is excusable, and will determine an appropriate course of action.
- If it is decided that the delay is excusable, the COR should request that the CO issue a modification to change the contract period of performance/delivery schedule.
- If the delay is not excusable and is attributable to the contractor, and there is no other recourse, the COR may request the CO to terminate the contract for default.

Terminating a contractor should be a last resort only after the Government has sufficiently addressed the matter with the contractor, detailing the problems, and providing the contractor an opportunity to take corrective action and remedy the problem. Also, it is clear that the contractor cannot or will not perform as required in the contract, then a termination for default or convenience, whichever is appropriate under the specific circumstances, must be pursued.

➤ **Address Cost Overruns**

A cost overrun occurs when a contractor exceeds the estimated costs or the fund limitation of a cost-reimbursement contract without proper authorization from the CO. Cover overruns occur only in cost-reimbursement type contracts, since in fixed-price type contracts, the contractor is responsible for completion of the contract regardless of costs incurred.

When the COR becomes aware of an overrun situation, he/she should not request or encourage the contractor to continue work. Boards of Contract Appeals have held that such action will legally obligate the Government to reimburse the contractor for keeping on with the work, notwithstanding the "Limitation of Cost" clause limiting the Government's obligation to the stated estimated amount. The COR should promptly notify the CO and the program office management. The Government will then assess the situation. The CO may terminate the contract for the convenience of the Government before the

overrun occurs; modify the contract to decrease the technical effort (de-scope SOW) in order to eliminate the need for additional funding; or, increase the contract funding to permit completion of the work. If it is determined to complete the work and if additional funding is available, the COR must initiate a requisition and submit it to the Division of Contracts for CO action.

➤ **Document Poor Performance**

It is important that CORs and COs coordinate efforts to record poor performance as part of Contractor Performance Assessment Reports (CPAR) process so that vital information can be used in the Government's contractor past performance portal - Past Performance Information Retrieval System (PPIRS).

It is equally important that Agency officials be honest and candid, but professional, in providing their feedback to the contractor about problems and shortcomings adversely affecting contract performance. Once final CPAR reports are submitted to PPIRS they can be accessed by other federal government buyers during source selection evaluations for consideration in award decisions.

## REMEDIES FOR NONCONFORMING WORK

The COR is responsible for assisting the Contracting Officer with recommendations for formal contract remedies, by performing the following delegated tasks:

- **Notify the Contracting Officer of performance failures or noncompliance issues**
  - **Provide technical assistance to the Contracting Officer**
- 

- **Notify the Contracting Officer of Performance Failures**

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

- Anticipated or actual late delivery.
- Failure to control costs under a cost-reimbursement contract
- Unsatisfactory performance
- Rejected products and/or inferior service.

Once a performance failure or breach is identified, the COR must notify the CO, immediately. Because many remedies are time sensitive, delays in informing the CO may result in harm to the Government, and limit the types of remedies available to correct the situation. A remedy recommendation by the COR should best match the problem and include adequate and timely documentation that supports the position.

- **Provide Technical Assistance to the Contracting Officer**

A COR may be required to:

- Prepare documentation and make appropriate recommendations to support the Government position for:
  - Any monetary or non-monetary consideration.
  - A revised delivery schedule.
  - Modifying other terms and conditions of the contract.

- Attend meetings with the contractor and provide technical advice as requested by the CO

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

- Providing technical analysis for delinquency notice situations.
- Calculating liquidated damages for contractor breaches of contract terms and conditions.
- Preparing written rejection of nonconforming products and services.
- Determining the applicability and use of warranty provisions.
- Providing technical review of contractor responses.

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

CORs are responsible for analyzing serious performance problems that justify the issuance of a delinquency notice.

In response to a CO-issued **cure notice**, the COR may be asked to determine the impact of the contractor's offer to:

- Correct the work.
- "Cure" performance problems.
- 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 or service, in exchange for consideration given to the Government.
- Present a case for an excusable delay, in accordance with FAR 52.249-14.

The COR may be required to assist with reviewing a contractor's response to a CO-issued **show cause** letter by evaluating:

- The impact of no contractor reply.
- A reply that has no reasonable or supportable justification.
- A claim for a case of excusable delay, in accordance with FAR 52.249-14.
- An assertion that performance is impossible or unrealistic 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 from the contractor. 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.
- 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 contract 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 products and services must clearly demonstrate the reason the product or service did not meet the requirements of the specification, SOW or PWS. CORs must provide supporting documentation, identifying which part of the contract the contractor did not perform and the reason why, to the best ability. Inspection and acceptance clauses in the contract provide the basis for rejecting products and services.

When the nonconformity seriously affects the requirement, the item should be rejected. The COR, in collaboration with the CO, 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 review the contract file and discuss with the CO or CS to determine whether any contract requirements may have been changed.

CORs, when authorized by the CO to perform inspection and determine acceptance, must document the reasons for any rejections.

The documentation must be in writing if:

- The rejection took place at a location other than the contractor's plant or facility.
- The contractor persists in providing minor nonconforming items or services.

- Late products or services 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 (after DOI/NBC or CO has officially contacted the contractor).
- Be furnished to the contractor promptly.

CORs must consider the following when rejecting products or services, and issuing notices to that effect to the contractor:

- Request an acknowledgment signature from the contractor for the notice.
- Detail the contents of the products or nature of services that were rejected, and provide reasons for nonconformance with the contract.
- A rejection notice does not extend the delivery period or performance period of the contract.
- State a demand that the contractor correct the noted deficiencies in an expeditious manner so not to further impede performance under the contract or cause unnecessary problems or higher costs.

### ***Determining Warranty Provisions***

The CO 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 required to verify that a warranty clause applies to a specific failure by:

- Confirming the Government has officially accepted the products 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 that they will be met.
- Confirming that facts in the case support invoking the warranty authority.



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

CORs are required to assist in evaluating the impact of the contractor's response to remedy defects and deficiencies, including:

- A proposal to repair or correct the nonconforming 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 to the Government.

## STOP WORK ORDER

The COR is responsible for assisting the Contracting Officer with issues concerning contractor stop work orders or suspension of work, by performing the following delegated tasks:

- **Identifies potential conditions requiring a work stoppage**
  - **Recommends a work stoppage to the Contracting Officer**
  - **Assists and facilitates issuance of a stop work order or suspension of work order**
  - **Recommends to Contracting Officer when work can resume after a work stoppage**
- 

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

- **Identifies Potential Conditions Requiring a Work Stoppage**

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

**Government**

- When unable to provide Government furnished property or services as stipulated in the contract, according to schedule.
- When a request for a change to the contract has been received and a modification cannot be or has not been issued.
- When additional time is necessary to consider contract modifications that would substantially change the contract or deliverables/results.

**Contractor**

- When a proposal has been submitted to materially change the technical requirement of the contract.
- When conditions at a Government work site make performance of work hazardous or unhealthy, and not immediately correctable.

### ***Determine the Impact of Work Stoppages***

Work stoppages should only normally occur “after” the Government has determined the foreseeable impact (*absence the present of immediate danger or harm to persons or valuable resources*), which may include:

- Estimated cost for delaying the work.
- Potential effect on contractor labor (loss of skilled labor, low morale, loss of efficiency).
- Potential loss of or damage to perishable goods.
- Estimated effect on overhead (inventory, indirect labor, etc.).
- Estimated length of the delay.
- Effect on Government operations and mission.
- Any adverse effects of the potential delay on contract completion.

The COR should coordinate with the Division of Contracts to determine if there is a contract clause that allows the Government to issue a stop work order or suspension of work order. CORs cannot issue any instructions to a contractor to start or stop work, as the CO is the only Government official authorized to issue stop work orders.

### ➤ **Recommends a Work Stoppage to the Contracting Officer**

The COR is responsible for making recommendations to the CO regarding the potential impact of work stoppages, and whether such action is necessary. Only after a thorough review has been conducted should work stoppages take place, unless urgent circumstances dictate otherwise.

If a work stoppage is necessary, the COR must document the need for the stoppage as part of a recommendation to the CO.

### ***Document Recommendation***

The COR documents a stop work order by including the following information:

- A detailed description of the work to be suspended
- Effective date and time
- Timeframe to resume work
- The contractor’s 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

➤ **Assists and Facilitates Issuance of a Stop Work Order or Suspension of Work Order**

The COR may be requested to:

- Select the method for issuing the stop work order or 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 order or suspension of work order. There are two methods for issuing stop/suspension of work orders:

Oral - Oral orders are issued for urgent reasons, such as life-threatening issues or safety violations or concerns. A CO issues oral orders only when the situation precludes waiting for a written one, and a timeframe for work stoppage needs to be conveyed immediately. Oral orders should be confirmed in writing as soon as possible to document the circumstances and facts associated with the work stoppage.

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 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 that might otherwise have ceased.

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

The COR assists the CO with discussions with the contractor regarding the stop work orders.

The following topics may be covered:

- Reasons for issuing the stop work order
- Discussion of the circumstances leading to 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
- Strategies for minimizing the time or impact of a 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 work stoppages occur daily. The CO, COR, and the NRC offices and other organizations/entities affected by the work stoppage should be included in any communication.

➤ **Recommends to Contracting Officer When Work Can Resume After a Work Stoppage**

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

- Written notice is received from the CO 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.

## TERMINATION FOR DEFAULT OR CONVENIENCE

The COR is responsible for assisting the Contracting Officer with contract termination matters, by performing the following delegated tasks:

- **Identify the event(s) or issues under a contract that may lead to or cause termination**
  - **Notify the Contracting Officer of the need for possible termination due to contract nonconformities, apparent breach of contract, or other possible law violations**
  - **Assist with termination planning and proceedings**
- 

- **Identify the Event(s) or Issues Under a Contract that May Lead to or Cause Termination**

### ***Events Leading to Termination for Convenience (T for C)***

The Government might need to prematurely end a contract and terminate for convenience (T for C) when:

- There is no longer a need for the product or service.
- Funds are not available (Anti-Deficiency Act).
- There has been a substantial change in the requirement that extends far beyond the contractor's expertise and skill areas.
- It is impossible for the contractor to perform as specified in the contract due to reasons or circumstances beyond its control and manageable interests.

### ***Events Leading to Termination for Default (T for D) (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 a Government cure and show-cause notices fails to demonstrate that the contract will be completed in accordance with its terms and conditions.
- The contractor is in breach with the contract terms and conditions.
- The contractor is in noncompliance with federal statute, laws, or regulations.

- Tax delinquency with the federal Government.

### ***Financial Warning Signs***

Occasionally there may be evidence or rumors circulating in the public or news media 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, or not at all.
- Late deliveries of materials to the job site.
- A contractor is falling behind contract schedule.
- Contractors co-mingle federal funds – “robbing Peter to pay Paul” in order to stay afloat
- Complaints occur by laborers on the job.
- Telephone calls and communications with Government officials go unreturned.
- Sloppy performance and workmanship is evident.
- Begin selling large-scale assets to maintain working cash flow to meet obligations with creditors
- Lay off employees
- Publicly discuss the possibility of mergers or hostile take-over bids
- Significant stock sell-off by corporate executives and major shareholders
- Declare bankruptcy

### ➤ **Notify Contracting Officer of the Need for Possible Termination Due to Contract Nonconformities, Apparent Breach of Contract, or Other Possible Law Violations**

The COR should notify the CO 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 products or services from other sources or vendors.
- 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.
- Unique capabilities of the delinquent contractor, including patents, technologies, expertise.
- Impact the termination would have on availability of funds.
- Affect on the NRC, other Government agencies and external stakeholders.
- 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 contractor, through such means as:
  - Permitting performance by the contractor under a revised delivery schedule.
  - Permitting the contractor to subcontract with an acceptable third party or establish other business arrangements.
- A no-cost cancellation, such as:
  - The Government obtains the product 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 re-procurement.
  - There is no supportable case for default.
- Termination for Default, if the Government case is strong, and all required steps have been followed (i.e., issuance of cure notice and show cause).

➤ **Assist with Termination Planning and Proceedings**

Termination proceedings typically 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 deliverables that would have been rendered 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 of any Government furnished property or other materials purchased with contract funds.
- Established deadlines for submission of items or information to either party.





## DOCUMENT CONTRACTOR PERFORMANCE

The COR is responsible for assisting the Contracting Officer with identifying, classifying, and recording contractor performance information, by performing the following delegated tasks:

- **Document contractor performance information in a timely manner, in accordance with contract requirements**
- **Notify the Contracting Officer of recurring performance problems**
- **Coordinate with the CO/CS to ensure the completion of annual and final Contractor Performance Reports (i.e., Contractor Performance Assessment Report – CPAR) for submission to the Government’s contractor past performance portal (i.e., Past Performance Information Retrieval System - PPIRS) for electronic storage and retrieval**

- 
- **Document Contractor Performance Information in a Timely Manner, in accordance with Contract Requirements**

Contractor performance evaluations are completed at various points during a contract, depending on its length. The basic process for conducting contractor performance evaluations is captured in the Federal Acquisition Regulation (FAR) and may also be detailed in the contract, specifying:

- Which NRC officials evaluate and document performance (i.e., names of COR and Contracting Officer)
- What is included in the documentation, including the evaluation areas.
- The format or forms required for documenting the evaluation.
- The basic steps for carrying out the process.

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.

### ***Evaluate Contractor Performance***

The contract should generally explain the manner in which contractor performance will be evaluated. The COR should rate performance without bias and provide accurate feedback.

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.
- ***Schedule*** - compliance with milestones; reliable, responsive to technical direction; completed contract requirements and deliverables on time; no liquidated damages assessed.
- ***Cost Control*** - within budget; current, accurate, and complete invoices; actual costs consistent with negotiated, budgeted costs.
- ***Business Relations*** - effective management; reasonable and cooperative behavior; flexible; effective contractor solutions; business-like concern for Government interests.
- ***Management of Key Personnel*** - how long key personnel stayed on the contract and how well they managed their portion of the contract
- ***Utilization of Small Business*** – effectiveness of the small business subcontracting program; progress in meeting small disadvantaged business (SDB) targets in the contract
- ***Other Areas*** – any other areas that the Government believes was critical to successful performance of the contract

### ***Provide Appropriate Information to Contractor***

The Contracting Officer (Assessing Official) provides copies of the evaluation to the contractor for comment and allows at least 30 days for comment. Evaluations must be completed within 90 days of the end of the rating period.

If the contractor disagrees with the evaluation, a decision will be made by a Review Official (RO) at least one level above the CO. The COR may be called upon to assist the RO with this process.

### ➤ **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 circumstances, if any.
- Related documents.
- Analysis of the impact contractor performance problems have had on overall cost and schedule in obtaining required supplies and services; and potential impact on overall contract objectives.

### ***Assist the Contracting Officer in Preparation of 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.
- Other violations of federal statute, laws, and regulations by the contractor.
- Current mailing address for the contractor and any affiliates.

### ➤ **Coordinate with the CO/CS to ensure the completion of annual and final Contractor Performance Reports (i.e., Contractor Performance Assessment Reporting System – CPARS) for submission to the Government's contractor past performance portal (i.e., Past Performance Information Retrieval System - PPIRS) for electronic storage and retrieval**

- Retain performance evaluations
- Release performance information to other Government officials
- Submit to Government portal for electronic storage and retrieval (PPIRS)
- Treat and protect past performance records as privileged source selection information

### ***Retain Performance Evaluations***

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

- Interim and Final Evaluations (CPARS form)
- Contractor responses/rebuttals
- Review comments (if any)

The documents should be marked **"SOURCE SELECTION INFORMATION – SEE FAR 3.104"** and should be readily accessible by contracting office personnel.

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

The contractor 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. In addition to the Contractor Performance Report, 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 or officials may be directed to PPIRs where they can readily access such information.

Reference the following website for additional information regarding the CPARS process:

<http://www.cpars.csd.disa.mil/cparsfiles/pdfs/DoD-CPARS-Guide.pdf>

## Contractor Performance Assessment Reporting System (CPARS)

Ratings & Narrative			
<b>Rating Definitions</b> <b>(Excluding Utilization of Small Business)</b>			
Rating	Contract Requirements	Problems	Corrective Actions
<b>Dark Blue (Exceptional)</b>	<b>Exceeds Many – Gov’t Benefits</b>	<b>Few Minor</b>	<b>Highly Effective</b>
<b>Purple (Very Good)</b>	<b>Exceeds Some – Gov’t Benefits</b>	<b>Some Minor</b>	<b>Effective</b>
<b>Green (Satisfactory)</b>	<b>Meets All</b>	<b>Some Minor</b>	<b>Satisfactory</b>
<b>Yellow (Marginal)</b>	<b>Does Not Meet Some – Gov’t Impact</b>	<b>Serious: Recovery Still Possible</b>	<b>Marginally Effective; Not Fully Implemented</b>
<b>Red (Unsatisfactory)</b>	<b>Does Not Meet Most – Gov’t Impact</b>	<b>Serious: Recovery Not Likely</b>	<b>Ineffective</b>

<http://www.cpars.csd.disa.mil/>

<http://www.cpars.csd.disa.mil/cparsfiles/pdfs/DoD-CPARS-Guide.pdf>

Evaluation Ratings Definitions (Excluding Utilization of Small Business)		
Rating	Definition	Note
<b>Dark Blue/ Exceptional</b>	Performance meets contractual requirements and exceeds many to the Government's benefit. The contractual performance of the element or sub-element being assessed was accomplished with few minor problems for which corrective actions taken by the contractor was highly effective.	To justify an Exceptional rating, identify multiple significant events and state how they were of benefit to the Government. A singular benefit, however, could be of such magnitude that it alone constitutes an Exceptional rating. Also, there should have been NO significant weaknesses identified.
<b>Purple/Very Good</b>	Performance meets contractual requirements and exceeds some to the Government's benefit. The contractual performance of the element or sub-element being assessed was accomplished with some minor problems for which corrective actions taken by the contractor was effective.	To justify a Very Good rating, identify a significant event and state how it was a benefit to the Government. There should have been no significant weaknesses identified.
<b>Green/ Satisfactory</b>	Performance meets contractual requirements. The contractual performance of the element or sub-element contains some minor problems for which corrective actions taken by the contractor appear or were satisfactory.	To justify a Satisfactory rating, there should have been only minor problems, or major problems the contractor recovered from without impact to the contract. There should have been NO significant weaknesses identified. Per DOD policy, a fundamental principle of assigning ratings is that contractors will not be assessed a rating lower than Satisfactory solely for not performing beyond the requirements of the contract.
<b>Yellow/ Marginal</b>	Performance does not meet some contractual requirements. The contractual performance of the element or sub-element being assessed reflects a serious problem for which the contractor has not yet identified corrective actions. The contractor's proposed actions appear only marginally effective or were not fully implemented.	To justify Marginal performance, identify a significant event in each category that the contractor had trouble overcoming and state how it impacted the Government. A Marginal rating should be supported by referencing the management tool that notified the contractor of the contractual deficiency (e.g., management, quality, safety, or environmental deficiency report or letter).
<b>Red/ Unsatisfactory</b>	Performance does not meet most contractual requirements and recovery is not likely in a timely manner. The contractual performance of the element or sub-element contains a serious problem(s) for which the contractor's corrective actions appear or were ineffective.	To justify an Unsatisfactory rating, identify multiple significant events in each category that the contractor had trouble overcoming and state how it impacted the Government. A singular problem, however, could be of such serious magnitude that it alone constitutes an unsatisfactory rating. An Unsatisfactory rating should be supported by referencing the management tools used to notify the contractor of the contractual deficiencies (e.g., management, quality, safety, or environmental deficiency reports, or letters).

NOTE 1: Plus or minus signs may be used to indicate an improving (+) or worsening (-) trend insufficient to change the assessment status.

NOTE 2: N/A (not applicable) should be used if the ratings are not going to be applied to a particular area for evaluation.

## Ratings & Narrative

### Small Business Rating Definitions

Rating	Subcontract Requirements	ISR/SSR	Benefits/Impacts
<b>Dark Blue (Exceptional, Outstanding)</b>	<b>Met All Goals &amp; Exceeded at Least One</b>	<b>Accurate &amp; Timely</b>	<b>Multiple Significant Events of Benefit</b>
<b>Purple (Very Good, Above Average)</b>	<b>Met All Traditional Goals &amp; At Least One Other Goal</b>	<b>Accurate &amp; Timely</b>	<b>Significant Event of Benefit</b>
<b>Green (Satisfactory)</b>	<b>Good Faith Effort to Meet Goals</b>	<b>Accurate &amp; Timely</b>	<b>Minor Problems; Major Problems w/ Corrective Action</b>
<b>Yellow (Marginal)</b>	<b>Deficient in Meeting Key Plan Elements</b>	<b>Inaccurate; Untimely</b>	<b>Corrective Action Plan Required</b>
<b>Red (Unsatisfactory)</b>	<b>Noncompliant; Uncooperative</b>	<b>Inaccurate; Untimely</b>	<b>Multiple Significant Problems; Liquidated Damages</b>

<http://www.cpars.csd.disa.mil/>

<http://www.cpars.csd.disa.mil/cparsfiles/pdfs/DoD-CPARS-Guide.pdf>



## Evaluation Ratings Definitions (Utilization of Small Business)

Rating	Definition	Note
<b>Dark Blue/ Exceptional</b>	Exceeded all negotiated subcontracting goals or exceeded at least one goal and met all of the other negotiated subcontracting goals for the current period. Had exceptional success with initiatives to assist, promote, and utilize small business (SB), small disadvantaged business (SDB), women-owned small business (WOSB), HUBZone small business, veteran-owned small business (VOSB) and service disabled veteran owned small business (SDVOSB). Complied with FAR 52.219-8, Utilization of Small Business Concerns. Exceeded any other small business participation requirements incorporated in the contract, including the use of small businesses in mission critical aspects of the program. Went above and beyond the required elements of the subcontracting plan and other small business requirements of the contract. Completed and submitted Individual Subcontract Reports and/or Summary Subcontract Reports in an accurate and timely manner.	To justify an Exceptional rating, identify multiple significant events and state how they were a benefit to small business utilization. A singular benefit, however, could be of such magnitude that it constitutes an Exceptional rating. Ensure that small businesses are given meaningful, innovative work directly related to the project, rather than peripheral work, such as cleaning offices, supplies, landscaping, etc. Also, there should have been no significant weaknesses identified.
<b>Purple/Very Good</b>	Met all of the negotiated subcontracting goals in the traditional socio-economic categories (SB, SDB and WOSB) and met at least one of the other socio-economic goals (HUBZone, VOSB, SDVOSB) for the current period. Had significant success with initiatives to assist, promote and utilize SB, SDB, WOSB, HUBZone, VOSB, and SDVOSB. Complied with FAR 52.219-8, Utilization of Small Business Concerns. Met or exceeded any other small business participation requirements incorporated in the contract, including the use of small businesses in mission critical aspects of the program. Endeavored to go above and beyond the required elements of the subcontracting plan. Completed and submitted Individual Subcontract Reports and/or Summary Subcontract Reports in an accurate and timely manner.	To justify a Very Good rating, identify a significant event and state how they were a benefit to small business utilization. Ensure that small businesses are given meaningful, innovative work directly related to the project, rather than peripheral work, such as cleaning offices, supplies, landscaping, etc. There should be no significant weaknesses identified.
<b>Green/ Satisfactory</b>	Demonstrated a good faith effort to meet all of the negotiated subcontracting goals in the various socio-economic categories for the current period. Complied with FAR 52.219-8, Utilization of Small Business Concerns. Met any other small business participation requirements	To justify a Satisfactory rating, there should have been only minor problems, or major problems the contractor has addressed or taken corrective action. There should have been no significant weaknesses identified. Per DoD policy, a fundamental principle of assigning ratings is that contractors will not be assessed a rating lower than Satisfactory solely for

## Evaluation Ratings Definitions

	included in the contract. Fulfilled the requirements of the subcontracting plan included in the contract. Completed and submitted Individual Subcontract Reports and/or Summary Subcontract Reports in an accurate and timely manner.	not performing beyond the requirements of the contract.
<b>Yellow/ Marginal</b>	Deficient in meeting key subcontracting plan elements. Deficient in complying with FAR 52.219-8, Utilization of Small Business Concerns, and any other small business participation requirements in the contract. Did not submit Individual Subcontract Reports and/or Summary Subcontract Reports in an accurate or timely manner. Failed to satisfy one or more requirements of a corrective action plan currently in place; however, does show an interest in bringing performance to a satisfactory level and has demonstrated a commitment to apply the necessary resources to do so. Required a corrective action plan.	To justify Marginal performance, identify a significant event that the contractor had trouble overcoming and how it impacted small business utilization. A Marginal rating should be supported by referencing the actions taken by the government that notified the contractor of the contractual deficiency.
<b>Red/ Unsatisfactory</b>	Noncompliant with FAR 52.219-8 and 52.219-9, DFARS 252.219-7003 (deviation), and any other small business participation requirements in the contract. Did not submit Individual Subcontract Reports and/or Summary Subcontract Reports in an accurate or timely manner. Showed little interest in bringing performance to a satisfactory level or is generally uncooperative. Required a corrective action plan.	To justify an Unsatisfactory rating, identify multiple significant events that the contractor had trouble overcoming and state how it impacted small business utilization. A singular problem, however, could be of such serious magnitude that it alone constitutes an Unsatisfactory rating. An Unsatisfactory rating should be supported by referencing the actions taken by the government to notify the contractor of the deficiencies. When an Unsatisfactory rating is justified, the contracting officer must consider whether the contractor made a good faith effort to comply with the requirements of the subcontracting plan required by FAR 52.219-9 and follow the procedures outlined in FAR 52.219-16, Liquidated Damages-Subcontracting Plan.

NOTE 1: Plus or minus signs may be used to indicate an improving (+) or worsening (-) trend insufficient to change assessment status.

NOTE 2: For subcontracting plans under the DoD Comprehensive Small Business Subcontracting Plan (Test Program), DFARS 252.219-7004 (deviation), the ratings entered in CPARS shall mirror those assigned by the Defense Contract Management Agency who is responsible for monitoring such plans.

NOTE 3: Generally, zero percent is not a goal unless the Contracting Officer determined when negotiating the subcontracting plan that no subcontracting opportunities exist in a particular socio-economic category. In such cases, the contractor shall be considered to have met the goal for any socio-economic category where the goal negotiated in the plan was zero.

## CLOSEOUT PROCEDURES

The COR is responsible for assisting the Contracting Officer with contract closeout processes, in accordance with Federal Acquisition Regulation (FAR) 4.804 – “Closeout of contract files” and FAR 42.708 – “Quick-closeout procedure”, by performing the following delegated tasks:

- **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 contract closeout. To avoid having to reopen a contract that has been closed, the CO requests a written release of claims from the contractor as a condition of final payment. Meanwhile, the COR must document that there are no unresolved claims or disputes raised by the contractor.

- ***Identify and Recommend De-obligation of Excess Contract 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 CO de-obligate funds. It is important that costs for final audits (including cost-incurred audits) and the possibility of increases to final indirect cost rates in cost-reimbursement contracts, be considered before funds are de-obligated from the contract.

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

The COR should verify and document whether the contractor has returned or otherwise properly disposed of Government furnished property, and has properly disposed of classified or sensitive unclassified material. A copy of the contractor’s property inventory checklist must be provided to the Government, and the contractor must follow prescribed disposition instructions provided by the CO for Government furnished or titled property.

- ***Upon completion of the contract, the Contracting Officer must ensure or determine, as applicable, that:***

- All services have been rendered;
- All supplies have been delivered and accepted;
- Required evaluations of contractor performance have been completed and documented;
- All payments and collections have been made;
- Releases from liabilities, obligations, and claims have been obtained from the contractor;
- Assignments of refunds, credits, etc., have been executed by the contractor;
- All administrative actions have been accomplished, including the settlement of disputes, protests, and litigation;
- Determination of final overhead rates;
- Release of funds;
- Disposal of property, etc.; and
- The file is properly documented.

➤ **Submit File to Contracting 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 provided proper payment in conformance with contract terms and conditions,
- The period of performance, including all option periods, has 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, and all contract requirements and deliverables have been completed. All files, correspondence, and other documents pertaining to the contract should be forwarded by the COR to the CO, with a statement of completion.

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

## DEFINITIONS

**Acceptance** - The act of an authorized representative of the Government to assume ownership of supplies or services rendered by the contractor in performance of a contract.

**Acceptable Performance Level (APL)** - Indicates the measure of acceptable performance indicated in the contract. An APL of 100% means there is no margin for error.

**Acceptable Quality Level (AQL)** - Is the reverse of the acceptable performance level, for example, if only 5% defects are permitted in a lot, then 5% is the AQL, while 95% is the APL. The AQL is also referred to as an error rate or margin of error that the contractor may have in producing products or in the performance of services.

**Alternative Dispute Resolution (ADR)** - Any procedure or combination of procedures voluntarily used to resolve issues in controversy without the need to resort to litigation.

**Bilateral Modification** - Contract modifications accomplished by mutual action of the involved parties, the contractor and the Government.

**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.

**Cardinal Changes** – These are changes to an existing contract which are beyond the general scope of that contract and are so extensive that a new procurement should be used.

**Change Order** - Unilateral action taken by the Contracting Officer in order to modify the drawings, designs, specifications, method of shipping or packing, place of inspection, delivery, or acceptance of an existing contract.

**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.

**Closeout** - Administrative closeout of a contract after receiving evidence of its physical completion. Closeout may occur after: 1) all work has been completed, 2) the period of performance has expired, or 3) the contract has been terminated for default or convenience.

**Competitive Range Report (CRR)** – Is signed by the CO and includes rationale identifying the highest rated proposals (cost and technical combined) with a reasonable chance for contract award, and precedes discussions or negotiations.

**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.

**Continuing resolution** - Is “an appropriation act that provides budget authority for federal agencies, specific activities, or both to continue in operation when Congress and the President have not completed action on the regular appropriation acts by the beginning of the fiscal year.”

**Contract** - A bilateral agreement between two or more parties, enforceable by law, that obligates the contractor (seller) to furnish something, and obligates the Government (buyer) to pay for it.

**Contract Administration** - The monitoring of the contractor's performance in order to ensure compliance with performance requirements and contract terms and conditions.

**Contract Administration Plan (CAP)** - Is the same as a Quality Assurance Surveillance Plan (QASP).

**Contract Dispute** - A written request to the NRC 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 Modification** - Describes any written change in the terms of the contract.

**Contract Specialist (CS)** – A Government official who assists and supports a Contracting Officer in all phases of the procurement process.

**Contracting Officer (CO)** – A Government official who has warrant authority to bind the Government and obligate appropriated funds.

**Contracting Officer's Representative (COR)** – A Government official with delegated authority to conduct certain contract administration duties by a Contracting Officer, as detailed and outlined in an official delegation letter. This individual is typically located in the program (requirements/technical) office and is responsible for identifying Government requirements and submitting requisition packages to the Division of Contracts. In addition, he or she provides the technical direction, contract administration duties, and monitoring and evaluation of the contractor's performance under a contract. This person is referred to as a COR at the NRC.

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

**Cost Estimate** - A written calculation of all items included in the scope of the work, tabulated under appropriate cost headings (direct costs, labor, overhead, and profit).

**Cost-Plus-Award-Fee Contract (CPAF)** - A cost-reimbursement contract that provides for a fee consisting of an award amount, based upon a judgmental evaluation by the Government, sufficient to provide motivation for excellence in contract performance.

**Cost-Plus-Fixed-Fee Contract (CPFF)** - A type of contract that provides for a set fee at the initiation of a contract with a corresponding dollar amount to be paid to the contractor for progress made.

**Cost-Plus-Incentive-Fee Contract (CPIF)** - A cost-reimbursement contract that provides for the initially negotiated fee to be adjusted later by a formula based on the relationship of total allowable costs to total target costs.

**Cost-Reimbursement Contract (CR)** - A type of contract that provides for payment of allowable incurred costs, to the extent prescribed in the contract. These contracts establish an estimate of total costs for the purpose of obligating funds and establishing a ceiling that the contractor may not exceed without approval of the Contracting Officer.

**Cure Notice** - A document the Contracting Officer issues to a contractor to notify the contractor that the contract may be terminated by reason of default (cause) if the condition or failures endangering performance of the contract is not corrected or cured within 10 days.

**Defense Contract Audit Agency (DCAA)** – Is the agency in the Government that performs various audits, including finalizing provisional indirect cost rates, for other federal agencies on a fee-for-service basis.

**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 disagreement develops concerning the interpretation of payment, time, or money due to either party or concerning contract terms.

**Division of Contracts (DC)** – Is responsible for all aspects of awarding contracts and grants, from procurement planning to close-out functions.

**Division of Facilities and Security (DFS)** – Is responsible for reviewing NRC Form 187 – “Contract Security and/or Classification Requirements”, to authorize contract security access under NRC contracts.

**Excusable Delays** - Excusable delays are beyond the control and without the fault or negligence of a contractor or its subcontractors at any tier. 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.

**Federal Acquisition Regulation (FAR)** - The federal regulation that implements procurement-related statutes and governs Government procurement.

**Final Evaluation Recommendation Report (FERR)** – This is the report provided by the SEP detailing the technical evaluation of proposals and recommending an offeror for award of a contract.

**Fixed-Price Contract (FP)** - A contract where the contractor agrees to deliver supplies or services by the dates specified for an agreed upon price.

**Government Accountability Office (GAO)** – Is the investigative watchdog of Congress to review federal agency programs and processes, and also serves as the adjudicator for bid protests.

**Government Furnished Property (GFP)** - Property in the possession of, or directly acquired by, the Government and subsequently made available to the contractor in connection with a Government contract, and only during the contract’s performance period.

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

**Indefinite-Quantity, Indefinite-Delivery Contract (IDIQ)** - A contract used for procurements in which the exact number of deliverable items and timing of delivery are not known at the time of contract award. The contract provides for a minimum and maximum amount of goods/services that may be ordered under the contract with an overall contract ceiling amount.

**Independent Government Cost Estimate (IGCE)** – An unbiased estimate derived by the Government for a specific work statement or requirement, and includes all reasonable costs to accomplish the work.

**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 so that formal “acceptance” may occur for payment.

**Labor-Hour Contract (LH)** - A contract that provides for the procurement of goods or services on the basis of direct labor-hours at specified fixed hourly rates (that include direct and indirect labor, overhead, and profit).



**Level-of-Effort (LOE) Contract** - A contract that specifies the number and type of person hours which the contractor will apply in pursuing the project.

**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.

**Multiple-year Contract** - A contract whose period of performance extends beyond one year. It includes any contract for: (a) severable services awarded with a base period and one or more option years; or (b) the completion of non-severable services that extend beyond a one-year period. For purposes of this Guidebook, the term "multiple-year contract" does not include any contract awarded using the multi-year contracting procedures authorized under FAR Subpart 17.1.

**Multi-year Contracting** - Is a special contracting method (see FAR Subpart 17.1) used to acquire planned requirements (for supplies or services) for up to 5 years without establishing or having to exercise options. A multi-year contract using annual appropriations may provide that performance after the initial year is contingent on the appropriation of funds, as long as the funds obligated at award are sufficient to fund the initial year of performance plus a cancellation ceiling payable to the contractor if future appropriations are not sufficient to fund continuation of the contract.

**Negotiations** - Written or oral discussions usually conducted with the selected offeror(s) to settle cost and other terms or conditions, which will be incorporated into the resultant contract.

**Nonconformance** - Occurs when the contractor presents a deliverable to the Government that does not conform to contract requirements. 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 its 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.

**Objective Performance Measure** - Based on the attributes of physical objects that can be measured or counted.

**Offer** - A response to a solicitation that, if accepted, would bind the offeror to perform the resultant contract. Responses to Requests for Proposals (RFP) (negotiation) are offers called "proposals." Responses to Invitations for Bids (IFB) (sealed bidding) are offers called "bids" or "sealed bids."

**Office of General Counsel (OGC)** – Provides legal advice, guidance and support to NRC staff, including any aspect of the acquisition cycle.

**Office of the Inspector General (OIG)** – Is an independent entity within the NRC that provides oversight into the proper use of appropriated funds in contracts and grants, and makes recommendations to the Agency to address material weaknesses.

**Office of Small Business and Civil Rights (SBCR)** – Is responsible for overseeing and coordinating the NRC’s small business program, usage, and progress towards meeting established small business contracting and subcontracting goals, and liaisons with the U.S. Small Business Administration (SBA).

**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.

**Past Performance Information Retrieval System (PPIRS)** – The past performance portal for the federal government for the storage and retrieval of official contractor past performance information.

**Performance Indicator** - Is that feature or characteristic of a product or service that is used to determine whether an outcome meets the defined performance standard.  
(Ex: Speed)

**Performance-Based Contracting (PBC)** - Structuring all aspects of an acquisition around the purpose of the work to be performed as opposed to either the manner by which the work is to be performed or broad and imprecise statements of work. For the purposes of this Guidebook, the term “Performance-based Acquisition” (PBA) is used synonymously.

**Performance-Based Payments** – Contract financing payments that are paid for progress made by the contractor and not for accepted items.

**Performance Monitoring** - Activities that a COR and Contracting Officer, and other Government personnel, use to ensure supplies and services acquired under contracts conform to prescribed quality, quantity, and other requirements.

**Performance Standard** - Is the minimum requirement that must be met in order for product or service to be defined by the performance indicator as meeting contract requirements. (Ex: 55 mph)

**Post-Award Kickoff Meeting** - A planned, structured discussion between Government and the contractor that focuses on understanding the technical aspects of the contract; identifying, clarifying and resolving issues; preventing problems; alleviating

misunderstandings; deciding how to solve problems that may occur later; discussing work objectives and approach; 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.

**Progress Payment** – A form of contract financing payment made before work or deliverables are accepted. Progress payments are available when utilizing performance-based contracting methods.

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

**Proposal** - A response by a prospective contractor to a Request for Proposals (RFP) issued by the Contracting Officer in negotiated acquisitions. It is an offer (including technical performance, as well as cost or price terms) that can be accepted by the Government to create a binding contract, either following negotiations or when certain conditions are satisfied. The term "bid" is used in sealed bid procurements.

**Proposal Evaluation Criteria** – Criteria against which proposals are evaluated. The solicitation must explain these factors and their order of importance.

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

**Quality Assurance Surveillance Plan (QASP)** – A plan developed by the Government to help with the oversight function during contract administration, which may include key deliverables, due dates, testing methods, performance standards, and identify persons and their roles and responsibilities under a contract.

**Quality Control Plan (QCP)** – The contractor's plan for ensuring production of quality products or services, and is a required element of performance-based acquisitions.

**Reasonable Cost** - A cost which in its nature and amount does not exceed that which would be incurred by a prudent person in the conduct of competitive business. If

challenged, the burden of proof for determining cost reasonableness rests with the contractor.

**Rejection** - The act of an authorized representative of the Government to refuse identified, nonconforming supplies or services rendered by the contractor in performance of a contract.

**Requisition** - A purchase request used to initiate the procurement of services or supplies. The document prepared by the program office which: 1) describes the supplies or services to be acquired, 2) certifies the availability of funds, 3) provides support documentation, and 4) includes other information and approvals necessary for the Contracting Officer to initiate a acquisition action.

**Request for Proposals (RFP)** - The Government's invitation (solicitation) to prospective offerors to submit proposals based on the terms and conditions set forth in a RFP.

**Services** - The performance of identifiable tasks rather than the delivery of an end item of supply.

**Show Cause Letter** - A document the Contracting Officer sends to a defaulting contractor to notify the contractor that the contract may be terminated by reason of default unless the contractor can prove in 10 days that the condition was not his or her fault. This notice calls the contractor's attention to the contractual liabilities if the contract is terminated for default, and request the contractor to explain why the contract should not be terminated for default.

**Solicitation** - A formal invitation by the Government to prospective offerors to submit offers to satisfy a Government need. It describes the requirements in sufficient detail to allow prospective offerors to determine their ability to meet that need and to submit a meaningful offer. It also includes the terms, conditions, and instructions under which offers may be submitted and resultant contracts will be awarded.

**Source Evaluation Panel (SEP)** – A team of Government and/or industry experts assigned responsibility for evaluating offeror (contractor) proposals, in response to Government-issued solicitations.

**Source Evaluation Panel (SEP) Procedures** - Formal procedures established for the solicitation, evaluation and negotiation for negotiated procurements, typically above the Simplified Acquisition Threshold (SAT).

**Specifications** - Clear and accurate description of the technical requirements of a service or supply contract.

**Statement of Work (SOW)** - A tasking document that specifies requirements to be performed by a contractor in exchange for fair compensation.

**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.

**Surveillance** - The continual monitoring and verification of status of a contractor and analysis of records to ensure specified requirements are being met. It may be 100%, statistically-based sampling, qualitative sampling, site visits, or the result of discussion with individuals who have first-hand knowledge of performance. It also may include the monitoring of contractor supplied metrics, available contractor data, sampling, or surveys.

**Suspension of Work Order** - 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 Direction** – Guidance, advice or clarifications provided by the COR, within his/her delegated authority, to help the contractor achieve successful contract performance and desired results for the Agency.

**Technical Evaluation** – The measurement of a technical proposal against the technical requirements and the rating factors stated in the solicitation.

**Technical Evaluation Criteria** – Factors included in Government solicitations that relate to the work requirement and are used to evaluate offeror (contractor) proposal responses.

**Technical Evaluation Process** – The process by which reviewers evaluate offeror proposals against established technical criteria set forth in solicitations.

**Technical Standard** - A common and repeated use of rules, conditions, guidelines or characteristics for products or related processes and production methods. It includes the definition of terms, classification of components, delineation of procedures, specification of dimensions, materials, performance, designs, or operations. It includes measurement of quality and quantity as well as a description of fit and measurements.

**Termination for Convenience (T for C)** - 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 an extreme change in the requirement beyond the contractor's expertise.

**Termination for Default (T for D) (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.

**Time-and-Materials (T&M) Contract** - A contract that provides for payment of supplies or services on the basis of incurred direct labor hours (at fixed rates) and materials (at cost).

**Time Delay** - An interruption during which services, supplies, or work are not delivered in accordance with the performance time or delivery schedule stated in the contract.

**Unilateral Modification** - Unilateral modifications are changes to a contract signed only by the Government Contracting Officer, and no signature is needed by the contractor. 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 within prescribed time period.

**U.S. Government Accountability Office (GAO)** - Is the "the investigative arm of Congress" and "the congressional watchdog."

**Work Breakdown Structure (WBS)** - A product-oriented, hierarchical division tree of deliverable items and associated services that relates the elements of work to each other and to the end item or overall result or objective.

# TEMPLATES, CHECKLISTS AND FORMS

Templates:

<http://neat/Libraries/Library.aspx?LibraryID=61>

Checklists:

<http://neat/Libraries/Library.aspx?LibraryID=62>

Forms:

<http://neat/Libraries/Library.aspx?LibraryID=63>