



SEAPOWER THROUGH ENGINEERING

3.2.6

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3.2.6 Contract Administration

Ind Study, 0.25 HR; In-Class, 1.75 HR; TIME: 2.0 HR

TOPIC LEARNING OBJECTIVES

Upon successful completion of this topic, the student will be able to:

1. Recognize the role of contract administration in the contracting process.
2. Recognize the roles of the Defense Contract Management Agency (DCMA), Defense Contract Audit Agency (DCAA), and Defense Finance and Accounting Service (DFAS) in contract administration.
3. Identify the relationship between the Program Management Office, the Procuring Contracting Officer, the Administrative Contractor Officer, and Program Integrator (including SUPSHIP and RMC equivalents).
4. Contrast a Change Order with a Supplemental Agreement.
5. Identify the purpose of and approval authority for the following documents: Levels 1 – 4 of Non-Engineering Change Proposal (NECP) and Engineering Change Proposal (ECP), Value Engineering Change, Deviation, Waiver, Field Modification Request, Headquarters Modification Request.
6. Identify the causes and consequences of constructive changes and unauthorized commitments.
7. Recognize the relationship between the Government, prime and subcontractors as defined by the term “privity of contract”.
8. Identify the process for resolving disputes between parties of a contract.
9. Identify when Termination for Convenience, Termination for Default, and Termination for Cause are used.
10. Recognize the importance of cash flow to the operation of a business.

STUDENT PREPARATION

Student Support Material

1. Video: “Supporting the Warfighter, Protecting the Taxpayer”
(https://www.youtube.com/watch?v=nYeM9_Lyvrs)
2. Video: “The Defense Contract Management Agency”
(<https://www.youtube.com/watch?v=BqaWhp5FZRA>)
3. Video: “From Paper to Product: We Are DCMA”
(<https://www.dcma.mil/News/Article-View/Article/1882369/from-paper-to-product-we-are-dcma/>)
4. Contract Administration Lesson Plan

Primary References

1. Federal Acquisition Regulations (FAR)
2. Defense Federal Acquisition Regulation Supplement (DFARS)
3. NAVSEA Contracts Handbook (NCH)
<https://wiki.navsea.navy.mil/display/NAP/NAVSEA+ACQUISITION+POLICY+Home>
4. SUPSHIP Operations Manual, Ch 3
5. DAU Acquipedia Contract Termination

Additional References

1. None

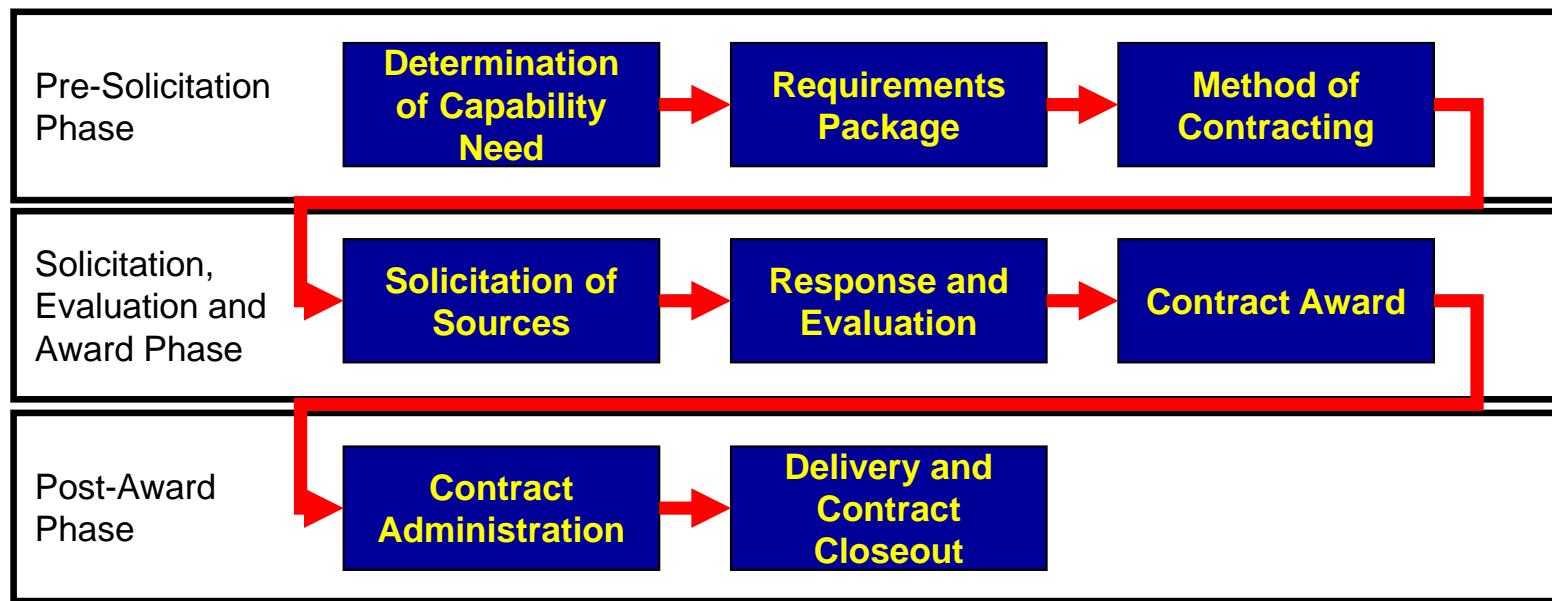


Overview

- Administration roles
- Relationships
- Changes and modifications
- Disputes and termination



The Contracting Process





Contract Administration

- The role of contract administration typically includes the following activities:
 - Manage Government interests
 - Monitor Contractor's processes to include quality, cost, and performance
 - Ensure Contractor is paid
 - Provide program support
 - Administer contract changes and modifications
 - Monitoring contract compliance with terms and conditions
 - Resolving disputes
 - Facilitating proper contract close-out



Defense Contract Management Agency (DCMA)

- DCMA's purpose is to provide worldwide contract administrative services in support of the DoD for non-shipbuilding contracts
- FAR 42.302 further defines the contract administrative functions that may be performed within the DCMA
- DCMA organization consists of a headquarters and three districts:
 - East and West districts for operations within the United States
 - International district for overseas operations
- Significant functions performed by DCMA components include:
 - Contract management
 - Quality assurance
 - Engineering, production, and industrial resources
 - Property management
 - Program support

DCMA provides administrative functions and advisory services



DCMA Life-Cycle Involvement





Defense Contract Audit Agency (DCAA)

- DCAA is a DoD organization responsible for performing contract audit services for the Department
- DCAA provides **accounting and financial audit and advisory services** (before and after award) in connection with:
 - Negotiating
 - Administering
 - Closing out contracts and subcontracts

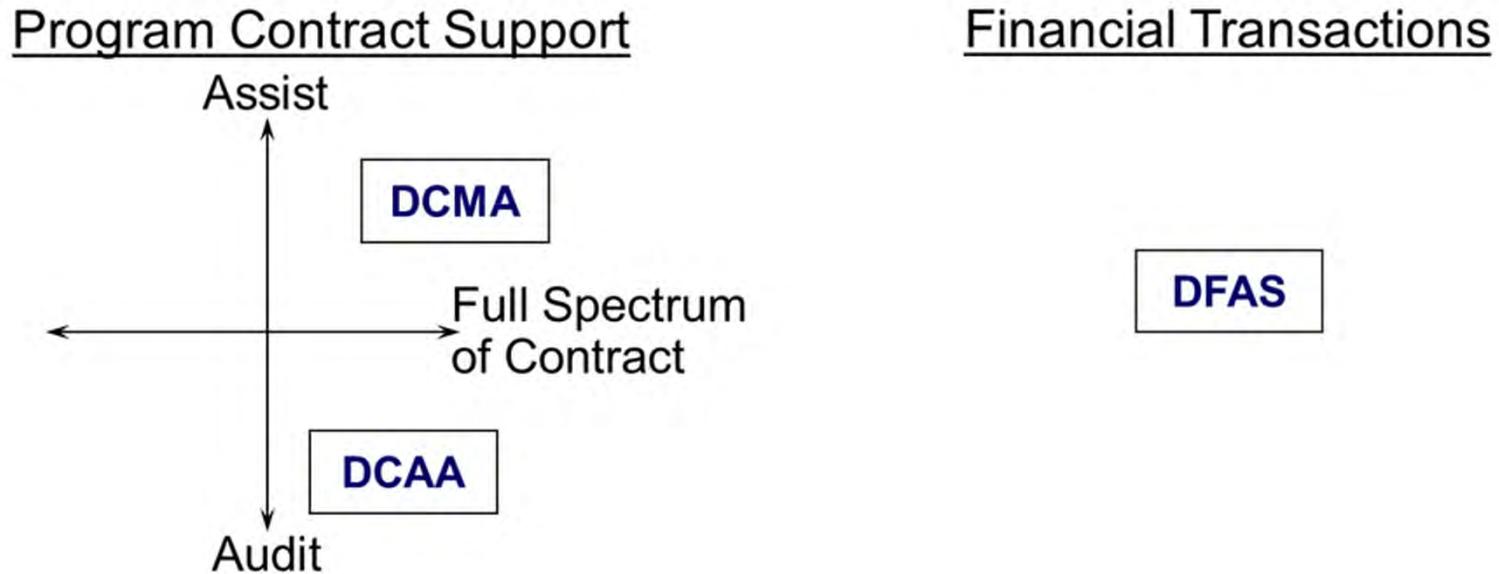


Defense Finance and Accounting Service (DFAS)

- DFAS is responsible for payment on all DoD contracts
 - 5 payment centers
 - 20 smaller operating locations (OPLOCs)
- DFAS must make timely payments on Defense contracts in accordance with the Prompt Payment Act of 1982
 - Requires the Government to make timely payments on its contractual obligations



DCMA, DCAA and DFAS Services



Organization	Program Contract Support	Financial Support	“Relationship” to Program
DCMA	Full Spectrum of Contract		Assistance
DCAA			Audit
DFAS		Transaction Processing	Functional



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Key Personnel





Responsibilities

- **Administrative Contracting Officer (ACO)**
 - Performs contract administrative functions assigned by the Procuring Contracting Officer (PCO)
 - FAR 42.302(a) lists the functions normally performed by the ACO
 - ACO works in the office of the Contract Administration Office (CAO)
 - For shipbuilding, the ACOs are SUPSHIPs
 - For overhaul and repair, the ACOs are Regional Maintenance Centers (RMC)
 - For combat and weapons systems, the ACO is DCMA
 - The PCO may retain responsibility for some of these functions, but may also assign additional functions to the ACO in accordance with FAR 42.302(b)

- **Program Integrator (PI)**
 - Serves as the Contract Management Office's focal point for a specific program
 - Leads the Program Support Team (PST)
 - Provides functional and technical expertise to support the program
 - Provides current program status to the Program Management Office (PMO) and the DCMA chain of command
 - SUPSHIP function for shipbuilding
 - RMC function for overhaul and repair contracts
 - For combat and weapons systems, PI is a DCMA function

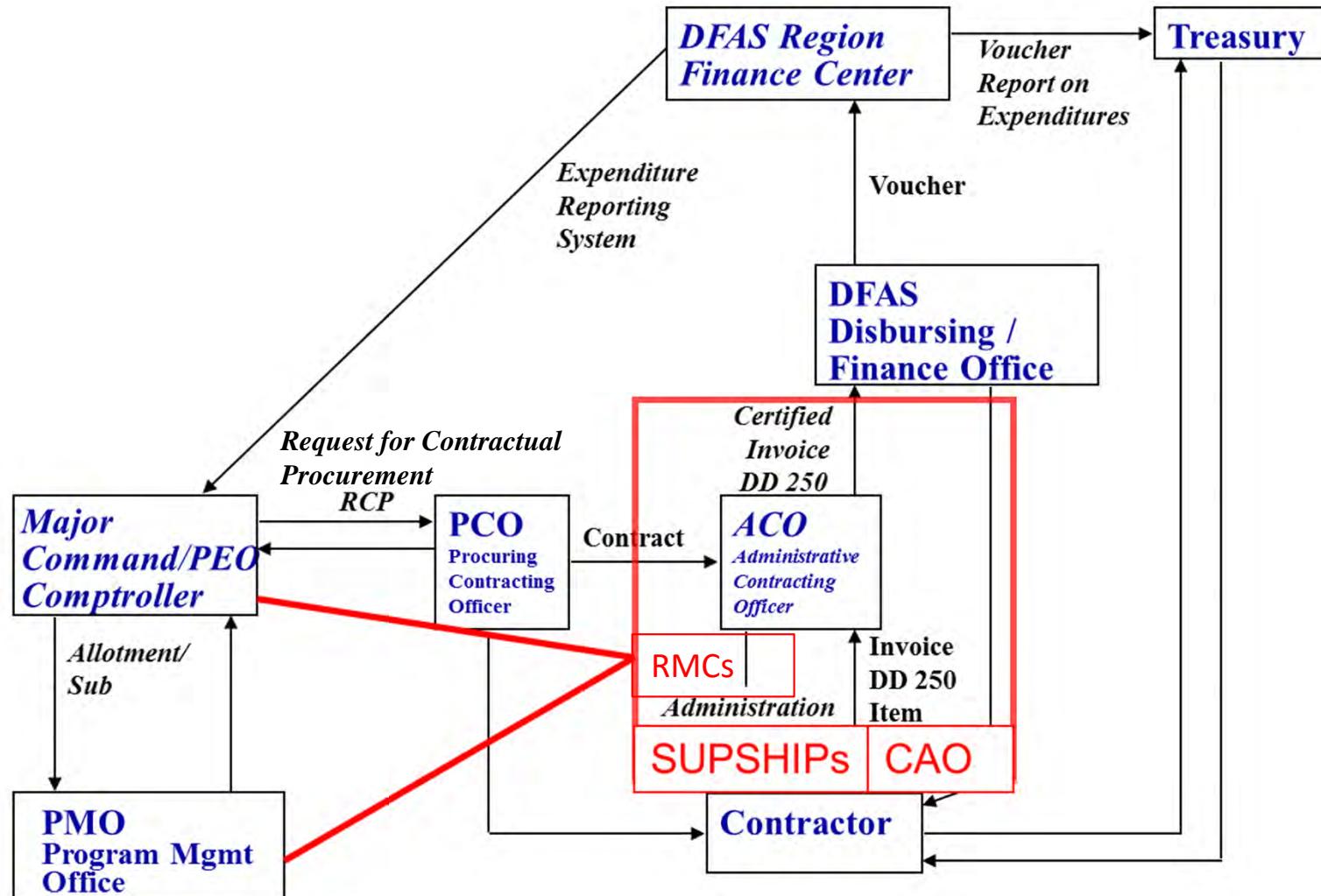


Responsibilities

- Contracting Officer Representative (COR)
 - Contracting Officers may designate qualified personnel as their authorized representatives to assist in the administration of a contract
 - This designated individual is referred to as the Contracting Officer Representative
 - A COR's authority must be specified in writing. It is important to remember that a COR may be personally liable for any unauthorized acts
 - COR personnel can reside at SUPSHIP, RMC, or Program Office
- Terminating Contracting Officer (TCO)
 - After the Contracting Officer (the PCO or ACO, depending on which has the authority) issues a notice of termination, the Terminating Contracting Officer (TCO) is responsible for negotiating an equitable settlement with the Contractor



PMO and CAO Relationship



Contract Administration Office (CAO)



PMO and CAO Relationship cont.

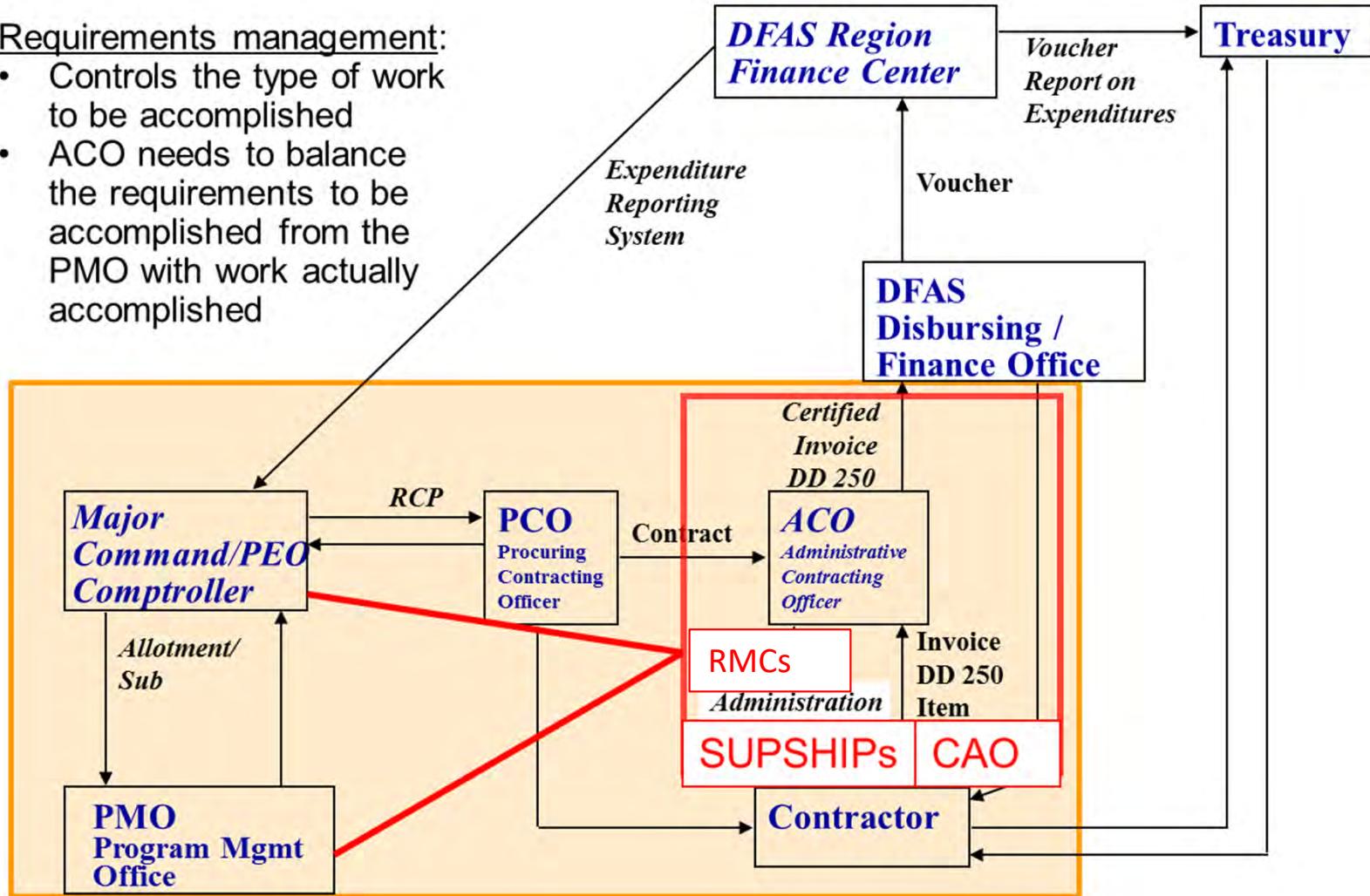
- Involve the Contract Administration Office (CAO) early & routinely
- Establish Memorandum of Agreement (MOA) between CAO & PMO
 - PMO needs & concerns
 - CAO reporting requirements
- Conduct combined Post-Award Conference
- Advise CAO of all planned visits (FAR 42-402)
- Inform CAO of Program developments
 - DAB/MAISRC Reviews (Defense Acquisition Board/Major Automated Information System Review Council)
 - Funding issues



PMO and CAO Relationship cont.

Requirements management:

- Controls the type of work to be accomplished
- ACO needs to balance the requirements to be accomplished from the PMO with work actually accomplished





Cash Flow

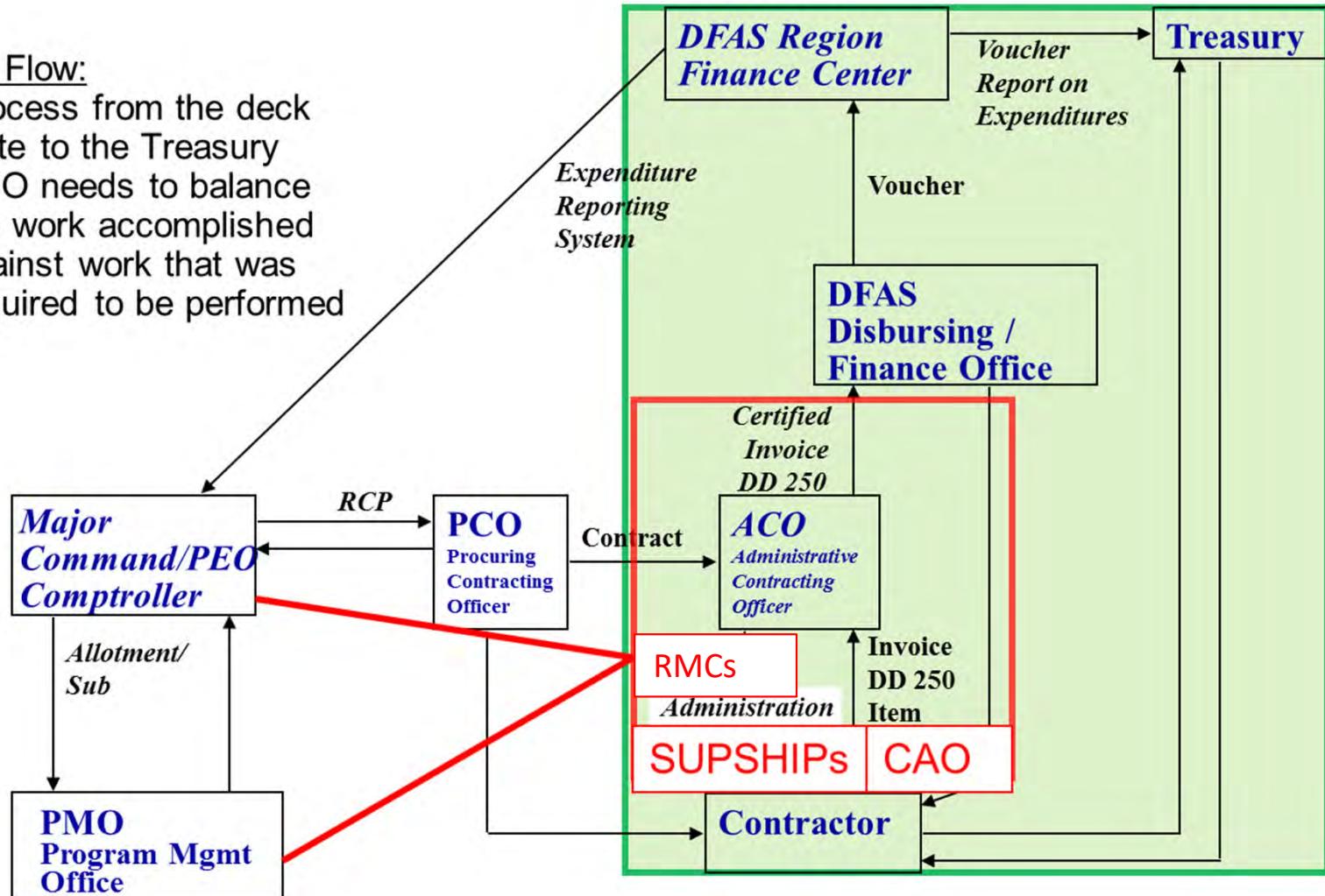
- The payments from the Government to the Contractor are cash flow (from the Contractor's perspective)
- The Government should endeavor to make all payments to the Contractor in a timely manner
 - **Cash flow** is critical to the Contractor's financial health because the cash flow allows the Contractor to pay bills (materials, subcontractors, payroll, and benefits) without having to obtain costly financing that may reduce the Contractor's profits
 - Timely payment is especially critical for small businesses as these Contractors rarely have large cash reserves to call on during times of reduced cash flow



PMO and CAO Relationship

Cash Flow:

- Process from the deck plate to the Treasury
- ACO needs to balance the work accomplished against work that was required to be performed





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Contract Changes and Modifications

Change Proposals

- Non-engineering Change Proposal (NECP)
- Engineering Change Proposal (ECP)

Modification Requests

- Field Modification Request (FMR)
- Headquarters Modification Request (HMR)

Contract Changes

- Supplemental Agreement
- Change Order



Change Proposals

- Non-engineering Change Proposal (NECP)
 - A request that proposes a change which does not affect the configuration of an item but does affect cost, delivery, or work scope
- Engineering Change Proposal (ECP)
 - A request that proposes an engineering change and includes the documentation by which the change is described and proposed
 - The change is an alteration in the configuration of an item or the detailed specifications
- Value Engineering Change
 - Proposed by the Contractor
 - Meets all requirements but saves money
 - Contractor shares in the savings
- Deviation
 - Non-conformance to a spec, drawing, or performance requirement, **prior** to manufacture
 - Usually results in a reduced cost
- Waiver
 - Non-conformance **during or after** manufacture considered suitable as is
 - Will also result in a reduced cost



NECP/ECP Approval Levels

Level	Organization	Description
1	OPNAV	<ul style="list-style-type: none">• Changes to military characteristics• Changes to technical specifications which increase cost beyond CNO Ship Cost Adjustment (SCA)• Changes that would delay ship beyond contract delivery date
2	SYSCOM	<ul style="list-style-type: none">• Changes where a reclama has been filed by a SPM Configuration Control Board (CCB) member or change sponsor to a change action by the SPM• Changes affecting more than one Program Manager where a common decision cannot be reached
3	Ship Program Manager (SPM)	<ul style="list-style-type: none">• Changes originated by Field Activity ACO or Contractor that affect contract dates, contract guarantees or incentives, hull strength, & safety• Changes affecting system interfaces• Changes significantly affecting cost of vessel
4	Field Activity	<ul style="list-style-type: none">• Changes not requiring higher approval

*Military characteristics include physical and operational characteristics. Physical characteristics are primarily physical in nature. Source: JP 3-60. Operational characteristics pertain primarily to the functions to be performed by equipment, either alone or in conjunction with other equipment, e.g., for electronic equipment, operational characteristics include frequency coverage, channeling, type of modulation and character of emission. Source: JP 5-0.



Modification Requests

- Field Modification Request (FMR)
 - A document prepared in the CAO authorizing the ACO to modify a contract as stated in the FMR
 - The FMR package includes the FMR, ECP/NECP(s), and supporting drawings
 - The FMR must be approved by the designated authority (ACO) in the CAO
- Headquarters Modification Request (HMR)
 - An authorization to the ACO from the Program Manager to modify a contract as indicated in the HMR
 - The HMR package includes the HMR, relevant ECP/NECP(s), and supporting drawings
 - The HMR must be approved by the appropriate authority in the Program Office

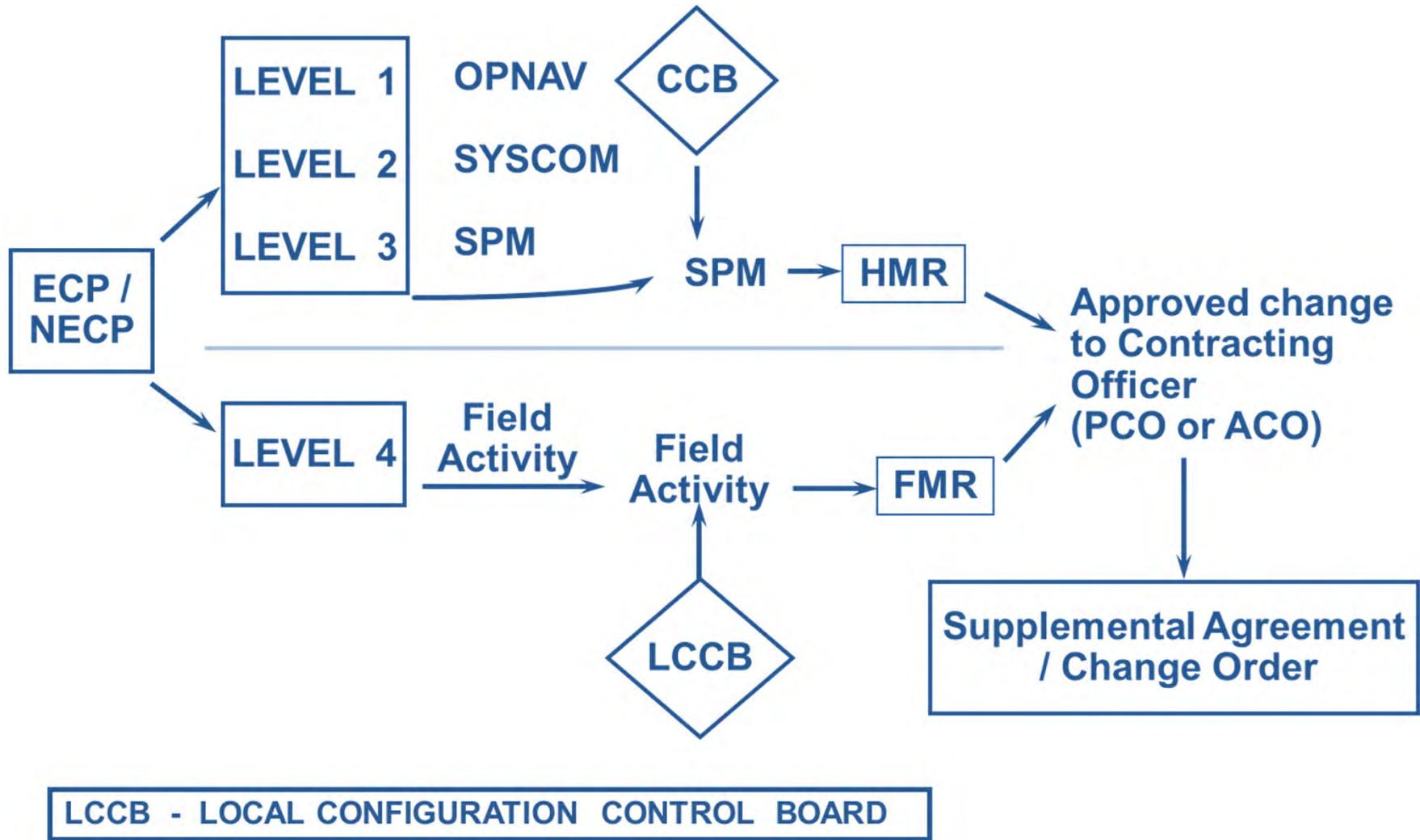


Contract Changes

- Supplemental Agreement
 - Contract modification based on prior agreement of parties regarding the change
 - Incorporates equitable adjustment to contract cost and/or schedule resulting from the change
 - Both parties sign the modification document indicating a bi-lateral agreement
 - Formal contract amendment process is required to incorporate changes in requirements (administrative, technical or schedule) to ensure equitable adjustment to a contract
- Change Order
 - Written order directing Contractor to make a change without prior agreement
 - Authorized by the “Changes Clause”
 - Contractor must continue performance, as changed
 - Adds Government risk
 - Creates “undefined” Government liability & Contractor may be entitled to equitable adjustment



SUPSHIP Change Proposal Process



5b



Constructive Change

- Oral or written act (or failure to act) by an **authorized** Government official in position of authority **construed** by the Contractor as having same effect as a written change order
 - From the Contractor's perspective the contract has been constructively changed by the direction they received
- Must involve change in performance beyond minimum contract requirements
- Often a result of an informal change
- Requires ratification (i.e., process for final disposition)
- Personal liability for constructive changes are determined by the procedure of each agency



Unauthorized Commitment

- Unauthorized commitment is an agreement that is not binding solely because the Government representative who made it **lacked the authority** to enter into that agreement on behalf of the government. (FAR 1.602-3(a))
- The Contracting Officer is the only individual that can enter into contracts on behalf of the Government; Any agreement made without the proper authority places an extra burden on the Government
- Example: CO of the base tells his COR to have the grounds crew trim some trees hanging over the base fence. The Contractor is present for the conversation and agrees to do the work. The COR neglects to inform the KO. The Contractor completes the work and bills the Government

Typically, a KO commits a constructive change and a non-contracting officer commits an unauthorized commitment



Privity of Contract

- “Having a legitimate, direct contractual relationship”
- Government has a direct contractual relationship with the Prime Contractor
- The Government **does not** have a contract (or implied contract) with the subcontractor
- The Prime Contractor may levy requirements upon the subcontractor regarding the nature of subcontracts (i.e., quality program requirements)
- The Government’s administration of the Prime Contractor must always adhere to the concept of privity





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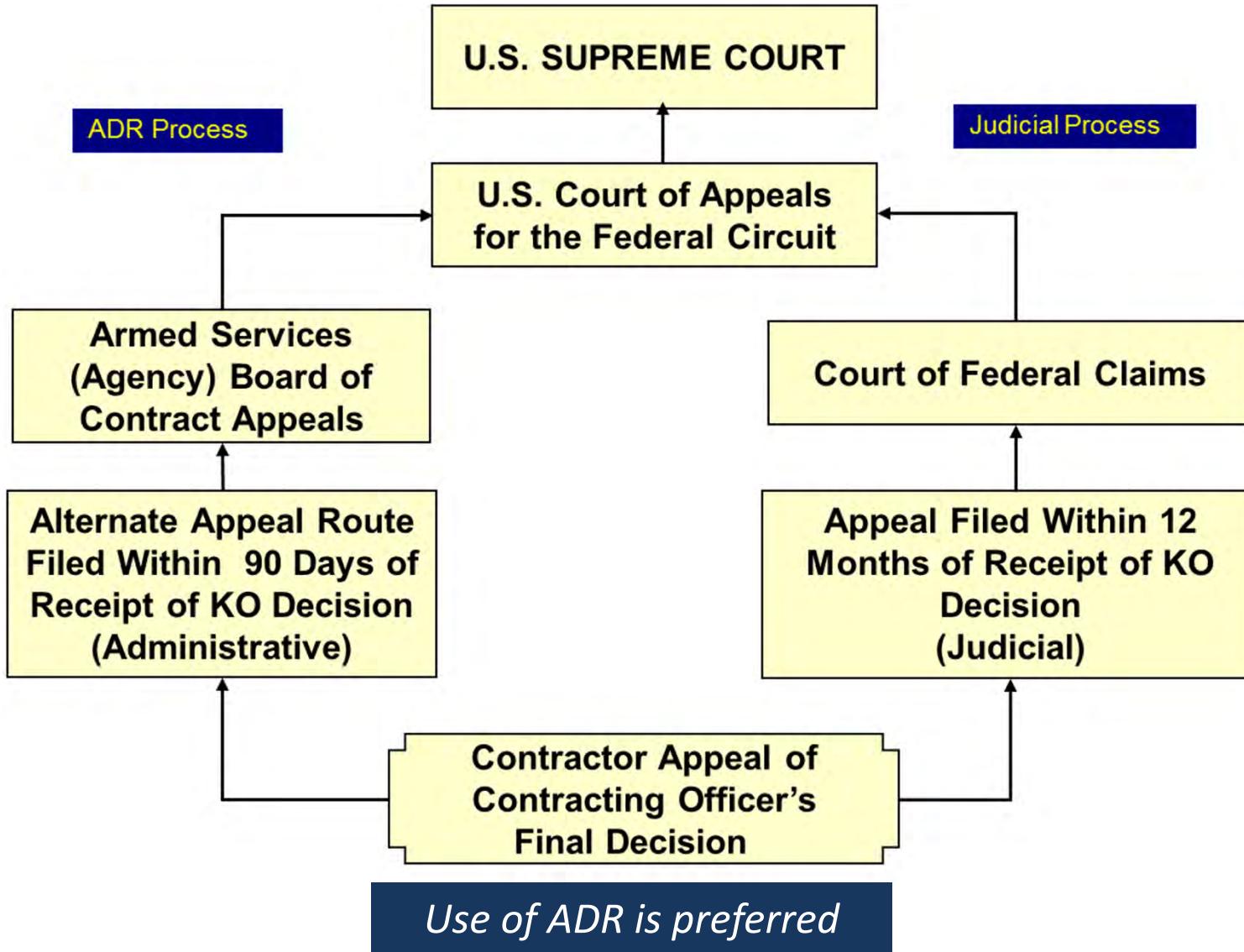


Alternative Dispute Resolution (ADR)

- Essential business manager tool
 - No perfect contracts
 - Unforeseen problems occur
 - ADR facilitates open discussions; informative exchanges
 - Involves stakeholders
 - Increases buy-in
 - Focuses on facts
 - Principled based settlements
 - Program risk management
 - Provides structured environment/process
 - Reduces adversarial nature of conflict management
 - Improves long-term partnering
- **The Government's policy is to try to resolve all contractual issues, to the maximum extent practicable, by mutual agreement at the contracting officer's level** (FAR 33.204)
- If a mutual agreement cannot be reached, the Contractor may seek resolution through the contracts disputes process (FAR 33.202)
- Contract Disputes Act (CDA) was structured in 1978, setting forth standard procedures to be used by all executive agencies

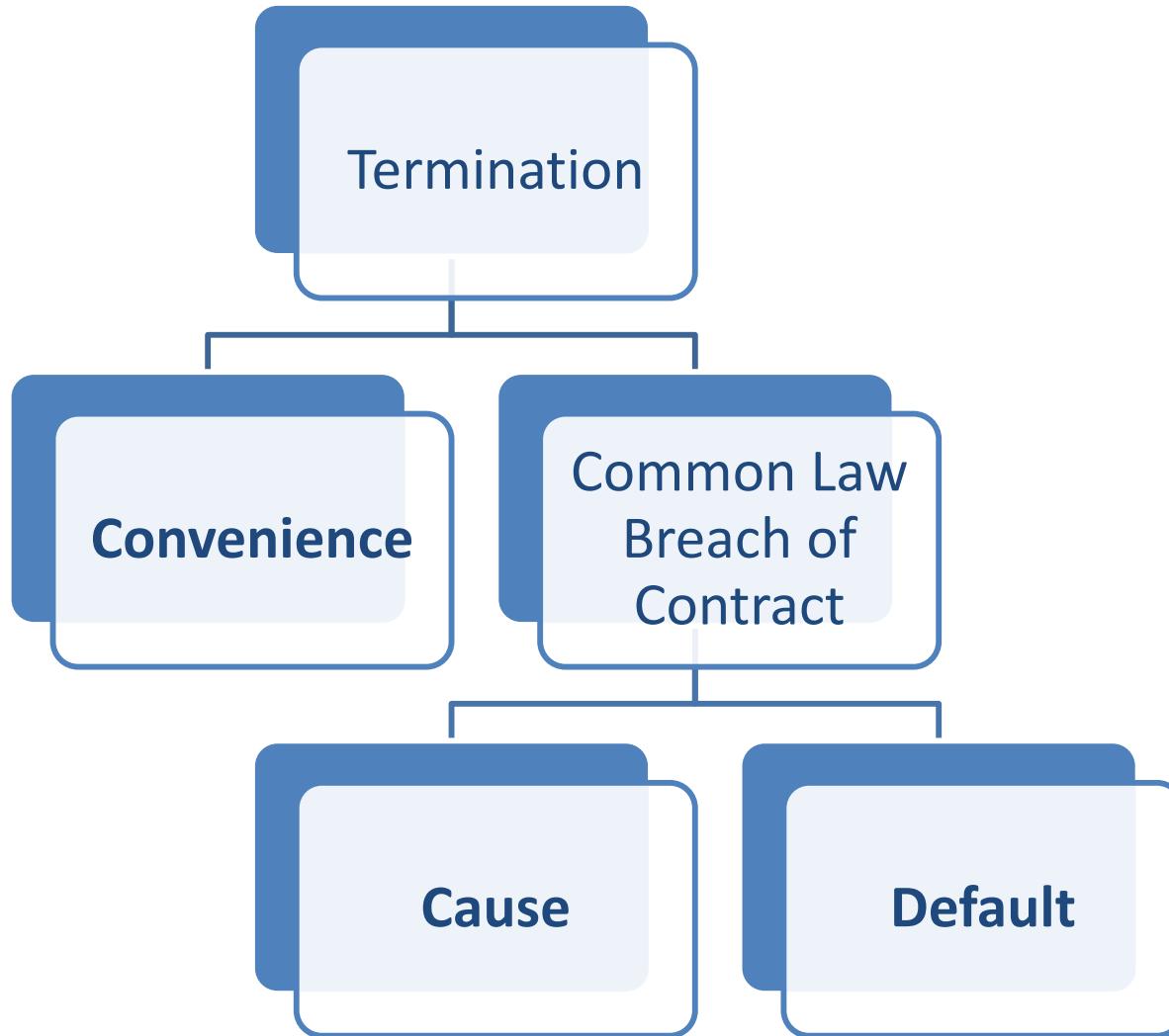


Disputes Appeal Process





Types of Termination





Types of Termination

- Termination for Convenience
 - When the government terminates a contract for its convenience, whether the contract is commercial or noncommercial
- Termination for Cause
 - When a *commercial* contract is terminated due to contractor fault
- Termination for Default
 - When a *noncommercial* contract is terminated due to contractor fault



Termination for Convenience

- The Government's right to terminate a contract for convenience is one of the most unique provisions contained in Government contracts
- There is no analogous right in common law contracting
- When:
 - Funds are insufficient
 - Requirement is no longer needed
 - Quantity needed has been reduced
 - There has been a radical change in requirement beyond Contractor's expertise
- Reasons:
 - Funds are insufficient
 - Conversion from an improper termination for default
 - Reduction or elimination of Government requirements
 - Government's failure to order work under a multiyear contract
 - Cancellation of award

The government does not need any particular reason to terminate a contract for convenience, other than it is in its best interest do so



Commercial Contract Definitions

- Commercial Product/Item:
 - A product, other than real property, that is of a type customarily used by the general public or by nongovernmental entities for purposes other than governmental purposes, and—
 - Has been sold, leased, or licensed to the general public; or
 - Has been offered for sale, lease, or license to the general public
 - A product that evolved from a product described in paragraph (1) of this definition through advances in technology or performance and that is not yet available in the commercial marketplace, but will be available in the commercial marketplace in time to satisfy the delivery requirements under a Government solicitation
 - A product that would satisfy a criterion expressed in bullet (1) or (2) of this definition, except for
 - Modifications of a type customarily available in the commercial marketplace; or
 - Minor modifications of a type not customarily available in the commercial marketplace made to meet Federal Government requirements. “Minor modifications” means modifications that do not significantly alter the nongovernmental function or essential physical characteristics of an item or component, or change the purpose of a process. Factors to be considered in determining whether a modification is minor include the value and size of the modification and the comparative value and size of the final product



Commercial Contract Definitions

- Commercial Product/Item cont.:
 - Any combination of products meeting the requirements of paragraph (1), (2), or (3) of this definition that are of a type customarily combined and sold in combination to the general public;
 - A product, or combination of products, referred to in paragraphs (1) through (4) of this definition, even though the product, or combination of products, is transferred between or among separate divisions, subsidiaries, or affiliates of a contractor; or
 - A non-developmental item, if the procuring agency determines the product was developed exclusively at private expense and sold in substantial quantities, on a competitive basis, to multiple State and local governments or to multiple foreign governments



Commercial Contract Definitions

- Commercial Service:
 - Installation services, maintenance services, repair services, training services, and other services if—
 - Such services are procured for support of a commercial product as defined in this section, regardless of whether such services are provided by the same source or at the same time as the commercial product; and
 - The source of such services provides similar services contemporaneously to the general public under terms and conditions similar to those offered to the Federal Government
 - Services of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices for specific tasks performed or specific outcomes to be achieved and under standard commercial terms and conditions. For purposes of these services—
 - Catalog price means a price included in a catalog, price list, schedule, or other form that is regularly maintained by the manufacturer or vendor, is either published or otherwise available for inspection by customers, and states prices at which sales are currently, or were last, made to a significant number of buyers constituting the general public; and
 - Market prices means current prices that are established in the course of ordinary trade between buyers and sellers free to bargain and that can be substantiated through competition or from sources independent of the offerors



Commercial Contract Definitions

- Commercial Service cont.:
 - A service referred to in paragraph (1) or (2) of this definition, even though the service is transferred between or among separate divisions, subsidiaries, or affiliates of a contractor.
- Commercially available off-the-shelf (COTS) item:
 - Means any item of supply (including construction material) that is—
 - commercial product (as defined in bullet (1) of the definition of “commercial product” in this section);
 - Sold in substantial quantities in the commercial marketplace; and
 - Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and
 - Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.



Termination for Cause & Default

■ Termination for Cause

- The Government may terminate a **commercial** contract for cause:
 - In the event of any default by Contractor
 - Only when it is in the best interest of the government
 - If Contractor fails to:
 - Comply with any contract terms and conditions
 - Provide Government, upon request, with adequate assurances of future performance

Source: FAR section 52.212-4

■ Termination for Default

- Can be used if it is anticipated that the Contractor will fail to meet its contractual obligations for **noncommercial** contract
- The Government may terminate for default if Contractor fails to:
 - Deliver supplies or to perform services within time specified in contract or any extension
 - Make progress or prosecute the work, so as to endanger performance of the contract
 - Perform any of the other provisions of the contract

Source: FAR section 52.222-41, Service Contract Labor Standards

*Termination for Cause is used for commercial contracts
Termination for Default is used for noncommercial contracts only*



Termination for Cause & Default

- Consider the following factors when determining whether to terminate a contract for cause/default:
 - Terms of contract and applicable laws & regulations
 - Specific failure of Contractor, and explanations for the failure
 - Availability of supplies and services from other sources
 - Urgency of need for supplies or services
 - Degree of essentiality of Contractor in Government acquisition program
 - Effect of a termination for default on ability of Contractor to liquidate guaranteed loans, progress payments
 - Any other pertinent facts and circumstances
- Do not terminate for cause/default unless:
 - Such action is in the Government's best interests
 - Facts support a termination for default



Notices

- Cure Notice
 - The Contracting Officer is required to issue a written cure notice when the Contractor:
 - Fails to perform some other provisions of the contract
or
 - Fails to make progress as to endanger performance of the contract
 - The written notice will specify the failure and provide the Contractor a period of 10-days in which to cure the failure
- Show Cause Notice
 - A Show Cause Notice is issued when:
 - There is not sufficient time remaining in the delivery schedule to cure the problem
or
 - The Contractor failed to act on the cure notice



Notices

- Prior notice not required
 - If a ***Contractor has defaulted*** by:
 - Failure to make delivery of the supplies
or
 - Failure to perform the services within the specified time
 - Then no notice of the possibility of termination is required to be sent to the Contractor before the issuance to the actual notice of termination
- Termination Notice
 - Advise the Contractor of the consequences of the termination
 - Provide a 10-day period for the Contractor to show cause why the contract should not be terminated



Government's Obligation to Pay

- For cost-reimbursement contracts, the Government is obligated to pay for:
 - Allowable costs incurred prior to termination
 - Allowable costs subsequent to Termination for Default (T4D) that were reasonably necessary or incurred at the direction of the Government
 - Costs of approved settlements with subcontractors
 - Fees in proportion to supplies and services already delivered and accepted
- Excusable delays
 - Epidemic
 - Strikes
 - Flood
 - Government actions
 - Freight embargo
 - Fire
 - Unusually severe weather



Summary

- What functions are performed by DCMA?
- What level is an ECP that changes the military characteristics of an item? Who approves the change?
- Who approves a Field Modification Request (FMR)
- What is an “oral or written act or failure to act by an authorized Government official construed by a Contractor as having the same effect as a written change order” called?



Summary

- What does “privity of contract” mean?
 - When is it appropriate to terminate a contract for convenience?
 - When is it appropriate to terminate a contract for cause opposed to terminate a contract for default?



RMC Contract Change Process

