

PARTICIPANT GUIDE

Intermediate COR Refresher



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Intermediate COR Refresher

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Syllabus

SYLLABUS

COURSE OVERVIEW

Experienced contracting officer's representatives (COR) know that projects can present a variety of challenges and responsibilities. This course will provide refresher training and an update on contracting principles that can build a strong foundation for future contracting work. You will be faced with various, relevant simulations to test your critical thinking abilities.

Who Takes This Course

This course is designed for Level II or III CORs who are seeking refresher training while at the same time satisfying their 40 continuous learning points requirement.

Learning Objectives

- Discuss the purpose, process, and the role and responsibilities of the COR as a member of the market research team
- Identify the role and responsibilities of the COR related to the development of the solicitation
- Define best value and discuss the processes to achieve it
- Identify COR responsibilities and activities for the postaward orientation and development of the COR Work Plan
- Discuss the government's method of assuring quality through inspection and the COR's role
- Explain the COR's role and responsibilities in reviewing contractor invoices and recommending payment
- Explain the COR's role in addressing contract remedies for different situations
- Explain the role of the COR in evaluating a contractor's performance and contract closeout

Prerequisites

- [Contracting Officer's Representative Course](#)

COURSE EXPECTATIONS

Required Texts

The following required materials will be issued to each participant and will be used throughout the course.

Management Concepts®, *Intermediate COR Refresher* © [Includes text, appendices, and handouts.]

Access electronic course materials on Student Central at <https://managementconcepts.csod.com>.

PARTICIPANT GUIDE ICON KEY



Discussion

**Example****Refer to Resource****Refer to Website****Tip**

These icons are used throughout your Participant Guide. Words that are bolded and italicized appear as terms in the Glossary.

Please note that the page numbers of this Participant Guide differ from the page numbers of the Course Delivery Guide used to conduct this class. This is because the Course Delivery Guide contains additional notes and solutions to exercises. Therefore, section numbers are provided along with topic titles to help navigate the course text.

Course Schedule

Day One	
Morning	Introduction
	Lesson 1: Market Research
Lunch	
Afternoon	Lesson 2: Presolicitation Considerations

Day Two	
Morning	Lesson 3: Best Value—Proposal Evaluation
Lunch	

Day Two

Afternoon	Lesson 3: Best Value—Proposal Evaluation, Continued
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Day Three

Morning	Lesson 3: Best Value—Proposal Evaluation, Continued
Lunch	Lesson 4: Postaward Orientation and Contracting Officer's Representative Work Plan
Afternoon	Lesson 5: Quality Management and Inspection

Day Four

Morning	Lesson 5: Quality Management and Inspection
Lunch	
Afternoon	Lesson 6: Invoice and Payment

Day Five

Morning	Lesson 7: Remedies
Lunch	
Afternoon	Lesson 8: Performance Evaluation and Contract Closeout
	Final Exam

Requirements for Successful Completion***Attendance and Participation***

Full (100%) attendance is expected and required. Successful completion of the course depends on full class attendance and active participation in individual and group exercises.

Graded Activities

This course includes a final exam. The final exam must be completed with a grade of 70% or higher.

PROFESSIONAL BENEFITS

Many Management Concepts courses are designed to meet the standards and requirements of leading industry organizations. Participants seeking information regarding earned credentials or recognition, such as college and continuing education credit and professional certification, should refer to the certificate of completion issued at the end of the course.

**Refer to Website**

For additional information about credits and certifications available for Management Concepts courses, please visit:

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Market Research

LESSON 1

MARKET RESEARCH

Lesson Objective

After completing this lesson, you will be able to:

- 1.1 Describe techniques for market research
- 1.2 Identify price and technical considerations to assist in market research
- 1.3 Describe the COR's role in developing market research reports

Market research is the process of collecting and analyzing information on commercial capabilities, processes, pricing, incentives, warranties, delivery, and other standard terms and conditions. Such research is necessary to determine the suitability of the marketplace in satisfying the government's requirement.

1.1 MARKET RESEARCH

Information gathered in market research is critical to the preaward process. This lesson covers all aspects of market research, including:

- The significance of market research
- The market research team
- Techniques for market research
- Price and technical considerations to assist in market research
- Market research reports

Market research is not a new concept for acquisition personnel. However, in today's environment, to provide high-quality solutions to the end user at a reasonable price, conducting that research in greater depth is necessary. The acquisition team—including the contracting officer's representative (COR)—must participate in market research early in the acquisition process, striving to capture and ensure ongoing access to state of the art solutions to agency needs.

Additionally, the team must explore potential commercial market solutions (commercial items and services) available to meet the government's needs.

1.2 BENEFITS OF MARKET RESEARCH

Program and acquisition personnel conduct market research to arrive at the most suitable approach to acquiring, distributing, and supporting supplies and services.

Benefits that may accrue from performing thorough market research include:

- Determining whether the item or service is commercially available
- Identifying sources and their size status
- Understanding alternatives available to fulfill the government's requirement
- Providing insight regarding potential price expectations
- Minimizing the risk of doing business, for both parties
- Uncovering and identifying potential problems

- Keeping up with latest technology and market trends
- Providing an understanding of current market conditions and practices
- Assisting overall acquisition planning
- Helping to develop, validate, and refine the requirements document

1.3 MARKET RESEARCH REQUIREMENTS

Federal Acquisition Regulation (FAR) part 10 prescribes policies and procedures for conducting market research to arrive at the most suitable approach to acquiring, distributing, and supporting supplies and services.

According to the regulation, market research must be conducted, as appropriate to the circumstances, before:

- Developing new requirements documents
- Soliciting offers for acquisitions with an estimated value in excess of the simplified acquisition threshold (SAT)
- Soliciting offers for acquisitions with an estimated value less than the SAT when adequate information is not available and the circumstances justify its cost
- Soliciting offers for acquisitions that could lead to a bundled contract
- Awarding a task or delivery order under an indefinite-delivery, indefinite-quantity contract for a noncommercial item in excess of the SAT

In addition, the FAR requires ongoing market research as it relates to:

- Contingency operation or defense against or recovery from attack (e.g., biological, nuclear)
- Disaster relief (e.g., distribution of supplies, reconstruction)

Although the FAR is clear as to when market research is required, the actual timing, depth, and extent of the market research effort are contingent upon the value and complexity of the procurement. The scope of the effort depends on the type and amount of information needed at different points.

1.4 THE MARKET RESEARCH TEAM

Traditionally, the program management office of the requiring activity has conducted market research, relying heavily on inputs almost entirely from the technical community. In this new business environment, however, using a team-based approach with representatives from all disciplines is the best way to conduct market research. The representatives collect information relative to their respective areas of expertise.

Following is a discussion of some of the relevant disciplines and what they can contribute to the market research effort.

- **End users.** User representatives drive the requirements forecast and formulate the long-term strategy and support over the entire life cycle. The government can use this forecast information to develop favorable pricing throughout the program's life span and negotiate terms for optimal management of inventory and distribution. Market research can provide insight into the total life cycle requirements for similar systems, products, and/or processes using similar or the same



Members of the market research team should represent a variety of disciplines

commercial items. The information gathered from this research permits user representatives to conduct a comparative and parametric analysis to more accurately forecast total commercial item requirements.

- **Program or project managers.** These managers consider how commercial items might fit into government systems or programs. They are responsible for creating the program management plan, then working with acquisition personnel to develop an acquisition strategy, source selection plan, and coordinating the market research effort. They work hand in hand with contracting officers and specialists in organizing and planning the market research and addressing decisions such as who should conduct the actual research and who should compose the market research team.
- **Contract specialists.** Contract specialists receive training in market research. They work alongside program or project managers on the organization and planning of the market research, providing guidance as needed. Contract specialists help find satisfactory solutions for the agency's needs that both stay within the bounds of regulations and preserve the integrity of the acquisition process. Their knowledge and understanding of the marketplace helps determine whether the price is fair and reasonable, which offer represents the best value, and what terms and conditions are most appropriate.
- **Others.** The nature and extent of the acquisition may require the use of other skills such as budget or cost analysis, logistics, or other specific skills.



Discussion

Have you ever served on, or contributed information to, a market research team? If so, what type of information did you provide?

1.5 MARKET RESEARCH TIMING

Market research is a continuous effort performed throughout the procurement process. It begins with requirements identification and ends when the product, service, or technology is in place.

Market research has two phases:

1. Strategic market research.
 - Ongoing process
 - Independent of any particular requirement
 - Activities performed on a continuing basis to stay abreast of product/service developments
2. Tactical market research.
 - Response to a specific requirement for a product or service
 - Focuses on details

Market research should continue throughout an acquisition to gather the kind of data needed for making smart acquisition decisions. Information is a changing commodity, and sound business judgments depend on up-to-date details.

In order to achieve fair and reasonable pricing, the team actively conducts market research to develop:

- A sound acquisition strategy
- A good understanding of customary commercial terms and conditions
- Sufficient information

The level of detail gathered may vary by stage in the acquisition process. When the initial requirements statement is being developed, a general understanding of terms and conditions and pricing may suffice for making judgments about higher level requirements.

However, ensuring that the market can respond to the government's needs and that the final acquisition strategy and the solicitation fit the particular market's customary business practices requires a more in-depth understanding of the types of terms and conditions offered commercially. Furthermore, firm knowledge of market pricing information is necessary to plan for contract obligations and determine price reasonableness. As the acquisition matures, market research information needs to be increasingly more precise.

1.6 MARKET RESEARCH TECHNIQUES

Since market research is a business operation, it should be conducted in a cost effective manner. This means that its extent will depend on such factors as urgency, estimated dollar value, complexity, and past experience.

FAR 15.201 encourages the exchange of information among all interested parties, from the earliest identification of a requirement through receipt of proposals. These exchanges of information must be consistent with procurement integrity requirements (see FAR 3.104).

Interested parties include potential offerors, end users, government acquisition and supporting personnel, and others involved in the conduct or outcome of the acquisition.

The purpose of exchanging information is to improve the understanding of government requirements and industry capabilities. Improved understanding allows potential offerors to judge whether or how they can satisfy the government's requirements and enhances the government's ability to obtain quality supplies and services, including construction, at reasonable prices. Government efficiency in proposal preparation, proposal evaluation, negotiation, and contract award may also improve.

Techniques to promote early exchanges of information include:

- Contacting knowledgeable individuals in government and industry
- Reviewing results of recent market research reports for similar items
- Publishing formal requests for information (RFIs)
- Querying information sources or databases
- Obtaining source lists from other agencies or associations
- Reviewing catalogs and product literature
- Conducting interchange meetings or holding presolicitation conferences
- Conducting site visits
- Issuing presolicitation notices
- Attending industry symposiums, trade shows, etc.

1.7 CONDUCTING MARKET RESEARCH—QUESTIONS TO ASK

To begin, you must determine what information is necessary, where you will get the information, and what techniques you will use to gather the information. Market research should be tailored to the acquisition. Different items or services call for different approaches—and different questions. The objective is to become informed about the industry that will be providing the requirement.

When you gather market research information, it helps to have a list of survey questions. This list will help you consider and capture all items requiring investigation and research. Use the survey questions as a point of reference for interviewing sources. The answers to the questions should be shared with the acquisition team. The answers will help when building the requirements document and other elements of the solicitation (e.g., evaluation factors). The more the acquisition team knows about the particular industry, the more likely the team can best articulate it in the requirements document.

Keep in mind that vendors or contractors provide their information on a strictly voluntary basis. As a general rule, information provided on standard industry practices will not be proprietary. However, if the vendor or contractor provides information that they consider proprietary, it must be protected by the government.

1.7.1 Historical Acquisition Information

Using historical acquisition information as a starting point for developing survey questions can be helpful. Historical data paints a picture of what happened in the past. You should give appropriate consideration to how changes might have affected the current acquisition environment.



Historical information provides a foundation

Not all the questions in the following table are valid for every acquisition. For some acquisitions, you may need answers to many specialized questions not covered here. However, the topics identified and the related questions provide a good framework for use when reviewing historical acquisition information.

TABLE: HISTORICAL ACQUISITION INFORMATION

Research element	Be able to answer questions such as ...
Trends in supply and demand	<ul style="list-style-type: none"> When did past acquisitions take place? Is there any indication of prevailing market conditions at that time?
Pattern of demand	<ul style="list-style-type: none"> What quantities were solicited for each acquisition? What quantities were acquired?
Source of supplies or services	<ul style="list-style-type: none"> How many sources were solicited for the prior acquisition? What specific sources were solicited? How many sources made offers? What specific sources made offers?
Product or service characteristics	Are there any significant differences between the government requirements documents for the prior contract and the current requirements?

Research element	Be able to answer questions such as ...
Delivery/performance terms	<ul style="list-style-type: none"> • What was the delivery or performance period in days, weeks, months, or years? • In what month(s) were the supplies to be delivered or the services to be performed? • Did the contractor meet the delivery targets? • What was the free on board (F.O.B.) point? • Was premium transportation required for timely delivery?
Ownership costs	What costs of ownership were associated with the acquisition?
Acquisition method	What acquisition method was used for past acquisitions?
Contract terms and conditions	<ul style="list-style-type: none"> • What were the general terms of past contracts? • Are there any significant differences between the terms of the last contract (e.g., packing requirements, type of contract, and the like) and those recommended for this acquisition?
Problems	What problems, if any, were encountered during contract performance?

Elements to consider when researching the market

1.7.2 Price-Related Information

Each government market research effort is different because of requirements specific to the procurement, varying market conditions, and other factors.



Example: Buying a New Office Computer System

In buying a new office computer system, we (as representatives of the government) would certainly want to know comparative prices across the marketplace for computers with the state of technology and equipment the government anticipates buying.

Further, we would want to know the various suppliers' warranty provisions. We would also need to know what the life cycle costs would be for any given system. For example, we must calculate software costs, costs for disposal of old equipment, training costs, and the costs for site preparation.

If we were buying batteries, such as 1.5-volt alkaline batteries, then the pricing factors considered in market research might differ. For example, here we would want to consult catalogs readily available in the marketplace to determine various manufacturers' prices.

Potential questions to ask:

- What are common practices for offering quantity discounts? What about the quality of the batteries? Answers to these questions help determine the market niche for price comparisons and other factors.
- What are the supplier delivery terms and conditions?
- Are the batteries environmentally safe, and do they cause increased costs due to unique disposal requirements?

The table Pricing Factors to Consider in Market Research identifies the type of price-related questions we should be able to answer when performing market research. Not all the questions in this table are valid for every acquisition. For some acquisitions, we may need to answer many specialized questions not covered in the table. However, the topics identified and the related questions provide a good framework for developing survey questions to be used in market research.

TABLE: PRICING FACTORS TO CONSIDER IN MARKET RESEARCH

Research factor	Be able to answer questions such as ...
Pricing history	<ul style="list-style-type: none"> • What information is available concerning past prices paid for the service or item of supply and about changes in the supply item or service or market since then? • Have there been historic differences between prices paid by the government <i>vis-à-vis</i> other buyers? Why?
Competitive conditions	<ul style="list-style-type: none"> • How many sellers are in the market? • How many buyers? • Are other companies expected to enter the market?

Research factor	Be able to answer questions such as ...
Overall level of demand	<ul style="list-style-type: none"> • What is the relationship of the quantity the government intends to buy <i>vis-à-vis</i> the quantities that others buy? • Will the planned volume justify a lower-than-market price as a result of the seller's increased economies of scale? • Will the planned volume be so large as to drive the sellers to or beyond full capacity, resulting in unanticipated inflation? • Is the procurement for items at the leading edge of market demand (i.e., market demand is increasing), or at the back end (i.e., demand is dropping)?
Trend in supply and demand	<ul style="list-style-type: none"> • Will demand be higher or lower at the time of award than now? • Will supply capacity keep pace with demand?
Other market forces expected to affect contract price	<ul style="list-style-type: none"> • What forces might drive prices up in the near future? Strikes? Labor shortages? Subcontractor bottlenecks? Energy shortages? Other raw material shortages? Seasonal factors? • What forces might lead the government to expect lower prices in the future?
Pricing strategies	<ul style="list-style-type: none"> • What are the pricing strategies of firms in the market? • What are the implications for expected prices? • Are discounts available for quantity buys?
Sources of supplies or services	Which firms in the market are the most or least likely to submit offers to a government solicitation? Why?
Supply or service characteristics	<ul style="list-style-type: none"> • What features distinguish one service or item of supply from another? • Which commercial supplies or services most closely match the government requirements document (as it currently reads in the purchase request)? • What is the apparent trade-off between features and price?
Delivery/performance terms	<ul style="list-style-type: none"> • What are the current distribution channels? • What are current transportation costs (if applicable)? • What are the commercial lead times? • What about maintenance and repair facilities?
Ownership costs	<ul style="list-style-type: none"> • What are the commercial warranty terms and conditions (if any)? • What are the historical repair costs for each item? • What are the historical maintenance costs for each item?

Research factor	Be able to answer questions such as ...
Contract terms and conditions	<ul style="list-style-type: none"> What terms and conditions are used in commercial transactions for the supply item or service? What terms and conditions have been used in other government acquisitions of the supply item or service? What type of contract is generally used in commercial transactions for the supply item or service? In government acquisitions?
Problems	<ul style="list-style-type: none"> What performance problems have typically been encountered? Have similar acquisitions been characterized by claims or cost overruns?
Overall value	What is the relationship between price and the overall value to the government?

Market research helps to answer questions related to specific pricing factors. Column one lists pricing factors, and column two has questions associated with each pricing factor.

1.8 THE MARKET RESEARCH REPORT

Both current and future acquisitions can benefit from market research if a market research report is produced to capture the details of the acquisition for future application. We should document and retain for future reference potentially useful aspects of market research in a manner appropriate to the size and complexity of the acquisition.



Refer to Resource

Resource: Sample Market Research Report

1.9 EXERCISE: MARKET RESEARCH



Refer to Resource

Handout: Sample Market Research Report Format

Directions

1. As directed by your facilitator, work individually or in groups.
2. Address the questions as they relate to the market research required for your project.
3. Be prepared to share your results with the class.



Scenario

Using the materials and ideas in this lesson, select a product or service with an estimated cost of \$160,000 or more, for which you might be developing requirements documents.

Questions

1. Decide whether the potential marketplace is regional, national, or global.

2. Develop a list of 10 to 15 survey questions to ask related to the product or service.

3. Draft a market research report using the sample market research report format. As you are not actually conducting market research in this exercise, be creative in completing the market research report.

1.10 EXERCISE: LESSON 1 QUIZ

Directions

Answer the quiz questions that follow.

1. Market research is:
 - a. Required for acquisitions of all dollar amounts
 - b. Required for acquisitions over the simplified acquisition threshold
 - c. Not required for sole source items
 - d. Not required for commercial items
2. Who should be on the market research team?
 - a. Representatives from the contracting staff only
 - b. Representatives from the technical staff only
 - c. Only the COR and the contracting officer (CO)
 - d. Representatives from all disciplines connected with the acquisition
3. You must conduct market research if you intend to award a \$200,000 delivery order for a noncommercial item under an indefinite-delivery, indefinite-quantity (IDIQ) contract.
 - a. True
 - b. False
4. Strategic market research is an ongoing process, while tactical market research is conducted in response to a specific requirement for a product or service.
 - a. True
 - b. False
5. The CO must take the lead in which of the following market research techniques?
 - a. Telephone calls
 - b. Attending trade shows
 - c. Publishing a formal request for information
 - d. Querying the internet
6. What can be disclosed in market research?
 - a. General information about the project
 - b. Everything except the government estimate
 - c. Anything that is asked for
 - d. Nothing may be disclosed

Action Planning

Refer to the Action Plan and record ideas to implement from this lesson.



Presolicitation Considerations

LESSON 2

PRESOLICITATION CONSIDERATIONS

Lesson Objective

After completing this lesson, you will be able to:

- 2.1 Identify various formats the requirements document can take
- 2.2 Discuss the purpose of the requirements document
- 2.3 Identify the COR's role in preparing the requirements document
- 2.4 Discuss contract type selection considerations
- 2.5 Identify parts of the solicitation and how those parts, including the requirements document, communicate the government's needs

This lesson discusses the duties of the contracting officer's representative (COR) related to the development of requirements documents. Requirements documents can have different formats and it is important to understand these formats and their importance in the procurement process.

2.1 THE REQUIREMENTS DOCUMENT

A **requirements document** is a written description of a government acquisition need. It addresses what you want to buy, why you want to buy it, where and when the work is to be done, and how the work is to be performed. The requirements document may include specifications, standards, commercial item descriptions, and purchase descriptions. Two types of requirements documents are the statement of work and the specification.

2.1.1 Statement of Work

The **statement of work** (SOW) defines government requirements in clear, concise language identifying specific work to be accomplished. Although the SOW can take different forms (e.g., performance work statement or statement of objectives), it is often used as a generic term to indicate the technical requirements of the contract.

Statement of Objectives

The **statement of objectives** (SOO) is a government-prepared document incorporated into the solicitation that states the overall performance objectives. It is used in solicitations when the government intends to provide the maximum flexibility to each offeror to propose an innovative approach.

Performance Work Statement

A **performance work statement** (PWS) is an SOW for performance-based acquisitions that describes the required results in clear, specific, and objective terms with measurable outcomes.

2.1.2 Specification

A **specification** is a description of the technical requirement for any material, product, or service that includes the criteria for determining whether these requirements are being met. Specifications

state only the government's minimum needs and are designed to promote full and open competition, with due regard to the nature of the supplies or services to be required.

2.2 PURPOSE OF REQUIREMENTS DOCUMENTS

The three best reasons to have requirements documents are to:

1. Communicate effectively.
2. Provide the contractor with an estimating base.
3. Establish performance standards and a contractual baseline.

2.2.1 Communicate Effectively

Needless to say, the development of a clear and concise description of the work requirements, including any special considerations or restraints that apply, is the heart of the acquisition. A poor requirements document causes problems throughout the solicitation process and during contract performance. Although a clear and concise requirements document does not guarantee project success, it does significantly reduce the problems that otherwise might occur.

The requirements document is a vehicle for communication. It must communicate your requirement in a manner understood by all personnel involved in the solicitation process as well as those involved in contract performance. This includes government as well as contractor personnel.

Various people must read and understand the requirements document during the course of the solicitation, award, and performance of the contract. Readers must be able to understand the requirements without having to interpret, extrapolate, or guess at the meaning. Such people include:

- The contractor's technical personnel, accountants, and cost estimators
- Government accounting and auditing personnel
- Government and contractor legal and contracting personnel
- Subcontractors

Remember, the contractor is legally required to do *only* what is written into the contract. If the requirements document is ambiguous or unclear and there is a dispute over contract interpretation, the courts generally follow the contractor's interpretation. The courts normally hold the originator of the requirements document responsible for its clarity.

2.2.2 Provide a Basis of Estimate to the Contractor

When developing the requirements document, keep in mind that the contractor will need sufficient information on which to base the estimated cost of contract performance. Provide this information or basis of estimate through a detailed description of the task requirements, a statement of the estimated level of effort required, or both.

Contractors develop cost estimates based on the requirements document. Describe the project in a manner that will facilitate an accurate development of the contractor's cost estimate.



The requirements document communicates to government and contractor personnel

Contractors break down the work description into its smallest components:

1. Starting from the bottom up, they develop estimates of the resources necessary to complete each component of each task.
2. Cost figures are developed for the estimated resources required.
3. Overhead and general and administrative (G&A) expenses are added to make up the total estimated cost.
4. Profit or fee is then added to the total estimated cost to come up with the total estimated price.

2.2.3 Set Performance Standards and Contractual Baseline

Through its description of the work requirements, the requirements document establishes the standard for measuring performance effectiveness and achievement both during contract performance and upon contract completion. The requirements document is the basis for determining whether the contractor achieved required results and whether the government must accept the contractor's performance. As such, it determines whether the contractor should receive payment of the contract price or fee.

The requirements document also establishes the baseline to determine the degree, extent, and ramifications of proposed contract changes. Proposed changes are checked against the document to determine if the change is within the scope of the contract.

Should a performance failure occur, the requirements document is useful in determining whether the contractor may be terminated for default and the extent of the damages incurred by the government for the contractor's performance failure.

Therefore, the clarity and conciseness of the requirements document are important throughout the life of the contract.

2.3 PLANNING AND PREPARATION OF THE REQUIREMENTS DOCUMENT

Planning and preparing the requirements document include these steps:

1. Think the project through.
2. Model it with a work breakdown structure.
3. Choose the requirements document type.
4. Choose the contract type.
5. Consider options.

2.3.1 Think the Project Through

You must plan and prepare your requirements document carefully to successfully translate your project requirements. Writing requirements documents is not simply a matter of drafting a memo saying, "I want what I want when I want it." You must convert your technical requirements into contractual language.

Before starting to write, think through the entire project from solicitation and contract award through contract performance, delivery, acceptance, and use. Consider what is required to initiate and sustain the contract effort. Do not overlook what is going to happen after the contract product is delivered and accepted. Consider the intended end use. Is there anything you should put into the requirements document to ensure the product is usable?

One approach to the planning process is to review the requirements as though you are going to do the work in-house and have all the necessary resources. Identify the key activities or tasks and any related subtasks based on how you would organize the effort. Determine the essential requirements, such as quantity, quality, capability, and any other salient characteristics that must be in the finished product or completed service. Determine what must be accomplished during contract performance and what problems are likely to be encountered. Scope the requirements to your actual needs, not your anticipated budget.

Do not ask a contractor to take on a requirement that exceeds its capabilities or capacity. Consider breaking large or complex requirements into smaller packages that can be performed in phases or awarded to multiple contractors. If it seems that significant subcontracting is called for, consider indicating which efforts the contractor must perform and which they may subcontract.

Consider what information you have on hand and what information you need to gather in market research in order to describe your requirement. Note the information needed from the contractor for use in developing not only the requirements document but, if applicable, evaluation factors and instructions for proposal preparation.

2.3.2 Model It with a Work Breakdown Structure

If the work requirements are complex, use a work breakdown structure (WBS) to model the requirement. To develop a WBS, first identify each of the key activities or tasks to be performed. Next, identify the related subtasks within each key activity that are required for successful completion. This breakdown helps ensure all activities within the technical requirement have been identified and described in the requirements document. The WBS also serves as the basis for developing the government cost estimate. Develop the WBS manually or through the use of commercially available planning software.

Generally, the WBS serves only as an internal planning document. Dictating a WBS in the requirements document inhibits a contractor's flexibility in developing its proposal because the contractor will assume that its proposal must conform to your WBS. This may preclude a proposal that contains a better way to do the job.

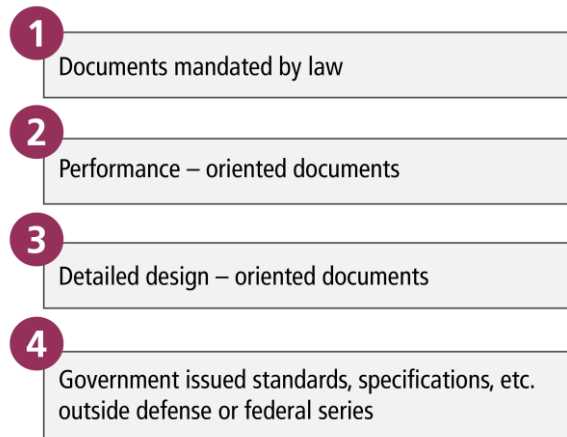
2.3.3 Choose the Requirements Document Type

There are a number of ways to write the requirements document. *Federal Acquisition Regulation* (FAR) 11.101 contains an order of precedence, as follows:

1. Documents mandated for use by law.
2. Performance-oriented documents (e.g., a PWS or SOO).
3. Detailed design-oriented documents.
4. Standards, specifications, and related publications issued by the government.

Documents mandated by law, as well as standards, specifications, and related government publications, speak for themselves. In the following two sections, we further describe performance-oriented and detailed design-oriented documents. After that, we discuss types of requirements documents for sole source and personal/nonpersonal service contracts.

ORDER OF PRECEDENCE FOR REQUIREMENTS DOCUMENTS



2.3.3.1 *Performance-Oriented Documents*

Performance-oriented documents address what is to be done rather than how to do the work. They describe what the contractor is to accomplish (end result), such as collect data and perform analysis, but do not get into the precise details of how to collect the data and perform the analysis. Usually, there are certain constraints (standards to be obtained) that must be described to ensure the contractor meets the end result.

These constraints can be physical characteristics, such as size or weight, or can relate to how the contractor performs, such as restrictions on the use of specific techniques. Describe only those constraints necessary to ensure contractor understanding of the complete requirement. A performance-oriented document permits the contractor to use its own approach to meet the end result(s), within the constraints established.

Use a performance-oriented document:

- To encourage creativity and the use of innovative techniques or methodologies; the project will benefit from the latest state-of-the-art developments
- When there are a number of ways to perform the requirement and you do not want to dictate the approach used

When a performance-oriented document is used, the solicitation is typically a request for proposals (RFP). Offerors are asked to respond to the RFP with a technical proposal that shows how they will perform the work. By proposing how the work will be done, the offeror assumes the responsibility that the proposed effort will produce an acceptable result.

The successful offeror's proposal is often incorporated into the contract, either physically or by reference. Whether to incorporate the entire proposal or portions of it is determined at contract award. It is best to use only those parts pertinent to the performance of the work requirement as described in the requirements document. The contracting officer (CO) and contractor agree regarding the parts or specific wording to be incorporated into the contract.

2.3.3.2 *Detailed Design-Oriented Document*

A design document details exactly how the contractor must perform the work. It is appropriate when your project requires performance of the work in a particular manner. In responding to the solicitation, each bidder/offeror must provide a response demonstrating that they can do the work;

normally, deviations from the requirements of the design description are not permitted. In essence, all competing bidders/offerors must perform exactly the same effort, with price typically being the primary consideration for award. When using a design document, the government assumes the responsibility that the work can be successfully performed as dictated.

2.3.3.3 *Sole Source Contracts*

Often in a sole source contract, the solicitation (typically an RFP) is not issued until after the government and the contractor discuss and mutually understand the requirement. In such instances, however, there is a tendency to write the requirements document based on a mutual understanding rather than writing a complete description of the requirement. This tendency often results in an inadequate requirements document because details that have been discussed are left out on the assumption they are not needed.

There should be no difference between a requirements document written for a competitive acquisition and one written for a sole source acquisition. Requirements documents for sole source contracts should follow the order of precedence stated in the FAR, with emphasis on performance-oriented versus detailed design-oriented documents. A complete description of the work requirement is necessary to protect the government's legal right to enforce contract performance. The contractor must do only what is written in the contract. Understandings not expressed in the requirements document are usually unenforceable because they lack legal standing.

2.3.3.4 *Personal and Nonpersonal Service Contracts*

The typical service contract is for nonpersonal services. The requirements document, often performance-oriented, defines what services the contractor must perform, but the contractor is responsible for determining how to perform the services. Under a nonpersonal service contract, the contractor performs the work free of daily government supervision over its personnel.

Personal service contracts are different. They typically permit direct government supervision of the contractor's employees. In fact, being able to supervise contract employees is one of the primary reasons for using a personal service contract instead of a nonpersonal one. Personal service contracts are characterized by the development of an employer-employee relationship between the government and the contractor's personnel.

If a nonpersonal service contract is used for personal services, the contract can be deemed illegal and voidable. A nonpersonal service contract can inadvertently turn into an improper personal service contract by the way the contract is written or by the way the contract is managed.

Often, distinguishing between personal and nonpersonal service contracts is problematic, particularly when contract employees must work at a government facility. Mixing government and contract employees makes it difficult to maintain proper relationships. The main issue is government supervision of contract employees. If the requirements document calls for contract employees to work at a government facility with government employees providing their daily work assignments and supervision, the contract may be deemed a personal service contract. If the contract is silent on these matters but the government is found providing daily supervision during contract performance, the contract may be deemed a personal service contract.

The best way to avoid inadvertently creating a personal service requirement is to clearly state that the contractor must supervise its own employees. Write the requirements document so that the

contractor must provide an onsite supervisor who coordinates all government direction. The problems with personal versus nonpersonal services also apply to time-and-materials (T&M) and labor-hour (LH) contracts.

2.4 CHOOSE THE CONTRACT TYPE

The FAR provides for two broad categories of contract types: fixed-price and cost-reimbursement. Each category consists of variations of type, but the essential characteristics within each category are the same.

Contract types differ in two key respects. One difference is the amount of risk placed on the government and the contractor; the other difference is the degree of contract management or administration each type places on the government.



Consider the degree of risk and administration required when choosing a contract type

2.4.1 Fixed-Price Contracts

Use a fixed-price contract only when the requirements document is definitive enough for bidders/offerors to accurately estimate the cost of contract performance. There must be a high degree of confidence that the work can be completed within the established fixed price. The fixed-price contract puts a significant burden on the author of the requirements document to ensure it is definitive enough for the contractor to accurately estimate the costs of performance.

Fixed-price contracts are generally useful for commercial or commercial-like supplies or services available in the open market. When contract performance uncertainties exist, a fixed-price contract may not be appropriate. Performance uncertainties (risks) are present when you are unsure as to the final outcome or your requirement cannot be defined except through contract performance, as in research and development.

Fixed-price contracts place maximum risk on contractors and little or no risk on the government. The contractor makes a commitment in the contract to deliver all it promised in return for the specified consideration. The government has the right to receive what it bought for the price it promised to pay. If the contractor fails to perform at the contract price, it is liable for breach of contract, which can bring severe additional costs on the contractor.

Because the risk is high to contractors, their incentive to perform according to the terms and conditions of the contract is quite high. Therefore, the government's contract monitoring requirements are usually far fewer than those for cost-reimbursement contracts (discussed later). The COR must monitor and perform other contract administration duties on fixed-price contracts; however, the magnitude of this effort is normally far below that for cost-reimbursement contracts.

Fixed-priced contracts limit the extent of the contractor's efforts. If performance proves to be more difficult or extensive than anticipated and the contractor's costs are approaching the fixed price, the contractor's options are limited. The contractor can continue to strive for a quality product at its own expense, or the contractor can cut corners and do whatever else is necessary to finish the contract within the fixed price.

The first option is not popular with contractors because a contractor cannot stay in business for long unless it makes a profit. The second option is not popular with the government because cutting corners and taking other actions designed to finish the contract usually has an adverse effect on the quality of the final product or service. Avoid problems such as these by carefully assessing the

performance uncertainties of your project and using a fixed-price contract only when performance uncertainties are minimal.

There are various types of fixed-price contracts:

- Firm-fixed-price (FFP)
 - This contract is the most common type
 - The contractor:
 - Agrees to deliver all supplies or services at the times specified for an agreed-upon price that cannot be changed without modifying the contract
 - Guarantees performance at the fixed price. If the contract cannot be completed at the fixed price, the contractor must complete the work at its own expense, even at a loss.
 - Makes a profit by completing the work at a cost less than the fixed price
- Fixed-price with economic price adjustment
- Fixed-price incentive
- Fixed-price with prospective price redetermination
- Fixed-ceiling-price with retroactive price redetermination
- Firm-fixed-price, level-of-effort term

2.4.2 Cost-Reimbursement Contracts

In a cost-reimbursement contract, the contractor receives reimbursement for its actual incurred costs. In addition, the government pays the contractor a fee for contract performance. The fee may be fixed or variable depending on the variation used. You cannot change the fee unless the scope of the work changes. Rather than guaranteeing to perform all contract terms and conditions at a specified price, the contractor agrees to deliver its best effort to perform the requirements in return for actual costs incurred and a reasonable fee.

Use cost-reimbursement contracts when the uncertainties involved in contract performance are of such magnitude that cost of performance cannot be estimated with sufficient reasonableness to permit use of fixed-price contracts. Cost-reimbursement contracts are typical for research and development, studies, analytic effort, and software development.

When the contractor cannot specify the exact price of performing, a total estimated cost is agreed to. This cost represents the best estimate of both the government and the contractor, agreed to in negotiations. It also is a contract cost limitation that the contractor cannot exceed except at the risk of nonreimbursement. There is no requirement for the contractor to complete the work at its own expense as in a fixed-price contract. This contract cost limitation can be changed by mutual agreement of the government and the contractor through a modification of the contract.

Cost-reimbursement contracts contain a Limitation of Cost clause. The clause limits the government's liability if the contractor exceeds the total estimated cost. The clause requires the contractor to notify the government when it expects to reach 75% of the total estimated costs in the next 60 days.

The government's risk is high in a cost-reimbursement contract. The contractor only promises to do its best (or use its best effort) to perform the work. No guarantee is given to the government. Failure to do the specified work will not be a breach of contract nor will it cost the contractor any money as long as it used its best efforts. If the work is not completed and the maximum costs have been reimbursed to the contractor, the government has two choices—equally unsatisfactory. The government can elect to:

- Not add funds to the contract and, therefore, not receive any further work
- Add money to the contract to fund the remaining work. This latter action is known as funding the cost overrun.

The funding flexibility in cost-reimbursement contracts does not mean you need not develop a detailed requirements document. Any requirements document for cost-reimbursement work must be as definitive as possible, so the contractor's cost estimate is as accurate as possible. Otherwise, you create a cost-overrun situation in your initial requirements document.



Discussion

Why must cost-reimbursement contracts be monitored more closely than fixed-price contracts?

Several types of cost-reimbursement contracts are available:

- Cost sharing
- Cost-plus-incentive fee
- Cost-plus-award fee
- Cost-plus-fixed fee

2.4.3 Time-and-Materials (T&M) and Labor-Hour Contracts

In a T&M contract, the contractor is paid a fixed hourly rate for each labor category set forth in the contract. The fixed rate includes direct labor, overhead, general and administrative expenses, and profit. Materials used in contract performance are typically reimbursed at cost.

T&M contracts are similar to cost-reimbursement and fixed-price contracts but in only one respect to each:

- Work on the T&M contract is on a best-effort basis like the cost-reimbursement contract, but this is its only resemblance to a cost-reimbursement contract
- The T&M contract has a price ceiling like a fixed-price contract, but this is its only resemblance to a fixed-price contract

In T&M contracts, payment is for the hours worked, not for the delivery of a specific product. The T&M contract is a fixed-rate contract, and the total amount paid depends on the number of hours worked plus materials. The LH contract is a variation of the T&M contract, differing only in that the government is paying for time (materials are not supplied by the contractor).

T&M contracts are useful when it is not possible to estimate the extent or duration of the work or to anticipate the total costs and using a cost-reimbursement contract is not feasible. T&M contracts are useful for repair, maintenance, or emergency services requirements or for service contracts with small businesses or individuals who lack an accounting system sophisticated enough for a cost-reimbursement contract.

The requirements document for a T&M contract must be as definitive as possible. Keep in mind that the overall effort is restricted by the ceiling price (usually the sum of the total estimated hours at the fixed rates plus materials at cost). You must describe the work requirements in sufficient detail for the contractor to accurately estimate the extent of effort and amount of materials required.

2.4.4 Indefinite-Delivery Contracts

Typically, the government uses indefinite-delivery contracts for recurring needs when the exact time of delivery or quantities to deliver are not known at the time of award.

There are three types of indefinite-delivery contracts:

- Indefinite-delivery, definite-quantity contract
 - This arrangement provides for the delivery of a definite quantity of specific supplies or services for a fixed period at designated locations
 - When the specified supplies or services are necessary, the government orders them by issuing a task or delivery order
- Indefinite-delivery, indefinite-quantity (IDIQ) contract
 - This arrangement provides for the delivery of an indefinite quantity, within stated limits, of specific supplies or services to be furnished during a fixed period
 - When the specified supplies or services are necessary, the government orders them by issuing a task or delivery order
 - An IDIQ contract requires the government to order and the contractor to furnish at least a stated minimum quantity of supplies or services. After the minimum quantity has been ordered, the government is not obligated to place further orders.
 - The IDIQ also contains a maximum quantity for the contract
 - The IDIQ also may specify maximum or minimum quantities the government may order under each task or delivery order during a specific period
 - IDIQ contracts specify the period of the contract, the number of options, and the period for which the government may extend the contract under each option.
- Indefinite-delivery requirements contract
 - This arrangement provides for the delivery of all actual requirements of specific supplies or services by designated government activities for a fixed period
 - The government orders specified supplies or services by issuing a task or delivery order
 - The government must purchase all of its actual requirements for the specified supplies or services from the contractor
 - Under a requirements contract, the contractor is the sole source of supply during the term of the contract

The overall benefits of indefinite-delivery contracts are that the government does not have to order supplies or services until the actual requirement materializes and funds are not obligated until issuance of each task or delivery order (other than the stated minimum quantity that is obligated at award of an IDIQ contract).

2.4.5 Consider Options

As part of thinking your way through the project, determine the likelihood of a follow-on effort after completion of the contract. This could be either a continuation of the effort or advancement to another stage of the project.

If you expect a follow-on effort, consider using an option item to cover this effort. If your contract includes an option, it also must include the applicable FAR option clause. The option clause obligates the contractor to provide the specified supplies or services if the CO exercises the option within a stated time frame. Options provide an expeditious means to move on to additional or extended efforts. Options are exercised by a unilateral modification of the current contract and are usually priced at the time the current contract is awarded.

Use an unpriced option if the option cannot be sufficiently described for pricing purposes at the time of original award. If the option is unpriced, the contractor is still obligated to perform but only if a reasonable price can be negotiated. An unpriced option must establish how the option effort will be priced. For example, the option could require the contractor to submit a price proposal by a certain time; exercise of the option would depend on successful price negotiations.

Care should be taken in deciding whether or not to include options—priced or unpriced. Options should not be used unless there is a reasonable expectation that the option will be exercised.

If you fail to consider a follow-on option, you risk delaying the project at contract completion while processing a contract modification or new contract. During this processing period, the contractor may not be able to hold its project team together and key personnel may be lost.

2.5 THE SOLICITATION

All parts of the solicitation work together to communicate the government requirements to potential bidders/offerors. When taken as a whole, the solicitation should convey what you are acquiring and how you will select a contractor. To convey this, all parts of the solicitation must align. To understand this alignment, you need an understanding of the solicitation (and contract) format.

Written solicitations under the simplified acquisition threshold (SAT) are a request for quotations (RFQ). Solicitations over the SAT are either an RFP or an invitation for bids (IFB). If the acquisition is negotiated, the RFP is used. If the acquisition is sealed bidding, the IFB is used. Both use the same format, but the content (primarily the solicitation provisions and contract clauses) is different. This is true of both the solicitation and the resulting contract.

2.5.1 Use the Uniform Contract Format

The FAR prescribes use of the uniform contract format (UCF) to the maximum extent practicable (with exceptions) for the RFP or IFB. The UCF is not required for the RFQ, as the purpose, in part, of simplified acquisition is to reduce administrative costs and promote efficiency and economy in contracting.

Use of the UCF in IFBs and RFPs facilitates preparation of the solicitation and contract. The UCF organizes the solicitation and contract into four parts, as shown in the following figure. This format makes it possible to use the same document as both a solicitation and a contract.

Uniform Contract Format

PART I The Schedule	A. Solicitation/Contract Form B. Supplies or Services and Prices/Costs C. Description/Specifications of SOW D. Packaging and Marking E. Inspection and Acceptance F. Deliveries or Performance G. Contract Administration Data H. Special Contract Requirements
PART II Contract Clauses	I. Contract Clauses
PART III Documents, Exhibits, Other Attachments	J. List of Attachments
PART IV Representations and Instructions	K. Representations, Certifications, and Other statement of offerors or respondents L. Instructions, conditions, and notices to offerors or respondents M. Evaluation Factors for Award

The Uniform Contract Format consists of the schedule, contract clauses, attachments, and representations/instructions

Parts I, II, and III make up the contract document:

- Part I contains the project description and accompanying information
- Clauses in part II are based on the principle type and/or purpose of the contract as well as the government's estimate of the project
- Part III attachments are often cross-referenced to other sections of the solicitation, such as the SOW in part I, section C

Part IV contains information related to the solicitation process:

- Section K contains information the contractor must provide to establish its eligibility for award of a government contract. Under a government initiative, an electronic format named ORCA (the Online Representations and Certifications Application) replaces this section. Under ORCA, bidders/offerors enter section K information once (annually) for use on all federal contracts. ORCA is one of several systems being incorporated into the System for Award Management (SAM), managed by the General Service Administration's (GSA) Office of Government-wide Policy. The most recent version, beta.SAM.gov, consolidates several federal procurement systems into one new system, with the consolidation being accomplished in phases. When completed, SAM will eliminate the need to enter the same data multiple times and will make the process of doing business with the government more efficient.
- Section L contains solicitation provisions and information to guide the preparation of responses to the solicitation
- Section M contains the evaluation factors as well as information on how bids/offers will be evaluated and the contract awarded. The next lesson, Best Value—Proposal Evaluation, covers evaluation factors.

The solicitation process uses the entire document (Parts I–IV). The bidder/offeror uses it to develop a response to the solicitation, and the government uses it to evaluate that response (bid/proposal).

When the contract is awarded, the solicitation portion (part IV, sections K, L, and M) is not physically included. Typically, a preaward file contains these sections.



Refer to Website

To access beta.SAM.gov, the official U.S. government website for people who make, receive, and manage federal awards, visit:
<https://beta.sam.gov>.

2.5.2 Relationship among Uniform Contract Form Sections C, L, and M

The responsibility for developing section C (SOW) usually includes responsibility for developing section L (proposal preparation instructions) and section M (evaluation factors). These sections are primarily the COR's responsibility. There is a direct relationship among these three sections. Keep this relationship in mind when developing the SOW.

- Section C, the SOW, describes the work to be performed by the contractor
- Section L, proposal preparation instructions, describes the type, scope, content, and format of information to be submitted in response to section M evaluation factors
- Section M, evaluation factors, describes the evaluation factors (and subfactors), their relative importance, and how the award will be made

2.6 EXERCISE: PREPARE A PERFORMANCE REQUIREMENTS SUMMARY



Refer to Resource

Handout: Performance Requirements Summary

Directions

1. Work in groups to prepare a performance requirements summary (PRS) for a contract with a performance-oriented requirements document (typically called a performance-based contract).
2. After group review, address the following items:
 - Select a project for this exercise and describe the performance requirements and/or end result you expect the contractor to achieve
 - Use the PRS form provided to further describe your requirements
3. Be prepared to share the experience of this exercise with other groups.



Scenario

A performance-based contract consists of a PWS and a quality assurance surveillance plan (QASP). Often, a PRS combines the two in an outline format. The PRS has dual purposes. First, the PRS is used as a drafting tool, capturing ideas of the acquisition team. From that draft, the PWS and QASP are prepared in detail. Second, the PRS often appears within the performance-based solicitation/contract as a quick reference guide.

2.7 EXERCISE: WRIGHT BROTHERS



Refer to Resource

Handout: Wright Brothers Performance-Based Specification

Directions

1. Review the Wright Brothers Performance-Based Specification. This solicitation, dated 1907, fits the requirements of today's performance-based contract.
 2. After group review, use the Performance Requirements Summary Template provided to identify the performance-based elements of this solicitation.
 3. Answer the question about the acquisition method.
 4. Be prepared to share the experience of this exercise with other groups.
-
1. The acquisition method used is similar to which method used today: sealed bidding or competitive negotiation? Give specific examples to defend your answer.

2.8 EXERCISE: LESSON 2 QUIZ

Directions

1. Answer the quiz questions that follow.
1. The requirements document:
 - a. Is prepared by the CO
 - b. Is a written description of a government acquisition need
 - c. Must always be written as a PWS
 - d. Is not required for commercial items
2. Which type of requirements document would provide the maximum flexibility to an offeror?
 - a. Performance Work Statement (PWS)
 - b. Statement of objectives (SOO)
 - c. Commercial item description
 - d. All of the above
3. Which type of contract places maximum risk on contractors and little or no risk on the government?
 - a. Sole source
 - b. Cost-reimbursement
 - c. Time-and-materials
 - d. Fixed-price
4. There are three types of indefinite delivery contracts.
 - a. True
 - b. False
5. Performance-oriented requirements documents:
 - a. Describe how to perform the work, with payment based on quality
 - b. Describe how to perform the work, with payment based on quality and timeliness
 - c. Address what is to be done rather than how to do it
 - d. Address end results and contain mandatory incentives
6. In an RFP, which sections of the solicitation have a direct relationship?
 - a. Sections C (statement of work), L (instructions), and M (evaluation factors)
 - b. Sections C and L
 - c. Sections C and M
 - d. Sections L and M

Action Planning

Refer to the Action Plan and record ideas to implement from this lesson.



Best Value—Proposal Evaluation

LESSON 3

BEST VALUE—PROPOSAL EVALUATION

Lesson Objective

After completing this lesson, you will be able to:

- 3.1 Define best value and the importance of teamwork in the acquisition process
- 3.2 Discuss the importance of appropriate evaluation factors and the role the COR plays in their selection
- 3.3 Discuss FAR part 15 competitive negotiation methods to achieve best value
- 3.4 Describe the differences in evaluation factors when employing simplified acquisition procedures
- 3.5 Explain the differences in evaluation for orders against multiple award contracts
- 3.6 Discuss the merits of various rating systems
- 3.7 Discuss the purpose of the technical evaluation panel and the role the COR might play as evaluator
- 3.8 Explain what and when preaward, award, and postaward notifications are required

Best value is the end result we strive for in all acquisitions, no matter what method of acquisition we use. Typically, however, best value is most often achievable through acquisition methods that allow selecting a contractor based on both cost and non-cost factors.

This lesson covers best value, specifically:

- Source selection methods best suited for best value acquisitions
- Evaluation factors/subfactors
- Ratings systems
- The technical evaluation panel (TEP)
- Decisions of the Government Accountability Office (GAO) Comptroller General that relate to best value

3.1 BEST VALUE ACQUISITION

3.1.1 Vision of the FAR

The *Federal Acquisition Regulation* (FAR) states best value is of primary concern in today's federal government. Although best value is the intended end result of all acquisitions, the term *best value* has most closely been associated with the competitive negotiation process in FAR part 15.

The vision for the Federal Acquisition System is to deliver on a timely basis the best value product or service to the customer, while maintaining the public's trust and fulfilling public policy objectives.¹

¹ FAR 1.102

The negotiation process allows for selection of contractors based on cost and non-cost evaluation factors. Non-cost evaluation factors, prepared by the contracting officer's representative (COR) for inclusion in the solicitation, should represent key areas of importance and allow for a meaningful comparison and discrimination between offeror's proposals. Examples of non-cost evaluation factors include qualifications and experience, past performance, technical approach, and management approach.

In addition to the ability to select contractors based on cost and non-cost factors, the negotiated method of acquisition allows for discussions. Discussions maximize the government's ability to obtain best value. The objective of discussions is to obtain a contract/contractor demonstrating the greatest promise of meeting the solicitations requirements.

3.1.2 The Role of Teamwork

The acquisition process involves teamwork between users, program/technical personnel, and acquisition personnel. The work of CORs, program or technical personnel, and others involved in the acquisition process needs to include linkage and coordination between the steps in the acquisition process. It begins with drafting requirements and ends with the selection of a contractor.

Keys to success rest with the following:

- Basing the requirements documents on sound market research
- Having evaluation factors that flow out of the acquisition planning process, market research, and requirements documents
- Selecting the *right* evaluation factors and weighing them properly to enable selection of a qualified and competent contractor
- Writing the instructions on technical proposal content to ensure the technical evaluation panel (TEP) receives information needed for evaluation. The contracting officer (CO) inserts this information into the solicitation based on input from those drafting the evaluation factors.
- Following evaluation panel procedures and processes to improve efficiency of the evaluation process
- Having panel members individually and comprehensively evaluate each proposal (make notes of their finding, ratings, strengths, and weaknesses) to arrive at an accurate consensus rating
- Producing a detailed TEP report derived from individual and consensus information



Teamwork is vital to the acquisition process



Tip

We discuss the TEP report later in this course.

3.2 DEVELOPING EVALUATION FACTORS

Evaluation factors and significant subfactors must:

- Represent the key areas of importance and emphasis to be considered in the source selection decision
- Support meaningful comparison and discrimination between and among competing proposals

The evaluation factors and significant subfactors that apply to an acquisition and their relative importance are within the broad discretion of agency acquisition officials, subject to the following requirements:

- Evaluate price or cost to the government for every source selection
- Address the quality of the product or service in every source selection by considering one or more non-cost evaluation factors such as past performance, compliance with solicitation requirements, technical excellence, management capability, personnel qualifications, and prior experience. When past performance is not evaluated on projects under FAR part 15, the CO must document the decision.

When developing evaluation factors, consider which are significant for the quality and/or timeliness of performance desired and limit evaluation factors to those that will reveal substantial differences of risk levels amongst competing proposals. Remember, it is not the number of factors that is critical—it is having the right factors. Too many factors can lead to leveling of ratings, and the final result may be a number of closely rated proposals with little discrimination among competitors.

The statement of work (SOW) is a key document on which to base technical evaluation factors to include in the solicitation. In addition, do not forget information obtained from market research when developing evaluation factors.

After determining evaluation factors, their relative importance to each other must be established. The relative importance of evaluation factors may need to be different for each acquisition. For example, in one project, the ability to achieve timely performance might be the most important. In another project, the quality of work may be most critical with timeliness secondary.

Relative importance of evaluation factors (including subfactors) can be:

- Listed in relative order of importance
- Stated as approximately equal in importance
- Stated in some other priority

Finally, the relative order of importance of all evaluation factors combined and cost must be described. State that all evaluation factors other than cost are:

- Significantly more important than cost
- Approximately equal to cost
- Significantly less important than cost

3.3 COMPETITIVE NEGOTIATION APPROACHES

According to the FAR, when using competitive negotiation the best approaches to use are:

- The tradeoff process
- The lowest price technically acceptable (LPTA) process
- A combination of the tradeoff process and LPTA

3.3.1 Tradeoff Process

Cost or price is always an evaluation factor in any source selection. However, many times there are other factors to consider. For example, you may require technical capabilities, qualifications, or proven successful past performance that a low-cost offeror may not possess. These factors may or may not be more important than cost, but they do have a strong bearing on the selection of a contractor.

Flexibility is needed to select the best value—considering cost and non-cost evaluation factors—not necessarily at the lowest price. The tradeoff process allows that flexibility. The tradeoff process is particularly appropriate if:

- The government's requirements are difficult to define, complex, or historically troublesome
- You expect measurable differences in proposals as they relate to design, performance, reliability, or supportability
- Services are not clearly defined or highly skilled personnel are required
- You are willing to pay extra for capability, skills, reduced risk, or other non-cost factors if the added benefits are worth the premium

In the tradeoff process:

- The solicitation clearly states all evaluation factors and significant subfactors and their relative importance
- The solicitation states whether all evaluation factors other than cost, when combined, are significantly more important than cost or price, approximately equal to cost or price, or significantly less important than cost or price
- Tradeoff between cost and non-cost factors is permitted. However, the perceived benefits of the higher-priced proposal must merit the additional cost, and the rationale for the tradeoff must be documented
- Discussions may occur

The TEP is key to the tradeoff process. The panel's recommendation for award to a higher-priced proposal must be accompanied by the rationale to justify the additional costs. Such a rationale may include, for example, paying a higher price to an offeror with a proven, excellent record for delivering a quality service, on time, where the project is time-critical and high-risk. The panel's rationale in this example would further explain the high-risk situation, the recommended firm's past performance history, clearly state the benefits or advantages the government would receive for the additional cost, and state why it is in the government's interest to expend the additional funds.

3.3.2 LPTA Process

In some situations, simply comparing the cost of proposals meeting or exceeding the government's requirements for capability can result in best value. In such cases, cost is the overriding consideration. While a need for discussions may exist, there is no need to make tradeoffs.

The LPTA process is similar to a sealed-bidding approach in that award is made to the acceptable offeror with the lowest evaluated cost. The major difference is that discussions can be held with offerors before award to ensure offerors understand solicitation requirements and to determine acceptability. Tradeoffs are not permitted, and no additional credit is given for exceeding acceptability. However, proposals are evaluated to determine whether they meet the acceptable levels for each non-cost evaluation factor and subfactor as stated in the solicitation.

This process may be appropriate where the requirement is not complex and the technical and performance risks are minimal. Examples are acquisitions where service, supply, or equipment requirements are well defined but where discussions may be necessary.

In the LPTA process:

- The solicitation shows all evaluation factors and significant subfactors that establish the requirements of acceptability. It is important that the minimum requirements that must be met are stated clearly so offerors know what they must meet to continue in the competition
- Tradeoffs between cost and non-cost factors are not permitted
- Proposals are evaluated for acceptability but not ranked using the non-cost factors
- Exchanges may occur

3.4 SIMPLIFIED ACQUISITION PROCEDURES

Simplified acquisition procedures (SAP) are designed to reduce administrative costs and promote efficiency and economy in contracting. Given this, the formal evaluation processes and procedures used in competitive negotiations under FAR part 15 are not mandatory. Rather, FAR part 15 provides guidance for acquisitions using SAP where cost and non-cost factors are of importance in selecting contractors.

When using technical evaluation factors in solicitations under SAP, agencies are not required to include subfactors nor is there a requirement to state the relative importance assigned to each evaluation factor. However, there is a requirement to state, when soliciting quotations, the basis on which the award will be made (price alone or price and other factors, e.g., past performance and quality). COs are encouraged to use best value and innovative approaches to the maximum extent practicable in awarding contracts using SAP.

3.5 ORDERS UNDER MULTIPLE-AWARD CONTRACTS

All awardees of multiple-award, indefinite-delivery contracts are given a fair opportunity to be considered for each task order or delivery order exceeding \$3,500 (except for statutory exceptions listed at FAR 16.505(b)(2)). The FAR allows the use of streamlined procedures for these selections, similar to SAP. For orders not exceeding the simplified acquisition threshold, the CO need not contact each of the multiple awardees before selecting an order awardee if the CO has information available to ensure each awardee is provided a fair opportunity to be considered for each order.

The CO is required to develop ordering procedures and include those procedures in the solicitation/contract. In developing the ordering procedures, the FAR states the CO should consider past performance, including quality, timeliness, and cost control for task and delivery order selections.

3.6 DEVELOPING RATING SYSTEMS

Rating systems help evaluators assess a proposal's merit with respect to the evaluation factors and subfactors in the solicitation. Rating systems can use a scale of words, colors, numbers, or other indicators to denote the degree to which proposals meet the standards for the non-cost evaluation factors.

Examples of rating systems include:

- **Adjectival.** This system uses adjectives (such as excellent, good, satisfactory, marginal, and unsatisfactory) to indicate the degree to which the offeror's proposal meets the standard for each factor evaluated. Use adjectival systems independently or in connection with other rating systems
- **Color coding.** This system uses colors to rate proposals.
- **Numerical.** This system assigns points (such as 0–10 or 0–100) to rate proposals. This system generally allows for more rating levels and, thus, may appear to give more precise distinctions of merit. Numerical systems can have drawbacks as their apparent precision may obscure the strengths, weaknesses, and risks that support the numbers.

Narratives should be included with any rating system.



Discussion

Why is it important to include narratives with adjectival, color, and numerical rating systems?



Tip

The key to using rating systems in evaluating proposals is not the method or combination of methods used but the consistency with which the selected method is applied to all competing proposals and the adequacy of the supporting narrative.

3.6.1 Technical Merit Ratings

The following sample numerical, adjectival, and color rating systems are examples to use, individually or in combination, in various solicitation situations. If used in combination, the solicitation must describe the relative trade-off between each method to allow offerors to know how their offers will be evaluated. Some agencies prohibit the use of numerical ratings.

TABLE: TECHNICAL MERIT RATINGS

Numerical	Adjectival	Color	Description
90–100	Excellent	Blue	Proposal demonstrates excellent understanding of requirements and capability standards. Has exceptional strengths that will significantly benefit the government.
80–89	Good	Green	Proposal demonstrates good understanding of requirements and capability standards. Has several strengths that will benefit the government.

Numerical	Adjectival	Color	Description
70–79	Satisfactory	Yellow	Proposal demonstrates acceptable understanding of requirements and capability standards. Acceptable solution. Few or no strengths.
60–69	Marginal	Amber	Proposal demonstrates shallow understanding of requirements and capability standards necessary for minimal, but acceptable, contract performance. Proposal inadequacies may be correctable.
<60	Unsatisfactory	Red	Fails to meet performance or capability standards. Significant weaknesses and/or deficiencies requiring major proposal rewrite.

3.6.2 Proposal Risk Ratings

Proposal risk ratings assess the risk and weaknesses associated with each offeror's proposed approach to performing the requirements stated in the request for proposals (RFP). It is an overall assessment derived from the technical evaluation and is driven by each of the subfactors within the technical factor.

TABLE: PROPOSAL RISK RATINGS

Adjective	Description
Low risk	Any proposal weaknesses have little potential to cause disruption of schedule and an increase in costs. Standard contractor effort and normal government monitoring will probably minimize any difficulties.
Moderate risk	Approach has weaknesses that can potentially cause some disruption of schedule and an increase in costs. Special contractor emphasis and close government monitoring will probably minimize difficulties.
High risk	Approach has weaknesses that have the potential to cause serious disruption of schedule and cost overruns, even with special contractor emphasis and close government monitoring.

3.6.3 Past Performance as a Risk Indicator

Past performance can be an indicator of risk. Past performance ratings assess the risks associated with each offeror's likelihood of success in performing the requirements stated in the RFP based on that offeror's demonstrated performance on recent, relevant contracts.

TABLE: PAST PERFORMANCE RISK RATINGS

Adjective	Description
Very low risk	No doubt offeror will successfully perform required effort.
Low risk	Little doubt offeror will successfully perform required effort.
Moderate risk	Some doubt offeror will successfully perform required effort.
High risk	Substantial doubt offeror will successfully perform required effort.
Very high risk	Extreme doubt offeror will successfully perform required effort.
Unknown risk	No relevant performance record. No past performance requires a neutral rating.

3.6.4 Cost

Cost is not rated like technical factors, but it must always be considered for all source selections. The RFP must describe the method by which cost will be evaluated (e.g., how probable cost or life cycle cost will be evaluated).

3.7 THE TECHNICAL EVALUATION PANEL

Note how different the role of a TEP is when it is a tradeoff versus LPTA proposal. In one case, strengths and weaknesses are identified and necessary for debriefing and negotiation. In the other case, the TEP is trying to determine if a proposal is technically acceptable.

TEPs are typically made up of an odd number of members—usually three or five. This permits coming to a consensus rating and prohibits ties.

A certification/statement of nondisclosure is usually required from each TEP member. Such certifications require independent action and nondisclosure of certain information learned during the evaluation process.

Clear understanding of the solicitation factors and the scoring procedures and processes to be used by the TEP is important. In some cases, the CO will provide training or guidance to the TEP members or at least to the chairperson of the TEP.

3.7.1 The Technical Evaluation Approach

A technical evaluation is an assessment of each offeror's ability to accomplish the technical requirements. This is not an evaluation of dollar amounts but rather the information behind the dollar amounts, such as the number and kinds of labor hours, number of computer hours, number of trips, and quantities or kinds of materials proposed and methods to accomplish technical requirements.

Following are the suggested steps to ensure a comprehensive review.

1. **Read the SOW.** When using a tradeoff process, read the source selection plan (SSP). The SSP is the government's plan for how it intends to acquire what it needs. It explains the process for

soliciting and evaluating proposals to make the selection decision. The SSP, submitted to the source selection authority, can be prepared by the CO, COR, or both. The SSP:

- Is the government's plan for how it intends to acquire what it needs
 - Explains the process for soliciting and evaluating proposals to make the selection decision
 - Is submitted to the source selection authority
 - Can be prepared by the CO, COR, or both
2. **Read each offeror's entire proposal.**
 3. **Read and understand the evaluation factors and subfactors.** In this iteration of the review process, be fairly picky. Several relatively small complaints may begin to show a general trend that could be combined into a single weakness upon completion of the review.
 4. **Individually evaluate and rate each proposal.** In documenting the evaluation, include proposal or SOW page and paragraph numbers as a reference tool. The reference can be useful in resolving later disagreements over interpretation when coming to a group consensus rating.
 - Summarize the adequacy of the offeror's approach to each evaluation factor and subfactor rather than summarizing what the offeror proposed, unless to make a specific point
 - Comment on the offeror's specific performance regarding each standard in this factor or subfactor. Just saying "OK" is sufficient if the offeror simply meets the standard.
 - If you identify a strength or weakness, annotate it using complete sentences to describe the situation and make strengths and weaknesses clear
 - If it is a fairly significant weakness, write a brief statement about the potentially negative impact it could have on the program
 - Significant strengths should be accompanied by a brief statement as to the benefit to the government—such as "reduces operating costs," "reduces risk," "increases performance," etc.—and a discussion of why it is a benefit
 - Now, go back and prioritize the strengths and weaknesses. Repeat this procedure for each offeror's proposal.
 5. **Develop a TEP consensus rating.** Discuss and agree on a rating for each offeror's proposal. This includes not only a consensus total rating for each offeror's proposal but a consensus rating for each factor and subfactor as well. Consolidate the strengths and weaknesses for each proposal. The TEP chairperson should start recording this information as each proposal receives a consolidated rating. The chairperson should consolidate all strengths and weaknesses by item/factor so the team may work through the wording, validity, severity, and ranking of the issues.
 6. **Prepare a TEP report.** The TEP chairperson prepares the report. COs can provide guidance and/or samples for this report. Generally, it contains introductory information regarding the acquisition, the basis for award, evaluation factors and subfactors, TEP members, solicitation requirements, a summary of each offeror's proposal, and recommendations for award. The TEP report serves two primary purposes by presenting information:
 - To be used in the negotiation process
 - For debriefing of unsuccessful firms
 7. **Participate in discussions where appropriate in the process.**

3.7.2 Importance of the TEP

The following are extracted statements from various Comptroller General (CG) decisions. All relate to the important role of TEP members as well as the documentation of the deliberation.



Examples: Importance of the TEP

Selection of TEP members. "Moreover, we have long found that the selection of individuals to serve as evaluators is a matter within the discretion of the agency, and, accordingly, we do not review allegations, such as these, concerning the evaluators' qualifications or the composition of evaluation panels absent a showing of possible fraud, conflict of interest, or actual bias on the part of evaluation officials, none of which have been alleged or shown here."²

COs have discretion to appoint a new TEP. "We have recognized that it is within the CO's discretion to convene a new evaluation panel where, for example, the CO, in good faith, determines that such action is necessary to ensure the fair and impartial evaluation of proposals, and the record shows that it was not made with the specific intent of changing a particular offeror's technical ranking or avoiding an award to that offeror."³

3.7.3 Discussions

Before issuing a solicitation, decide whether the government intends to award with or without discussions. Based on input from acquisition team members, the CO will communicate this intent in the solicitation. In making the decision, consideration must be given to best value. Award without discussions is most likely to result in best value when requirements are clear, commodities are known or stable, and the marketplace is extremely competitive.

If the initial solicitation contains a notice to award without discussions and the government determines it is necessary to conduct discussions, the government may do so provided the rationale is documented in the contract file. The primary objective of discussions is to persuade offerors to revise their proposals in ways that will optimize the result for the government based on the requirement and evaluation factors in the solicitation.

Discussions should be tailored to each offeror's proposal and focus on:

- Strengths
- Weaknesses
- Deficiencies
- Other aspects of the proposal that could be altered or explained to enhance materially its potential for award

Discussions may be oral, written, or a combination of both. The type, scope, and extent of discussions are a matter for the CO's judgment. However, the TEP recommendations set forth in the TEP report are considered in the CO's decision.

² GAO 2008a

³ GAO 2001

3.8 MAKING PREAWARD, AWARD, AND POSTAWARD NOTIFICATIONS

FAR part 15 procedures require prompt notification of unsuccessful offerors. The CO must provide notifications in writing whenever an offeror is eliminated from competition.

3.8.1 Notifications under FAR part 15

FAR 15.503(a) Preaward Notices

When excluding proposals from the competitive range or otherwise from the competition before award, notify unsuccessful offerors promptly in writing. This notification is to include the basis for the determination.

For small business set-asides, the preaward notice is to include the name and address of the apparent successful offeror.

FAR 15.503(b) Postaward Notices

Within three days after award of a contract, the CO is to provide written notification to each offeror that was in the competitive range but was not selected for award. The postaward notice is to include:

- Number of offerors solicited
- Number of proposals received
- Name and address of each awardee
- Items, quantities, and any stated unit prices for each award
- In general, reasons why the offeror's proposal was not accepted



Tip

The TEP report is critical to preaward and postaward notifications. The TEP report contains detailed information as to why the panel excluded an offeror's proposal from competition. The CO prepares preaward and postaward notifications, utilizing the wording in the TEP report to provide each offeror with an understanding of the government's evaluation of its proposal and the reasons why the offeror was excluded from competition.

3.8.1.1 Debriefings under FAR part 15

Some offerors desire an opportunity to further discuss their unsuccessful proposals with the government to gain a better understanding of the information contained in the preaward or postaward notification. To accomplish this, unsuccessful offerors may request, in writing, either a preaward or postaward debriefing.

A debriefing is a meeting between government personnel and an offeror eliminated from the competition either before or after contract award.

The purposes of a debriefing are to:

- Explain the rationale for exclusion from the competition
- Instill confidence in the offeror that they were treated fairly

- Assure the offeror that proposals were evaluated according to the solicitation and applicable laws and regulations
- Identify weaknesses in the offeror's proposal, so the offeror can better prepare proposals in future government acquisitions
- Reduce misunderstandings and protests
- Give the offeror an opportunity to provide feedback regarding the solicitation, discussions, evaluations, and the selection process

FAR 15.505 Preaward Debriefing of Offerors

Offerors excluded from the competitive range or otherwise excluded from the competition before award may request a debriefing before award. The offeror may request a preaward debriefing by submitting a written request for debriefing to the CO within three days after receipt of the notice of exclusion from the competition.

If the offeror does not submit a timely request, the offeror need not be given either a preaward or postaward debriefing. Offerors are entitled to no more than one debriefing for each proposal.

Debriefings can be oral, written, or by any other method acceptable to the CO.

Preaward debriefings are to include:

- The agency's evaluation of significant elements of the offeror's proposal
- A summary of the rationale for the offeror's elimination from competition
- Reasonable responses to relevant questions about whether source selection procedures, applicable regulations, and other applicable authorities were followed in the evaluation

FAR 15.506 Postaward Debriefing of Offerors

At award, unsuccessful offerors not previously excluded from competition must be given an opportunity for debriefing. Debriefings of successful and unsuccessful offerors may be done orally, in writing, or by any other method acceptable to the CO. The CO should normally chair any debriefing session held.

Debriefing information should include:

- The government's evaluation of weaknesses or deficiencies in the offeror's proposal
- The overall evaluated cost or price and technical rating of the successful offeror and the debriefed offeror, and past performance information on the debriefed offeror
- The overall ranking of all offerors, when any ranking was developed by the agency during the source selection
- A summary of the rationale for award
- The make and model of the item to be delivered by the successful offeror, if applicable
- Responses to questions about source selection procedures

The debriefing should not include:

- Point-by-point comparisons of the debriefed offeror's proposal with those of other offerors
- Any information prohibited from disclosure or exempt from release under the Freedom of Information Act including:
 - Trade secrets
 - Privileged or confidential manufacturing processes and techniques

- Commercial and financial information that is privileged or confidential, including cost breakdowns, profit, indirect cost rates, and similar information
- The names of individuals providing reference information about an offeror's past performance

An official summary of the debriefing is included in the contract file.

3.8.1.2 *Debriefing Simplified Acquisitions under FAR part 13*

Under FAR part 13, written notifications are not mandatory in acquisitions under the simplified acquisition threshold. However, if a supplier requests information on an award that was based on factors other than price alone, provide a brief explanation of the basis for the contract award decision.

Upon request, the CO furnishes the following (which are the same as for competitive negotiation, FAR part 15, awards):

- Number of offerors solicited
- Number of proposals received
- Name and address of each awardee
- The items, quantities, and any stated unit prices for each award
- General reasons why the proposal was not accepted

3.9 SELECTED DECISIONS FROM THE COMPTROLLER GENERAL

The following examples describe the basic philosophy of the Comptroller General, based on a series of selected decisions.



Example: Comptroller General Philosophy

Technical Evaluation Panel Recommendations—Use in Negotiation/Discussions. "It is a fundamental precept of negotiated procurement (FAR part 15) that discussions, when conducted, must be meaningful and must not prejudicially mislead offerors. Specifically, an agency may not mislead an offeror—through the framing of a discussion question or a response to a question—into responding in a manner that does not address the agency's concerns; misinform the offeror concerning a problem with its proposal; or misinform the offeror about the government's requirements. More specifically, when an agency asks a general question indicating concern regarding a perceived weakness in an offeror's proposal, then subsequently rejects the proposal as technically unacceptable on the basis of this concern, a question which could not reasonably be construed as putting the offeror on notice of the agency's actual concern regarding the acceptability of its proposal does not constitute adequate discussions."⁴

Meaningful Discussions. "Written discussion questions generated by a contracting agency should reasonably apprise offerors of the areas that the agency considers deficient such that the offerors will understand the agency's concerns."⁵

"For discussions to be meaningful, they must lead offerors into the areas of their proposals requiring amplification or revision; the agency is not required to spoon-feed an offeror as to each and every item that could be revised so as to improve its proposal, however."⁶

Discretion in Developing Evaluation Criteria. "Agencies enjoy broad discretion in selecting evaluation criteria and we will not object to a solicitation's evaluation scheme so long as it reasonably relates to the agency's needs. The fact that a solicitation's technical requirements or evaluation criteria may favor the agency's actual needs, and the advantage enjoyed by a particular firm is not the result of improper government action."⁷

Evaluation Factors Are Guides in the Decision-Making Process. "The evaluation of proposals and the assignment of adjectival ratings should generally not be based upon a simple count of strengths and weaknesses but upon a qualitative assessment of the proposals consistent with the evaluation scheme. Moreover, it is well established that ratings, be they numerical, adjectival, or color, are merely guides for intelligent

⁴ GAO 1999a

⁵ GAO 1999b

⁶ GAO 2000

⁷ GAO 1999c

decision making in the procurement process."⁸

Evaluating Past Performance. "Where a solicitation requires the evaluation of offerors' past performance, an agency has discretion to determine the scope of the offerors' performance histories to be considered, provided all proposals are evaluated on the same basis and consistent with the solicitation requirements."⁹

Offerors Must Address Evaluation Criteria. "A procuring agency's technical evaluation is dependent upon the information furnished in the offeror's proposal. An agency is not required to overlook a flawed proposal on the basis of the offeror's prior performance; on the contrary, all offerors are expected to demonstrate their capabilities and submit required information in their proposals."¹⁰

Evaluation Factors are Designed to Identify Differences in Proposals. "In this regard, proposals with the same adjectival ratings are not necessarily of equal quality, and an agency may properly consider specific advantages that make one proposal higher quality than another."¹¹

Individual Ratings versus a Consensus Rating. "Specifically, the protester complains that two original TEP members assigned its proposal 3 points, the maximum possible score, while, without explanation from the original or reconvened TEP, two others assigned it 0 points. This argument is without merit. First, disparate scoring among evaluators, by itself, is not sufficient to establish an improper evaluation."¹²



Tip

Disparate scoring among evaluators is the reason that a consensus rating should be reached.

⁸ GAO 2008b

⁹ GAO 1993

¹⁰ GAO 1998a

¹¹ GAO 2007

¹² GAO 1998b



Examples: Comptroller General Philosophy, continued

The Same Evaluation Criteria Must Be Applied to All Proposals.

"According to the statement of the individual who conducted [Firm B]'s reference checks pursuant to an earlier solicitation, he explained to the references whom he contacted that they were to rate [Firm B]'s performance in accordance with the following scale: met or exceeded the standard, close to the standard, departure from the standard with increased risk, departure from the standard with significant risk, unacceptable departure from the standard. This scale differs from those used to rate [Firm A]'s past performance in that it collapses the top two (in the case of the exceeded the standard/met the standard/etc. scale) or possibly three ratings (in the case of the excellent/good/ satisfactory/marginal/poor scale) into the single top category of met or exceeded the standard. It would obviously have been easier for [Firm B] to attain top ratings under this scale than for [Firm A] to attain top ratings using either of the others. In our view, the use of these different rating scales calls into question the even-handedness of the evaluation of [Firm A]'s and [Firm B]'s past performance."¹³

Agencies Shall Follow Stated Evaluation Criteria. "In reviewing a protest challenging an agency's evaluation of competing proposals, our office will not reevaluate the proposals but, rather, will examine the record to ensure that the agency's evaluation was reasonable and consistent with the stated evaluation criteria. A protester's mere disagreement with the agency's evaluation determination does not provide a basis for sustaining the protest.

Further, it is well settled that a particular offeror may possess unique advantages and capabilities due to its prior experience under a government contract, and the government is not generally required to equalize competition to compensate for such an advantage. More specifically, our decisions have long held that such an advantage neither constitutes preferential treatment nor is otherwise unfair."¹⁴

Changing Evaluation Criteria. "Moreover, the source selection documents and testimony of the SSA and SSAC chairman suggest that the agency may have improperly converted the source selection to one based upon technical acceptability and low price, instead of one emphasizing technical superiority and skills as announced in the RFP evaluation scheme. An agency does not have the discretion to announce in the solicitation that it will use one evaluation plan, and then follow another; once offerors are informed of the criteria against which their proposals will be evaluated, the agency must adhere to those

¹³ GAO 2005

¹⁴ GAO 2003a

criteria in evaluating proposals and making its award decision, or inform all offerors of any significant changes made in the evaluation scheme."¹⁵

Source Selection Documentation. "An agency that fails to adequately document its source selection decision bears the risk that our office may be unable to determine whether the decision was proper. Although source selection officials may reasonably disagree with evaluation ratings and results of lower-level evaluators, they are nonetheless bound by the fundamental requirement that their own independent judgments be reasonable, consistent with the stated evaluation factor and adequately documented."¹⁶

Price Tradeoff Analysis. "Agencies have considerable discretion in determining the particular method used in evaluating cost or price; however, the method used should, to the extent possible, accurately measure the cost to be incurred under competing proposals. Where the SSA bases his source selection decision on figures that do not reasonably represent the differences in costs to be incurred under competing proposals, this source selection is not reasonably based."¹⁷

Cost-Technical Tradeoffs Required for Technical Superiority. "The SSAC chairman, while acknowledging the technical superiority of PSS's proposal, testified that the case could not be made for paying the additional cost because objectively quantifying the advantages in dollar terms was "nearly difficult and next to impossible." This is not a reason for failing to perform a cost/technical tradeoff. First, FAR 15.308 expressly states that a cost/technical tradeoff need not be quantified. More fundamentally, however, a cost/technical tradeoff requires a comparative assessment of the proposals considering all of the stated selection criteria, even where the value of a technically superior proposal cannot be quantified. An agency cannot avoid making a cost/technical tradeoff analysis because of its difficulty, especially where it has encouraged offerors to compete on the basis of technical superiority."¹⁸

¹⁵ GAO 2003b

¹⁶ GAO 2004a

¹⁷ GAO 2004b

¹⁸ GAO 2003b

3.10 EXERCISE: RANKING EVALUATION FACTORS

Directions

1. As directed by your facilitator, work individually or in groups.
2. Select a project for which you may be using tradeoff for selection of a contractor.
3. Address the following questions as they relate to developing evaluation factors for the acquisition.

Questions

1. Review the following list of typical evaluation factors used in best value acquisition. Select those factors you feel would be important to your project and rank them in order of importance: 1 = highest, 2 = next highest, etc.
 - Past performance (successful past performance with work similar in scope and magnitude, considering past quality, timeliness, cost control, and business relations)
 - Understanding of government needs
 - Qualifications and experience of key personnel
 - Safety associated with performance of work
 - Quality control plan (assuring performance to standards)
 - Schedule and delivery control
 - Risk to the government if the project is not performed in accordance with quality or timing requirements
 - Technical approach to performing work
 - Other (describe):
 2. The solicitation must state the order of importance of cost to the non-cost evaluation factors. Consider this relationship for your project by selecting one of the following. When combined, all evaluation factors, other than cost, are:
 - Significantly more important than cost
 - Approximately equal to cost
 - Significantly less important than cost
-
3. Once the evaluation factors have been determined, it is necessary to include in the solicitation instructions about what information needs to be provided with the technical proposals. This will allow the TEP to effectively review each proposal against the stated evaluation factors. The CO inserts instructions into the solicitation based on the COR's input. Review your evaluation factors above. For each factor, list the information needed for an effective evaluation.
 - Evaluation factor 1:
 - Information needed:
 - Evaluation factor 2:
 - Information needed:
 - Evaluation factor 3:
 - Information needed:

3.11 EXERCISE: DEVELOP A RATING SYSTEM

Directions

1. As a group, choose one of the evaluation factors (other than past performance) from Exercise: Ranking Evaluation Factors.
2. Develop a five-step rating system for that factor.
 - Your rating system can be numbers, colors, or adjectives
 - Supporting narratives for each step are also required
 - Whatever system you use, begin by describing the acceptable level of performance for that factor, then describe levels above and below that level



Sample Five-Step Rating System

- Exceptional / 5 / Blue
 - Significantly exceeded delivery requirements; all on-time with many early deliveries to the government's benefit
 - Quickly resolved delivery issues; highly effective corrective actions
- Very good / 4 / Green
 - On-time deliveries; some early deliveries to the government's benefit
 - Quickly resolved delivery issues; effective corrective actions
- Satisfactory / 3 / Yellow
 - On-time deliveries
 - Minor problems; did not affect delivery schedule
- Marginal / 2 / Amber
 - Some late deliveries
 - No corrective actions
- Unsatisfactory / 1 / Red
 - Many late deliveries
 - Negative cost impact; loss of capability for government
 - Ineffective corrective actions; not likely to recover

1. Your factor:

2. Your rating system:

3.12 EXERCISE: SERVING ON A TEP

Directions

Working in groups, you will participate as a TEP. Your responsibilities are to:

1. Review the project information below.
2. Use the worksheet in this exercise to individually evaluate technical proposals, using the evaluation factors contained within this exercise.
 - The technical proposals for this exercise consist of summaries from five offerors
 - Identify strengths, weaknesses, risks, and deficiencies of each proposal
3. Develop a group consensus rating for each proposal (in each factor).
4. Provide an abbreviated version of a TEP report.
5. Make award decision:
 - Decide on award with or without discussions
 - Develop the competitive range and prepare discussion topics, if needed

1. Project ABC Information

The following project costs are based on using the latest, state-of-the-art technology and ENERGY STAR products and methods:

- Government estimate: \$450,000
- Contract time: 365 days
- Scope of project: medium size, including resource technology challenges
- Projected LTM (Long-Term Maintenance) costs: \$50,000
- Anticipated maximum savings of LTM: \$40,000

Dwayne Straightarrow will lead the TEP as the chairperson. Other members will be appointed soon. Dwayne has been with the agency for three years. Before that, he worked in a highly successful private business with his then partner, Plum Bob.

It is anticipated the government will have a COR and three inspectors on site each day work is performed.

Included in the solicitation are evaluation factors and instructions to offerors:

- **Cost.** Offerors should provide a complete, detailed breakdown of all costs within the cost proposal. The CO will analyze information within the cost proposal. Cost information will be shared with the TEP after the CO receives the TEP report (with award recommendations).
- **Past performance.** Offerors should provide past performance information. Include a list of clients, with contact information, for current projects and projects completed within the past two years. Items such as quality of service, timeliness/responsiveness of performance, customer satisfaction, problems encountered, and cost control should be addressed. Include any special awards or recognitions received for past, similar work.

- **Technical approach.** Offerors should address their unique approach to accomplishing the work set forth in the solicitation. Include new and innovative methods, state-of-the-art technology, use of ENERGY STAR–rated/energy efficient or recovered materials to be used, safety, long-term project maintenance, and a detailed technical approach explaining schedules and project management assuring completion on time and within the allotted budget. The offeror's quality control plan should be included.
- **Qualifications/experience.** Offerors should address the qualifications of the firm. In addition, offerors should provide one-page resumes displaying the qualifications and experience of key personnel who will work on the project.

Also included in the solicitation:

- **FAR 52.215-1 Instructions to Offerors—Competitive Acquisition.** This includes information related to contract award, as follows: "The government intends to evaluate proposals and award a contract without discussions Therefore, the offeror's initial proposal should contain the offeror's best terms from a cost or price and technical standpoint. The government reserves the right to conduct discussions if the contracting officer later determines them to be necessary."
- **Alternate Proposals Instructions.** Alternate proposals may be submitted, however, offerors must first address the agency's stated requirements, per the solicitation, in one proposal prior to submitting an alternate proposal. The alternate proposal(s) must be marked "Alternate Proposal."

The solicitation is for full and open competition; no set-aside applies.

2. Worksheet

Use the following worksheet to complete a technical evaluation of each offeror's proposal. Choose one order of importance and one rating system to complete this step.

Order of importance (choose one):

- The relative importance of the technical evaluation factors, when compared to each other, is considered equal. All technical evaluation factors other than cost are approximately equal to cost.
- The relative importance of the technical evaluation factors, when compared to each other: Past performance is considered significantly more important than technical approach, which is considered more important than qualifications/experience. All technical evaluation factors other than cost are significantly less important than cost.
- The relative importance of the technical evaluation factors, when compared to each other: Technical approach and qualifications/experience are considered equal, and both are considered more important than past performance. All technical evaluation factors other than cost are significantly more important than cost.

Rating system (choose one; shown lowest to highest):

- Numerical: 1, 2, 3, 4, 5
- Adjectival: unsatisfactory, marginal, satisfactory, good, excellent
- Color: red, amber, yellow, green, blue

TABLE: TECHNICAL EVALUATION WORKSHEET

Firm	Past Performance	Technical Approach	Qualifications and Experience	Total Technical Score	Comments

Notes:

- **Firm 1: L.O. Bid, Dew Wright, Owner**

- A well-known local firm with good qualifications and qualified managers. Past contracts included several similar projects in the local area. You recognize individuals within their list of past performance references and place phone calls to check the firm's past performance. You receive comments from "very good" to "excellent." The firm has submitted resumes for two individuals for project manager, stating one will be assigned at award should they be selected. One of the individuals has better skills and a better performance record than the other, but either has the minimum skills necessary to complete the project.
- Their technical approach, while good, contains few innovative or unique approaches. It proposes the old tried and true methods for doing the project. They feel that what has worked well in the past should work well in the future. The part of their technical approach detailing how they will perform the work within the contract performance period looks good. They've submitted a quality control plan that seems to be an off-the-shelf plan—one they would use for all contracts. A check of their safety record shows one minor on-the-job incident a year ago. The project as proposed entails high long-term maintenance costs for the government following project completion. This will result in significant cost to carry out the initial contract and significant future costs.

- **Firm 2: M&M Proffit, Max Proffit, Owner**

- A new, local firm with excellent qualifications; however, there is no past performance history for the firm. Five individuals within the firm, including the proposed project manager, have performance records working for different companies. All five received "very good" to "excellent" ratings from clients you contacted. The clients were very pleased with the proactive approach the firm took toward modifications. They gave early notice of possible situations that might require a change and worked to keep the cost of modifications at a minimum. Business ethics are a high priority with this firm. You note the proposed project

manager received national recognition last year while employed by another offeror, Firm 1. The project management personnel seem well qualified for the positions they will hold.

- Their technical approach to the work has some innovative ideas and does include state-of-the-art technology. Their proposed project schedule looks reasonable, and they should be able to complete the project on time and within budget provided nothing out of the ordinary is encountered. It looks like they put some thought into the quality control plan they submitted—excellent. Their technical approach looks very good. Their proposal offers some opportunities for reducing the government’s long-term maintenance costs. The firm has no safety record as a firm; however, the safety plan was prepared by their safety officer, who previously worked as an Occupational Safety and Health Administration (OSHA) consultant. The safety plan is exceptional.
- M&M has an alternative proposal (appropriately marked) with an interesting cost-saving performance method and which indicates it would save the government money in the long term. In addition to what was in their basic proposal, they are offering the company’s top management person, who has multiple national awards, to oversee the project. This person has an excellent reputation and an outstanding record for both quality and quantity of work completed on past projects.
- The firm offers to complete the work within 275 calendar days from the date of award. They are offering to use unique ENERGY STAR–rated items on the project that are currently being developed and will be in the marketplace at about the time needed for this project. They further offer many recycled materials for this project that were not included in their other offer. Furthermore, by making some changes to the project design, the alternate proposal can reduce the government’s long-term maintenance cost to a minimum. These changes are within the requirements of the solicitation.

- **Firm 3, Goodenuf, Inc., Ima Goodenuf, Owner**

- Although the firm is fairly new, several of the proposed workers are former government employees you know. Having worked with these individuals when they were employed by your agency, you feel their performance is excellent. Upon checking past performance with other clients outside of the government, the firm received “very good” to “excellent” ratings. The proposed project manager, another retiree, received several performance awards while employed by the government. The firm’s personnel are well qualified for this project, as it is directly related to the type of work they did while employees of the government.
- This firm indicates they feel some of the requirements of the solicitation are unreasonable and unnecessary and instead are offering, in their only proposal, the industry standard as their methods to complete this portion of the project. They have offered some unique approaches to accomplishing the work, and their use of recycled and energy-efficient materials is very good. Their technical proposal, including their quality control plan, looks very good. They have a good progress plan for accomplishing the work within the allotted schedule and a good contingency plan should they fall behind. Their safety record is outstanding, having received national recognition. They are an 8(a) firm.

- **Firm 4: Gouger, Cheatam & Offe, Rip Offe, Owner**

- This is a local firm with very good qualifications. They provided a list of clients to check past performance, including peers with another agency. The information submitted with their proposal indicates they have very satisfied customers and have completed most projects on or ahead of time.
- The previous clients tell you to stay away from this firm as there have been problems. The previous clients say the firm's work, when it does work, is excellent; however, it needs significant performance monitoring. Other clients you contact outside of the government (whose names were not included in the proposal), indicate the same, saying they believe the firm overextends itself. Some of the clients, in response to your questioning, state they would give this firm a poor performance rating.
- The firm has provided only an outline of a technical approach that seems to cover all the major activities to be performed under the contract. They have provided a quality control (QC) plan. The QC is an excellent plan, which makes you wonder what went wrong with prior contracts. Although your review of the firm's safety record appears satisfactory, one of the firm's past clients alleges the firm does not follow OSHA regulations.

- **Firm 5: Next Generations, Willy Finish, Owner**

- From reviewing resumes, you conclude this firm has excellent qualifications. Particularly outstanding is their proposed project manager, Plum Bob, who is highly respected in the field and has received several national awards. In addition, the other management people proposed for the project are also very highly qualified. They have had several large contracts in the general area and have included within their proposal several letters of recommendation—primarily from federal agencies.
- Their technical approach and QC plan seem to be the best so far, geared specifically toward your requirements. Using their proposed methods of work, which include ENERGY STAR-rated products and a recycling plan, will minimize the agency's long-term maintenance costs for this project. This firm has an excellent safety record. The firm is willing to comply with the agency action plan included in the solicitation; however, they have submitted an alternative management plan in an alternative proposal (properly marked). Upon review, it is within the requirements of the solicitation and appears superior to the government's plan.
- This management plan builds on the original proposal. The initial performance approach would be expensive; however, considerable savings would offset the cost in the long run. Using state-of-the-art technology, unique and innovative methods of work, ENERGY STAR-rated products, and recycled materials, they have an outstanding approach to completing the project satisfactorily, on time, and within budget.

3. Group Consensus Rating

Working together with other TEP members, develop a consensus rating for each offeror's proposal. Use the same rating system (color, numerical, or adjectival) as used in the individual ratings.

The consensus rating will be provided to the CO through preparation of the TEP report in the following step. At that time, the CO will provide cost information, after which the TEP and the CO will determine whether award may be made without discussions as originally planned. The CO will make an award considering the TEP recommendations and rationale for any cost/technical tradeoffs (considering the relationship stated in the solicitation).

TABLE: GROUP CONSENSUS WORKSHEET

Firm	Past Performance	Technical Approach	Qualifications and Experience	Total Technical Score	Price*

*Will be inserted later by the CO

4. TEP Report



Refer to Resource

Handout: Technical Evaluation Panel Report

The TEP report documents the group consensus rating of each proposal reviewed and evaluated against the stated evaluation factors. This includes a total rating for each firm as well as a rating in each factor and subfactor—all with supporting narratives. It also includes a recommendation for award, with rationale for that recommendation.

Prepare an abbreviated TEP report to include the following:

1. The group consensus rating (with supporting narrative) for each evaluation factor, for the top-rated, #1 firm only. Use the format in the Technical Evaluation Panel Report provided to prepare your group's report.
2. Rationale (one to two paragraphs) explaining why the top-rated, #1 firm is recommended for award.

5. Award Decision

Following are the costs proposed by all offerors.

- **Firm 1:** \$430,000
- **Firm 2:** \$480,000 (Alternate proposal: \$570,000)
- **Firm 3:** \$455,000
- **Firm 4:** \$440,000
- **Firm 5:** \$550,000 (Alternate proposal: \$595,000)

Questions

With the facilitator serving in the CO role, you and the CO are to determine whether you should proceed without discussions (as stated within the solicitation). If you cannot proceed without discussions, address the following:

1. Which firms should be included within the competitive range?

2. What questions/issues would you like each of these firms to address in discussions?

3.13 EXERCISE: REVIEW/ANALYZE A GAO DECISION



Refer to Resource

Handout: GAO Decision B-310617

Directions

1. Work in groups.
2. Review the GAO decision regarding technical evaluation factors.
3. Address the questions that follow.

Questions

1. Identify the strengths and weaknesses of each party's argument.

2. Could the agency have done anything to avoid the protest?

3. What lessons have you learned from this decision?

4. List any other concern about this decision you would like to discuss further.

3.14 EXERCISE: LESSON 3 QUIZ


Directions

Answer the quiz questions that follow.

1. Best value is:
 - a. Not applicable to government contracts
 - b. Difficult to achieve on government contracts
 - c. The ideal end result of all acquisitions
 - d. Not required for contracts over the simplified acquisition threshold
2. With which negotiated acquisition approach can discussions (for the purpose of proposal revisions) occur?
 - a. The tradeoff process
 - b. The lowest price technically acceptable process
3. When using simplified acquisition procedures, the formal evaluation process and procedures of FAR part 15 are not mandatory.
 - a. True
 - b. False
4. The key to using a rating system is:
 - a. The consistency of its use and the adequacy of the supporting narrative
 - b. To only use adjectives or colors
 - c. To have a wide range of numbers
 - d. The ability to design it after seeing who responds to the solicitation
5. Whenever price and other factors are used to select a contractor, a formal technical evaluation panel is required.
 - a. True
 - b. False
6. Postaward debriefings can include the overall ranking of all offerors when a ranking system was used in source selection.
 - a. True
 - b. False

Action Planning

Refer to the Action Plan and record ideas to implement from this lesson.



Postaward Orientation and Contracting Officer's Representative Work Plan

LESSON 4

POSTAWARD ORIENTATION AND CONTRACTING OFFICER'S REPRESENTATIVE WORK PLAN

Lesson Objective

After completing this lesson, you will be able to:

- 4.1 Identify the COR's responsibility in preparing for the postaward orientation (including a preliminary meeting with the CO), and the COR's role during the postaward orientation
- 4.2 Identify the COR's responsibility in preparing the COR work plan and carrying it out during contract administration

The purpose of the postaward orientation is to ensure both parties to the contract have a clear and mutual understanding of all contract requirements. The contracting officer's representative (COR) work plan, built from contract requirements, will serve as the COR's road map during contract administration.

This lesson contains a detailed look at both the postaward meeting and the COR work plan, specifically:

- Preparing the COR working file
- The preliminary briefing and the postaward orientation
- Preparing the COR work plan

4.1 THE POSTAWARD ORIENTATION

The *Federal Acquisition Regulation* (FAR) provides topical coverage concerning the postaward orientation, or prework meeting. The postaward orientation is one of the most significant meetings that occurs between a contractor and the government. It is the first official time the contractor and government agency can get into serious discussion about all the requirements of the contract. They now know who the principals are for each party; they should know the extent of the authority of anyone involved in the contract administration. In short, it is the ideal time to set the foundation of the contractual relationship and get the contract started in a positive and productive manner.

FAR part 42, Contract Administration and Audit Services, gives some guidance on the postaward orientation. A postaward orientation aids both government and contractor personnel in:

- Achieving a clear and mutual understanding of all contract requirements
- Identifying and resolving potential problems

However, the postaward orientation is not a substitute for the contractor's full understanding of the work requirements at the time offers are submitted nor is it to be used to alter the final agreement arrived at in any negotiations leading to contract award.

The postaward orientation is encouraged to assist small businesses and small disadvantaged, women-owned, veteran-owned, HUBZone, and service-disabled veteran-owned small business concerns (see FAR part 19). It is up to the contracting officer (CO) to determine when a postaward orientation is appropriate; however, the CO's decision is often influenced by the COR's suggestion that a postaward is necessary.

The postaward orientation can be accomplished through oral or written methods. Although FAR 42.500 prescribes either a conference or a letter format (or other form of written communication), conferences are the typical approach. This decision is made after it is determined a postaward orientation is necessary.

Some factors to consider when deciding whether to hold a postaward orientation and what form it will take include:

- Nature and extent of the preaward survey and any other prior discussions with the contractor
- Type, value, and complexity of the contract
- Complexity and acquisition history of the product or service
- Requirements for spare parts and related equipment
- Urgency of the delivery schedule and relationship of the product or service to critical programs
- Length of the planned production cycle
- Extent of subcontracting
- Contractor's performance history and experience with the product or service
- Contractor's status, if any, as a small business, small disadvantaged, women-owned, veteran-owned, HUBZone, or service-disabled veteran-owned small business concern
- Contractor's performance history with small, small disadvantaged, women-owned, veteran-owned, HUBZone, and service-disabled veteran-owned small business subcontracting programs
- Safety precautions required for hazardous materials or operations
- Complex financing arrangements, such as progress payments, advance payments, or guaranteed loans

4.1.1 Preparations for a Postaward Conference

The CO in charge of deciding whether a conference is needed for the postaward orientation is responsible for:

- Establishing the time and place of the conference
- Preparing the agenda when necessary
- Notifying appropriate government representatives (e.g., contracting/contract administration office) and the contractor
- Designating or acting as the chairperson
- Conducting a preliminary meeting of government personnel
- Preparing a summary report of the conference

The contracting office, or a designee such as the COR, is responsible for arranging the postaward conference. In addition, when distance, cost, availability, or other factors are considered, the CO will frequently delegate to the COR the authority to conduct the meeting, serving as the chairperson. However, authority to conduct the meeting does not necessarily grant the COR any

authority to make changes or commitments nor does it incur any obligations. The COR is serving as the spokesperson for the CO and must clearly understand their role and responsibilities.

The chairperson (the CO or designee) conducts the postaward conference. Unless a contract change is contemplated, the chairperson will emphasize that it is not the purpose of the meeting to change the contract. The CO may make commitments or give directions within the scope of their authority and will put in writing and sign any commitment or direction, whether or not it changes the contract.

Any change to the contract that results from the postaward conference shall be made only by a contract modification referencing the applicable terms of the contract. Participants without authority to bind the government shall not take action that alters the contract in any way. The chairperson shall include in the summary report all information and guidance provided to the contractor.

The chairperson prepares and signs a report of the postaward conference. The report covers all items discussed, including areas requiring resolution, controversial matters, the names of the participants assigned responsibility for further actions, and the due dates for the actions. The chairperson is required to furnish copies of the report to the contracting office, the contract administration office, the contractor, and others requiring the information.

4.1.2 COR's Role in a Postaward Orientation

The COR training guidelines suggests the following specific tasks may be involved with the postaward orientation.

The COR should:

- Develop a discussion paper for the CO's preliminary briefing
- Participate in the CO's preliminary briefing
- Participate in the orientation
- Review a report of the postaward orientation
- Complete assigned action items

The COR's general approach for the postaward orientation should be:

1. **Preparation.** First, decide what items should be covered and draft an agenda. Second, hold a preliminary briefing (within the government) typically involving, at a minimum, the CO and the COR. A briefing paper may be prepared by the COR for this preliminary briefing. This paper relays COR issues, concerns, apparent areas of risk, etc. Third, working with the briefing paper at the preliminary briefing, develop the government's position, agree on the issues to cover at the postaward orientation, and set the agenda. When setting the government agenda, it is wise to consider those items the contractor might want to include as its agenda items.
2. **Participation.** Participate in the postaward conference or, if assigned, conduct the meeting. Document the meeting, including attendance, topics covered, items discussed, issues clarified, issues for future resolution, and agreements reached.
3. **Follow up.** After the meeting, follow up on all assignments derived from the postaward orientation, including resolution of all outstanding issues.

4.1.3 Postaward Letter in Lieu of a Conference

In some circumstances, in lieu of a conference, a letter or other written form of communication to the contractor may be an adequate postaward orientation. The letter should identify the government

representative responsible for administering the contract and cite any unusual or significant contract requirements. The rules on changes to the contract also apply here.

4.2 THE CONTRACTING OFFICER'S REPRESENTATIVE WORK PLAN

CORs should develop and follow a cost-effective work plan for monitoring contract performance and performing other delegated responsibilities. The COR work plan serves as a baseline for project management and scheduling as well as tracking contractor performance. The work plan should address both quality and timeliness of performance. However, it should carefully avoid directing the contractor or subcontractors on how to perform the contract.



Refer to Resources

- Resource: Sample COR Work Plan
- Resource: Sample Quality Assurance Surveillance Plan

When preparing a work plan, the COR should:

- Include administrative information:
 - Contract title
 - Identity of the contractor and key contractor personnel
 - Identification of government personnel responsible for monitoring the contract (COR, project inspector, etc.)
 - Brief description of the work to be performed
 - Place of performance and delivery points
 - Assigned tasks and milestones, such as:
 - Monitoring the contractor's quality control plan and records
 - Furnishing government property and monitoring its use
 - Reviewing and responding to contractor reports
 - Inspecting the contractor's work
 - Reviewing and processing payments
 - Monitoring compliance with the small business subcontracting plan
- Consider historical factors
- Include the techniques and frequencies for monitoring the contract
- Include how performance will be documented
- Identify areas of concern or conflict

4.2.1 Consider Historical Factors

To help determine the level of commitment involved and monitoring methods/frequency, the COR should consider historical factors and the contractor's performance history.

TABLE: HISTORICAL FACTORS TO CONSIDER

Factor	Questions to Answer
Type of contract	<ul style="list-style-type: none"> • What type of contract is this? • If there was a previous procurement, did the type of contract change?

Factor	Questions to Answer
Past experiences with this type of requirement	<ul style="list-style-type: none"> • Has this type of requirement been done before? • What are current problems associated with this product or service?
Past experiences with the previous contractor	<ul style="list-style-type: none"> • Did the previous contractor deliver on time? • Did the contractor perform as expected?
Type of requirement	<ul style="list-style-type: none"> • Does this type of requirement necessitate extensive monitoring to ensure compliance?
Urgency of the requirement	<ul style="list-style-type: none"> • How soon is this requirement needed and what would happen if delivery or performance is delayed? • Were there any previous problems with contractors meeting the contract time? • Has this contractor established that they can expedite delivery if needed?

4.2.2 Determine the Technique(s) for Monitoring the Contract

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

Techniques for monitoring include:

- **Do nothing.** Rely on the contractor's inspection system; review the system and inspection records.
- **Perform government inspections and tests.** Methods may include 100% review, random sampling, periodic/planned sampling, and third-party testing.
- **View the contractor's work.** Make onsite visits and other personal observations.
- **Conduct progress or status meetings.** Meet with the contractor and other government officials.
- **Contact other government officials for input.** Utilize customer input or customer surveys.
- **Make telephone calls to contractor and other government officials.**
- **Review contractor requests and other correspondence.**
- **Review contractor progress or status reports.**

The COR work plan should also state what the government may do as a result of monitoring the contractor's performance—including what actions the government may take if the contractor fails to meet to contractual requirements.

4.2.3 Determine How to Document Performance

Upon receipt of the COR delegation, the COR should establish a working file. The COR's working file should include (copies or originals, as applicable):

- Contract, including any modifications
- COR delegation
- Project inspector designations, if applicable
- Work plan or quality assurance surveillance plan (QASP), as applicable

- Contractor-supplied items the contract may require (quality control plan, safety plan, insurance certificates, etc.)
- All contract correspondence, memos, and records of conversations with the contractor (completed forms, notices, letters, etc.)
- All notes from meetings related to contract performance
- Contractor reports and other deliverables, if applicable
- Records of inspection; test results
- Trip reports, if applicable
- Invoices/vouchers
- Contractor performance report(s)
- Photographs, where appropriate
- Blank forms that may be needed for contract administration

4.2.4 Identify Areas of Concern

These may be contract requirements the COR identifies as potential problems. Areas of concern and possible solutions may be addressed in the COR work plan. Examples might include:

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

4.2.5 Quality Assurance Surveillance Plan (QASP)

The work plan for a performance-based contract is called a **quality assurance surveillance plan (QASP)**. The FAR suggests the QASP be developed when preparing the performance work statement (PWS). Part of the QASP typically includes a performance requirements summary (PRS). The PRS matrix summarizes the contract- specific tasks/activities and the government's monitoring procedures.

Typically, the PRS matrix includes:

- Identification of the overall contract requirement(s)
- Identification of tasks and subtasks
- Performance standards
- Acceptable quality levels
- Method(s) of monitoring
- Positive/negative incentives—tied to performance

Elements within the PRS provide a start to developing the QASP. Methods of monitoring are already identified as well as negative and positive incentives tied to contractor performance. The COR should build on these PRS elements to create the QASP, covering all components of a COR work plan.



Refer to Resources

- Resource: Sample COR Work Plan
- Resource: Sample Quality Assurance Surveillance Plan

Guides for performance-based contracts suggest developing the QASP in tandem with the PWS. This is a logical approach because the QASP is intended to measure performance against standards in the PWS. These two interdependent documents must be coordinated; writing the two documents simultaneously is both effective and efficient.

On a performance-based contract, the contractor must submit a quality control (QC) plan to describe how it plans to monitor compliance with contract requirements. The contractor typically submits its QC plan before the postaward orientation and before work begins. In addition, if requested by the government, the contractor may propose a QASP, indicating how the government will monitor the contractor's work. This is especially suitable for a requirements document written as a statement of objectives (SOO) where the solution is not known until proposed. Under a SOO, offerors are free to develop their own solutions, so it makes sense for them to develop and propose a QASP tailored to their solution.

4.3 EXERCISE: PREPARE FOR A POSTAWARD ORIENTATION

Directions

1. Working in groups, prepare an agenda for a postaward orientation and answer related questions.
2. Review the project and related PRS developed in Exercise: Prepare a Performance Requirements Summary.
3. Develop an agenda for a postaward orientation for your project.
4. Decide what format the postaward orientation should take, either oral or written.
5. If your group decides the format should be oral, address the following:
 - Where will the conference take place?
 - Who will lead the conference?
 - As the COR, what role and responsibilities do you have at the conference?
1. What items did you include in your agenda for the postaward orientation for your project?

4.4 EXERCISE: PREPARE FOR AND CONDUCT A POSTAWARD CONFERENCE (ALTERNATE)



Refer to Resource

Resource: Sample Statement of Work

Directions

1. Working in groups, prepare for and conduct a postaward conference. This is a role-playing exercise for which your facilitator will organize groups—government teams and contractor teams—and assign roles.
2. Review the sample statement of work (SOW).
3. Review the additional information provided in this exercise.
4. Prepare for the postaward conference by developing an agenda and assigning roles and responsibilities as necessary.
5. Conduct the postaward conference, documenting the meeting (in outline format). Each government team will meet with a contractor team for the postaward orientation.
6. Be prepared to share the experience of this exercise with other groups.



Scenario

General Information

- An agency awarded a \$250,000, four-year (base year with three one-year renewals, if things go well) contract for janitorial services at four administrative and maintenance buildings. The awarded contract has all applicable clauses, including FAR 52.217- 8, Option to Extend Services; FAR 52.217- 9, Option to Extend the Term of the Contract; and FAR 52.237- 3, Continuity of Services.
- The CO works at a centralized regional acquisition program office several hundred miles away from the work site. The CO has directed the COR to conduct the postaward conference; however, the CO is available via phone if needed during the conference.
- The contractor is a small, minority-owned business from outside the local area. It has had previous contracts with state agencies, but this is its first federal contract. The contractor's representative is a recent retiree from the agency, having worked as maintenance manager until six months ago.

Contractor Information

- As a contractor, you have successfully performed smaller contracts for the state, but this is the largest contract you have undertaken. It is likely to tax your technical and financial capabilities to be able to complete work on such a large complex of buildings.
- You were able to succeed and receive the award principally because your representative was maintenance manager for the facility and knows a great deal about the needs of the agency. In fact, as maintenance manager, she drafted the SOW used on the previous contract, and the wording has not changed significantly.
- You were pleased that the requirement for the HEPA-quality vacuum system was included as government- furnished property because purchasing the system would have been cost prohibitive, precluding you from offering on the job. The only glitch now seems to be the inability to obtain security documentation for some of your employees, which would delay start of work for possibly another month. Under Homeland Security Presidential Directive 12, all your employees working on the government site need documentation because the project extends beyond 90 days.
- You submitted the documentation in a timely manner, but the agency responsible (Federal Bureau of Investigation) is backlogged with requests from other companies. Your representative is the only one who has a security clearance, as required by the contract.
- You have been asked to provide your QC plan at the postaward conference, but you have not completed it yet.

You do not have any significant experience in preparing a QC plan. Your emphasis has always been on hiring good employees who produce good work. You hope the government will rely on your excellent record of performance and waive the QC requirement.

Government Information

- As the COR, you have had all required training and have served as a COR on several contracts. However, you are new to this unit and have no technical experience in this type of contract. You will require the assistance of the maintenance/facility manager and the safety officer.
- You requested that the contractor provide its QC plan at the postaward conference. You would like to see it before the start of work to ensure it will work with your COR work plan.
- You have moderate experience with postaward conferences, having conducted one or two for noncomplex services below the simplified acquisition threshold. It has been implied that the COR has the certification and skills necessary to handle just about any contract. This will be a test to see if that is so.
- Since the negotiation and award of the contract, a construction contract was completed on a fifth building, and the maintenance manager has submitted a funded purchase request to add it to the contract.
- On a negative note, government- furnished property (a HEPA-quality vacuum system and certain supplies) is no longer available to provide to the contractor. The use of the HEPA system is critical; there are two employees particularly sensitive to dust, and use of this system was negotiated as a reasonable accommodation to their disability.
- Finally, the requisitioner has raised a concern that the contractor's representative has a potential conflict of interest. The SOW used in the expiring contract has not been changed in the current contract. The proposed contractor's representative previously developed the work statement and had experience monitoring previous contractors.

1. What items did you include in your agenda for the postaward orientation for your project?

4.5 EXERCISE: DEVELOP A QASP (COR WORK PLAN)



Refer to Resource

Resource: Sample QASP Template

Directions

1. Work in groups to prepare a QASP.
2. Review your project and postaward orientation notes from Exercise: Prepare for a Postaward Orientation.
3. Develop a QASP using the Sample QASP Template. As you do not have a complete SOW for your project, you will need to be creative.
4. Be prepared to share the results of this exercise with other groups.



Scenario

To add some complexity to your project, consider the following in developing the QASP:

- Your contractor is new to federal government contracts; this will be its first
- Individuals within the firm have performance history (from “very good” to “excellent” among key personnel), but there is no history as a firm
- In talking with peers in the government, you discover your contractor will be awarded two government contracts for similar work—the performance time on those contracts will overlap the performance time on your contract
- You do not have the technical expertise to conduct government inspections

4.6 EXERCISE: DEVELOP A QASP (ALTERNATE)



Refer to Resources

- Resource: Sample Statement of Work
- Resource: Sample QASP Template

Directions

1. Work in groups to prepare a QASP.
2. Review the following information:
 - Sample Statement of Work
 - Sample QASP Template
 - Notes from the postaward conference from Exercise: Prepare for and Conduct a Postaward Conference (Alternate) and related discussions
 - Contract-specific information in this exercise
3. Be prepared to share the results of this exercise with other groups.



Scenario: Contract-Specific Information

An agency awarded a \$250,000 one-year (with up to three additional option years) performance-based contract for janitorial services at four administrative and maintenance buildings at the agency office. The contractor is a small, minority-owned business from outside the local area, but it has a local office. The government has the contractor's QC plan. It states the contractor's contract manager will hire experienced janitors and a QC manager to monitor 40% of each worker's performance each week.

On successive weekdays, the monitoring focuses on varying elements of work:

- Monday, wastebaskets
- Tuesday, vacuuming
- Wednesday, windows
- Thursday, dusting
- Friday, restrooms

The contractor's QC manager usually spot-checks each element of work while moving from building to building. The government has a checklist for the contractor to use in conducting its inspections. The government will use the same checklist in its inspections.

4.7 EXERCISE: LESSON 4 QUIZ

Directions

Answer the quiz questions that follow.

1. What is a postaward conference (meeting)?
 - a. A planned meeting to discuss changes to the contract
 - b. A planned meeting for the government team to review the contract
 - c. A planned meeting between the government and the contractor
 - d. A planned meeting for the contractor team to review the contract
2. The purpose of the postaward orientation is to:
 - a. Identify changes needed during performance
 - b. Assure the contractor can perform quality work
 - c. Determine the technical requirements of the contract
 - d. Achieve a clear and mutual understanding of the contract
3. Postaward orientations are required to be face-to-face meetings with the contractor.
 - a. True
 - b. False
4. What is the primary purpose of the COR work plan?
 - a. To alert the contractor that their performance is being monitored
 - b. To show the CO you are capable of performing your duties
 - c. To serve as a baseline for tracking contractor performance
 - d. To demonstrate that the contract was read
5. A quality assurance surveillance plan (QASP) is a COR work plan for:
 - a. A performance-based contract
 - b. A design-based contract
 - c. All contracts
 - d. Commercial-item contracts
6. COR work plans should address both quality and timeliness of performance.
 - a. True
 - b. False

Action Planning

Refer to the Action Plan and record ideas to implement from this lesson.



Quality Management and Inspection

LESSON 5

QUALITY MANAGEMENT AND INSPECTION

Lesson Objective

After completing this lesson, you will be able to:

- 5.1 Define how the government assures quality through inspection
- 5.2 Discuss the different types of quality requirements
- 5.3 Explain the principles related to inspection

Monitoring the contractor's work is critical work for the contracting officer's representative (COR).

This lesson discusses:

- The purpose of inspection
- The various inspection clauses
- Methods of inspection
- The rights and responsibilities of both parties related to inspection

5.1 DETERMINING QUALITY

Quality is of primary importance in government contracting. Many disputes concern whether the delivered items or services (including construction) meet the contract requirements. In this section, we examine the inspection process with a view toward interpreting and defining contract compliance with quality standards.

When the government awards a contract, the contractor assumes responsibility for timely delivery and satisfactory performance. Performance includes furnishing the quality and quantity of items the contractor has agreed to deliver.

For government contracts, *Federal Acquisition Regulation* (FAR) 2.101 broadly defines **inspection** as examining and testing supplies or services (including, when appropriate, raw materials, components, and intermediate assemblies) to determine whether they conform to contract requirements.

Inspection does not constitute or imply acceptance. Acceptance is the act of the government assuming ownership via an authorized representative. Acceptance can be for partial or complete performance of the contract.

All contracts include inspection provisions or clauses. Inspection clauses vary by type of project (service, supply, or construction) as well as the type of contract (from fixed-price to cost-reimbursement). However, most inspection clauses require the contractor to have an inspection system, commonly referred to as the contractor's quality control (QC) plan.

INSPECTION ≠ ACCEPTANCE

Inspection is not equal to acceptance



Exceptions include:

- FAR 52.212-4(a), Contract Terms and Conditions—Commercial Items, which implies but does not require an inspection system
- FAR 52.213-4(d), Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items), is similar—unless combined with FAR 52.246-1, Contractor Inspection Requirements

The government's role in inspection is to verify the contractor's performance—to ensure the contractor is performing satisfactorily and according to the contract requirements. This government role is commonly called quality assurance (QA).

5.1.1 Purpose and Extent of Inspection

The purpose of inspection is to determine whether:

1. The product or service conforms exactly to what the government ordered.
2. The government receives that product or service within the time specified in the contract.

The government's role is to determine the extent of its inspection—how much it should inspect to ensure the effectiveness of a contractor's work as well as the contractor's QC procedures. The government must be careful not to take on the contractor's responsibilities: the more inspecting the government does, the more the contractor is relieved of its responsibilities in this area.

The government usually makes an inspection determination after considering several factors:

1. The integrity and reliability of the contractor as a quality producer.
2. The adequacy of the contractor's inspection system, which includes incoming material, lab testing, in- process inspection, end- item inspection, packaging, packing, crating, and marking.
3. Previous government experience with the contractor.
4. The nature and value of the item or service involved.

For example, a contract for commercial off-the-shelf items under simplified acquisition procedures may require minimum inspection after receiving the items at their destinations. Such inspection may only be counting items, determining damage in transit, and verifying that the items are as ordered.

On the other hand, a contract for sophisticated aircraft or missile parts or assemblies requires a detailed inspection system that starts with the raw materials, continues through production, and ends with the completed item. Faulty QC or QA of any phase during production could result in acceptance of a poor quality end item, which could cause aborted missions and loss of life.

5.2 CONTRACT QUALITY REQUIREMENTS

The two basic types of contract quality requirements that establish a contractor's duty to perform inspection and control of the quality of its products and services are:

1. Government reliance on inspection by the contractor.
2. Inspection requirement.

Descriptions of the two basic types of contract quality requirements that establish a contractor's duty to perform inspection and control of the quality of its product/service follow. These also establish the government's right of inspection of supplies and services.

Since the needed quality requirements vary substantially among contracts, each contract must clearly specify the contractor's responsibilities for inspections and quality control. Contracts that contain ambiguous terms, inadequate inspection/ acceptance criteria, or omissions jeopardize the government's ability to obtain a quality product.

5.2.1 Government Reliance on Inspection by the Contractor

This approach is used under FAR part 12, Acquisition of Commercial Items, and FAR part 13, Simplified Acquisition Procedures, where the inspection clause provides the government the opportunity to inspect services or supplies that have been tendered for acceptance. The FAR states the government shall rely on the contractor's inspection and testing to ensure supplies or services procured under simplified acquisition procedures conform to contract quality requirements. This is especially true if the procurement involves a commercial item or service.

However, an exception exists if the contracting officer (CO) determines there is a need for the government to test the supplies or services prior to tender for acceptance or to approve the adequacy of the contractor's work processes. The CO must base such a determination on market research that allows in- process inspection or where the CO obtained a waiver to deviate from commercial practice. If the CO has not made this determination, the CO may use the Contractor Inspection Requirements clause at FAR 52.246- 1 to specify contractor responsibility for performance of all inspection and testing necessary for the supplies or services to conform to contract requirements.

5.2.2 Inspection Requirement

Most inspection clauses state the contractor's inspection system must be either acceptable to the government or adequate. Nevertheless, the intent is clear: The government has the right and, perhaps, the responsibility to review the contractor's inspection system to ensure it is adequate or acceptable. That inspection system should contain detailed information to determine whether its product/service meets the government's requirements. It should also contain detailed information on what action(s) the contractor will take if their product/service does not meet government requirements.

The first task for the COR, when authorized under the applicable inspection clause, is to check the contractor's inspection system. Inspection systems not deemed acceptable or adequate should be brought to the contractor's attention for correction before work starts. After the inspection system is deemed acceptable or adequate and in place, the COR may review the contractor's inspection records as necessary, perform an independent examination of the contractor's work, or a combination of both.

Most inspection clauses also require the contractor to produce complete records, maintain those records, and make those records available to the government.

5.2.3 The Government's Right to Inspect

It is basic government contract policy that contractors are responsible for controlling product quality and for offering for acceptance only those items that conform to contract requirements. Contractual inspection clauses establish the contractor's inspection responsibilities and vest certain legal rights in the government. Improper application of the procedures (of inspection, waivers, corrections or replacements, and final acceptance) may jeopardize those rights. One of the rights the government has under inspection clauses is to inspect at any time or place where contract work is performed.



The government has the right to inspect, but it is not its duty

Specific portions of the clauses allowing for government inspections:

- "The Government has the right to inspect and test all supplies called for by the contract, to the extent practicable, at all places and times, including the period of manufacture, and in any event before acceptance"¹
- "Services,' as used in this clause, includes services performed, workmanship, and material furnished or utilized in the performance of services The Government has the right to inspect and test all services called for by the contract, to the extent practicable at all times and places during the term of the contract"²
- "All work ... is subject to Government inspection and test at all places and at all reasonable times before acceptance"³

5.2.4 Methods of Inspection

An examination of the production process and the examination points in the process are key in choosing among methods of inspection.

There are several ways to perform inspections; the most commonly used are:

- Visual and dimensional checks (subjective)
- Conducting or witnessing physical or performance tests (objective)

Visual checks are done by eye, and the inspector may exercise great personal judgment. This subjective examination reveals surface defects, missing pieces, and parts out of alignment, for example. In other situations, the contract may call for objective, measurable requirements using gauges or other instruments or test procedures.

Conducting or witnessing physical or performance tests involves more objectivity. Seeing a web page function, measuring computer access speed, and observing a protective vest withstand a bullet are examples of this kind of examination. Chemical tests to determine chemical composition and physical tests to determine hardness are also in the objective category of examination.

¹ FAR 52.246-2

² FAR 52.246-4

³ FAR 52.246-12

Whether you are using subjective or objective inspections, there are a variety of ways to accomplish the actual inspection or test, such as:

- **Random sampling.** This is a statistically-based method that assumes receipt of acceptable performance if a given percentage or number of scheduled assessments are found to be acceptable.
- **Periodic sampling.** This sampling is similar to random sampling, but it is planned at specific intervals or dates. It may be appropriate for tasks that occur infrequently.
- **Trend analysis.** Trend analysis includes regular and continual assessment of the contractor's ongoing performance over time. In this method, the government builds and maintains a database for the data gathered.
- **Customer feedback.** This is firsthand information from actual users of the product or service. Customer feedback typically supplements other methods of assessment, but it may be used on its own. However, use customer feedback prudently. Sometimes it is complaint- oriented, subjective in nature, and may not always relate to actual contractor performance.
- **Third-party audits.** These are contractor evaluations by a third- party organization, independent of the government and the contractor.

5.3 PRINCIPLES RELATED TO INSPECTION

The government has great latitude in choosing the type of inspection or test to determine whether the work conforms to the contract requirements. Although the government may specify a particular type of inspection to be used for evaluating the contractor's work, this generally is not the practice.

Unless otherwise stated, the contractor may choose its inspection and testing methods. However, it must fairly document the compliance with contract requirements. If a contractor has chosen its inspection methods (deemed acceptable to the government at award) and the government later requires the contractor to perform an inspection in a different manner, it may be construed as a government- ordered higher inspection and is likely to be considered a constructive change.

However, a constructive change will not have occurred if, for example, the contract specifies an inspection method. In this case, the government may use an inspection method in lieu of those specified in the contract as a basis for rejection—if it does not impose a more stringent standard of performance.

Where the government has not specified the test use, it may use an unspecified test as a basis for rejection if such a test determines the work does not, in fact, comply with the contract requirements. An unspecified test is acceptable as a basis for rejection if it is accurate and reasonably calculated to determine compliance with specifications.

An action of the parties can also establish the inspection standard. Where the specifications are not precise, the government's inspection standards used early in performance can establish the contract's quality requirements. Similarly, under certain circumstances, lax inspection standards may result in a waiver of specifications.

5.4 EXERCISE: INSPECTION CLAUSE APPLICATION



Refer to Resource

Handout: Sample COR Delegation of Authority

Directions

1. Working individually or in groups, address the following as they relate to inspection of the contractor's work. The resource Sample COR Delegation of Authority includes inspection clauses for your reference in completing the exercise.
2. Choose a project (either service or construction), examine the applicable inspection clause, and examine the sample delegation of authority. Using the applicable clause and sample delegation, determine the rights of the government.
 - For example, it is clear the government has the right to inspect—this is the COR's or inspector's job. The government has other rights under the inspection clause; you will need to know those rights to complete this exercise.
3. List your project and the applicable inspection clause.
 - Your project:
 - Applicable inspection clause:
4. Answer the following questions. If other FAR clauses also address the situation, list those clauses with your answer.

Questions

1. Is the contractor required to have an inspection system? If yes, can you require the contractor to provide their inspection records/reports to you?

2. If work does not meet contract requirements, are you, according to your delegation of authority, authorized to notify the contractor?

3. If you are authorized to reject work, how and with what document or documentation do you notify the contractor?

4. If you are not authorized to reject defective work, when must you advise the official who has the authority to reject work? How much time does the government have to advise the contractor regarding defective work?

5. The FAR makes a distinction between inspection and acceptance. Are you authorized, according to your delegation of authority, to accept work as it is completed?

6. When does final acceptance take place? When portions of the work are completed, when deliverables are received, or at other points in the contract?

7. When work is found to be defective and cannot be performed again, what rights does the government have? What is your role in this situation?

8. If work is found to be defective and could be reworked but the contractor refuses to do so, what rights does the government have? What is your role in exercising these rights?

9. If you identify defects after acceptance, do you have any recourse against the contractor?

5.5 EXERCISE: INSPECTION SCENARIOS

Directions

1. Working in groups, review the scenario(s) assigned by your facilitator.
2. Use the information in this topic and, if necessary, the applicable clause(s) to answer the questions following each scenario below. Clauses may include the applicable inspection clause from the previous exercise and other applicable FAR clauses.
3. Be prepared to discuss your answers with the class.



Scenario 1

An agency executive whose office is in the building is inside late one night. The executive contacts the janitorial firm's onsite person that evening and tells him of an important meeting about to occur and that the executive has no time to contact anyone else about needs. The executive is obviously very excited about this very important meeting. The executive asks the onsite person to come in and vacuum the office, dust/polish up furniture, and clean all the windows. The onsite person, while doing the requested sprucing up, is also enlisted by the executive to rearrange office furniture and bring an extra table and some chairs from another office on the same floor.

Scenario 1 Questions

1. List the applicable clause(s):

2. As the COR, you are contacted the next day by the authorized contractor representative, who requests a contract modification to cover these extras provided the night before.

As the COR, what do you do and how do you respond? What action, if any, do you take?

**Scenario 2**

You are newly assigned as COR to the project, as the previous COR has retired.

You are reviewing a solicitation/contract package and note that the Service Contract Labor Standards wage determination contained in the solicitation/contract is for Oregon and the project is in Washington.

Scenario 2 Questions

3. List the applicable clause(s):

4. What do you do if your discovery is during the solicitation stage?

5. What if your discovery is after contract award and performance has begun?



Scenario 3

You are the COR for a janitorial project. The janitorial services are for a new building in a geographic location where the agency had no presence before. The solicitation and resulting contract includes a Service Contract Labor Standards wage determination with one occupation, Janitor, at a wage of \$10.50 per hour plus \$2.00 per hour for fringe benefits.

The contract is for one year of performance and requires daily janitorial services during regular working hours of eight hours a day, five days a week (Monday through Friday), including holidays. The contract also requires that the janitorial firm have an onsite supervisor who could act for the contractor on a day-to-day basis at the work site and to accept and sign for notices of deductions, inspection reports, and all other correspondence on behalf of the contractor. The contractor begins contract performance and has four onsite janitors. A management person visits the site daily but only stays for a portion of the day. The contractor appoints one of the janitors as the onsite supervisor. All four of the janitors are paid at the required hourly rate of \$10.50 plus \$2.00 for fringe benefits.

The work begins on July 1, and exactly six months into the contract performance (December 31), the contractor receives a notice from the U.S. Department of Labor that a new wage classification is applicable to the contract for Working Custodial Supervisor with an applicable wage of \$11.00 per hour plus \$2.00 per hour for fringe benefits. The government receives this same notice, which requires that the new occupation wage be paid retroactively for all work performed to date. Based on this notice, the contractor requests an equitable adjustment in contract price for the first six months of work performed and requests an equitable adjustment in price for the remaining six months of contract performance.

Scenario 3 Questions

6. List the applicable clause(s):

7. As COR, what is your recommendation to the CO regarding the contractor's request for an equitable adjustment for the first six months of the contract?

8. What is your recommendation regarding the change of pricing for the remaining six months?



Scenario 4

You are the COR for a contract for the construction of a building that includes the installation of a multiplex voice fire alarm system. The contract requires that upon completion of all work, the alarm system shall be fully operational and shall meet all applicable state and local codes. The contract specifications address the use of various types of wiring for various purposes, including, "Wire runs for notification appliance circuits shall be solid copper No. 12 AWG [American wire gauge] size conductors at a minimum." The contract further requires submittals for the alarm system components and shop drawings regarding installation.

Work begins. The alarm system submittals are provided by the contractor and approved by the government. Alarm system installation begins and progresses to almost 75% complete. At this point, the first inspection by the inspector for the project notes the wire being used for the installation does not conform to the shop drawings: the wire being used is multistrand rather than solid. The inspector issues a notice of noncompliance regarding nonconforming work.

In initial discussions regarding the matter, the contractor indicates to the inspector that multistrand wire was used because all the fixtures purchased from a subcontractor/supplier have preinstalled multistrand wire by the manufacturer of the alarms, controllers, switches, and other components. The matter of wiring for connecting the alarm system was not addressed in the shop drawings/ submittals.

After discussion of the issue with both the inspector and the COR, the contractor states that to conform to the contract, all the wire would need to be removed and reinstalled, increasing the labor for the work, and that solid wire is more expensive than multistrand wire. The reinstallation would also delay the completion of the project beyond the called- for completion date, subjecting the contractor to liquidated damages. The contractor agrees to correct the work but indicates that a request for an equitable adjustment in contract price will be submitted for the rework (pulling of multistrand wire, installation of solid wire, higher wire costs, and increase in performance time).

Scenario 4 Questions

9. List the applicable clause(s):

10. What is your response to the contractor?

11. Would your answer change if the government had never inspected the wire installation during work performance but determined the wire issue at final inspection?

12. If either multistrand or solid wire is permissible in the state and local code, what action could you recommend to the CO regarding the wire issue?



Scenario 5

As COR, you decide to visit the project site to view the excavation of a deep trench to accommodate installation of a large culvert. Your visit is planned in advance and communicated with the contractor and the inspector. When you arrive at the work site, there is an ambulance and fire truck from the local community volunteer fire department parked near where the trenching activity was to occur. As you walk to the area, a body is being removed from the trench. The project superintendent is obviously in emotional shock. You also learn in a quick conversation with the inspector that the fatally injured worker was just in the trench for a minute to measure the depth of excavation and announced that the trench was 10 feet deep when the walls, without shoring, collapsed.

Scenario 5 Questions

13. List the applicable clause(s):

14. With your knowledge that the Occupational Safety & Health Administration (OSHA) requires the contractor to have a competent person (one trained and certified by OSHA) make a determination of when shoring is required, the apparent severity of the accident, and the extreme atmosphere surrounding the work site, what immediate action(s) would you take?



Scenario 6

Editorial Disclaimer: The following scenario includes references to offensive language. The purpose of the scenario is to illustrate what can happen in actual contract situations. No offense is intended whatsoever, and we in no way condone racial slurs.

The following is quoted from an actual Civilian Board of Contract Appeals case.⁴ The contractor filed multiple claims regarding breach of contract, tort, and bad faith. In part, the claims were based on this alleged event, asserting that violations of civil rights and racial discrimination had occurred. At the time of this particular event, Mr. Jordan is the COR for the project, Mr. Portillo is the CO, and Mr. Young is a representative of the contractor.

"On Wednesday, May 14, 2003 ... Mr. Jordan called IPS corporate office regarding the [cable televisions] within the VA[HCC]. He stated that all the [televisions] were down. To our surprise, all the sites he mentioned, 4th floor neurology, cardiology, and the 1st floor conference rooms[,] were all operating properly when IPS technicians left the VA[HCC] on Friday afternoon from adding the local channels.... This was explained to Mr. Jordan, but it was not the answer he wanted to hear. Mr. Young told him that IPS would look into it to find out why the [televisions] were not operating. It was then explained to Mr. Jordan that Mr. Young was in a meeting discussing a facsimile that was just received in [IPS's] office that morning from Mr. Daniel Portillo regarding a couple of outstanding work orders at the VA. It was also explained to Mr. Jordan that there was a due date for a response to the facsimile.

At hearing this, Mr. Jordan became irate and would not listen to reason. Mr. Young told Mr. Jordan that he needed to calm down so they could discuss the matter professionally; this only made Mr. Jordan more upset and he became belligerent. When Mr. Jordan began screaming, Mr. Young pushed the speaker button on the telephone so that all parties in the conference room could witness what was being said. It was then, Mr. Jordan, in our opinion, completely lost control of his demeanor and began screaming and swearing at the top of his voice. A banging sound was heard in the background, as if Mr. Jordan was hitting a wall or desk to punctuate his sentences. Mr. Jordan demanded that Mr. Young "get his {racial slur} over to the VA and fix the televisions or he [Mr. Jordan] was going to use all his power to make sure IPS's contract with the VA would be canceled and he would also ensure that IPS would never

⁴ CBCA 2007

receive another VA contract in this country again.”

Based on the claims related to this particular event, the board ruled as follows:

"Regarding the appellant's claims asserting violations of civil rights and racial discrimination, this Board does not have jurisdiction to consider those claims. Bridget Allen, ASBCA 54696, 05-1 BCA ¶ 32,871; Charles E. Irons, ENG BCA 6318, et al., 00-2 BCA ¶ 30,965; see also Atlanta Appraisal Services, Inc. v. United States, 54 Fed. Cl. 51, 55 (2002). Jurisdiction to hear claims of discrimination is limited by Title VII of the Civil Rights Act of 1964 and the Age Discrimination Employment Act, both of which grant exclusive jurisdiction over race, sex, and age discrimination claims to the United States District Courts. See Charles E. Irons. Concerning general claims of unlawful discrimination, the Board also lacks jurisdiction. Starghill Alternative Energy Corp., ASBCA 49612, et al., 98-1 BCA ¶ 29,708. We are permitted, however, to review such allegations to the extent that they might impinge on the Government's duty to cooperate with contractors and not impede their performance. The appellant's burden is to prove specific instances of unlawful discrimination that have a nexus with and adversely impacted its ability to perform under the contract. See Green Thumb Lawn Maintenance, ENG BCA 6249, 98-1 BCA ¶ 29,688; Tarzan Construction, Inc., ENG BCA 5552, 91-2 BCA ¶ 23,887. As we made clear supra, the appellant has failed to allege in any specific way how Mr. Jordan's outburst or any other acts of VAHCC employees adversely impacted its ability to perform at the VAHCC."

Scenario 6 Questions

15. List the applicable clause(s):

16. If you were the COR on a contract where a similar event occurred and involved an inspector, what actions might you take with regard to the inspector?

17. What would you say to the contractor if he or she approached you indicating that he or she was going to file a claim related to the event?



Scenario 7

You are the COR for a firm-fixed-price contract to perform routine maintenance on a ship and to repair items as appropriate. The contract expressly states that the contractor must furnish all necessary labor, material, services, equipment, supplies, power, accessories, facilities, and such other things and services as are necessary except as otherwise specified to perform dry dock repairs and alterations to the vessel. Specific to one element of the work, the contract requires the contractor to clean, inspect, repair, and reassemble heat exchanger gasket kits for the main diesel engine (MDE) jacket water heat exchangers. Specifically, the contract states:

"After all authorized repairs, the Contractor shall reassemble each heat exchanger. Renew all software (seals, gaskets, O-rings) and isolation fittings/mounts in accordance with the manufacturer's specifications. Renew fasteners, hoses, thermostats and anodes as applicable."

Further, the contract defines *renew* to mean:

"Permanently remove an item and install, in its place, a new and unused item which is identical in material, form, fit, and function ..."

The contract also requires that the contractor provide a technical representative of the MDE manufacturer to ensure compliance with the manufacturer's procedures and standards during disassembly, inspection, and reassembly and to assist with the proper cleaning, inspecting, and testing of the heat exchanger.

The contractor conducts the disassembly of the MDE and includes the oversight of the manufacturer's representative as stipulated by the contract. After disassembly, the MDE manufacturer representative inspects the gaskets and states the gaskets can be reused. The contractor cleans the MDE and reassembles it using the reused gaskets. During routine inspection, the government inspector learns of the reuse of the gaskets and issues a notice of noncompliance stating that the gaskets are to be new.

Scenario 7 Questions

18. List the applicable clause(s):

19. As the COR, assume you agree with the inspector and the contractor refuses to replace the used gaskets with new gaskets. What actions, if any, should you take? If you disagree with the inspector, what actions, if any, should you take?

20. In the end, in consultation with the CO, it is agreed that the gaskets are to be new. A formal directive, signed by the CO, is issued to the contractor to replace the gaskets. The contractor refuses initially and, after several discussions, still refuses to replace the gaskets.

What action do you recommend to the CO?



Scenario 8

You are the COR for a commercial item contract for the purchase of an exhibit booth needed for participation in agency outreach meetings. The intent is to present the agency's mission through the display of photographs, artifacts, publications, and miscellaneous materials within the booth. The booth, consisting of freestanding partitions and related hardware, is being customized to accommodate these agency-provided items (to be affixed by agency personnel at each meeting). The contract contains a conceptual design, addressing the customization, prepared by the contractor (incorporated at contract award).

Now, into production, the contractor has called several times regarding the customization. You are concerned the final product will not meet your needs and decide you need to conduct an in-process inspection at the contractor's facility. You request the contractor to prepare for this inspection. The contractor informs you this is not customary—and not acceptable.

Scenario 8 Questions

21. List the applicable clause(s):

22. Can you, with the CO's assistance, require the contractor to comply with this in -- process inspection? If so, explain.

23. If you cannot require this in-process inspection, what will you do to ensure the booth meets contract requirements?

-
24. The first outreach meeting is coming up in one week. The booth has been delivered and, upon inspection, does not meet contractual requirements. What are your options?

25. Could anything have been done to avoid the situation you are in?

5.6 EXERCISE: LESSON 5 QUIZ

Directions

Answer the quiz questions that follow.

1. Inspection clauses:
 - a. Always require reperformance of defective work
 - b. Are the same whether they are for service or construction
 - c. Vary by the type of project (service, supply, or construction)
 - d. Limit the government actions to those available under the *Uniform Commercial Code*
2. In commercial item contracts, the contractor does not have to inspect its own work.
 - a. True
 - b. False
3. Inspection is defined as:
 - a. Examining/testing supplies or services to determine if they conform to the contract
 - b. Directing the contractor to correct any defective work performed
 - c. The act of the government accepting the final product or service
 - d. The methods to be used by the contractor to make work acceptable
4. Recommendations to accept the contractor's work should include an explanation and/or a justification for acceptance of any minor noncompliance.
 - a. True
 - b. False
5. Unless otherwise stated, the contractor may choose its inspection and testing methods.
 - a. True
 - b. False
6. The contractor asked you to interpret a paragraph in the contract. Your interpretation caused the contractor to provide an additional report (the contract called for one report). Is this a constructive change?
 - a. Yes, any interpretation is a constructive change
 - b. Yes, it is work not originally planned by the contractor
 - c. No, the contractor chose to do the additional report on its own
 - d. No, interpretations are not considered constructive changes

Action Planning

Refer to the Action Plan and record ideas to implement from this lesson.



Invoice and Payment

LESSON 6

INVOICE AND PAYMENT

Lesson Objective

After completing this lesson, you will be able to:

- 6.1 Identify the COR's role and responsibilities in reviewing contractor invoices and recommending payment

Payment is a principal element of a contract. The contractor promises to perform, the government promises to pay. This topic covers payments through coverage of:

- The various payment clauses
- Type of payments
- The Prompt Payment Act
- Payment problems

6.1 THE ROLE OF PAYMENT

A principal element of a contract is the exchange of promises: the contractor promises to perform, and the government promises to pay. If performance is complete but proper/timely payment is not, it gives the contractor the (not necessarily legal) excuse to say, "Why should I perform the work? You don't pay me anyway."

Both contract parties are expected to meet their obligations on time. Whenever the government fails its obligation, it provides the contractor with real or perceived reasons not to pay employees and suppliers. Although the contract has a remedy for late payments, payment of interest does not offset the contractor's need for cash flow to meet obligations incurred.

As a COR, it is important that you know the answers to the following questions:

- What payment clause is in the contract?
- What are the payment requirements of the contract?
- What are the invoicing requirements of the contractor after performing work?
- What are the procedures used by the agency to process the payment?

Obviously, knowing the answers to these questions depends on knowing the payment provisions of the contract.

6.2 COMMERCIAL ITEM CONTRACTS

According to the *Federal Acquisition Regulation* (FAR), commercial item contracts of any dollar amount contain these payment clause provisions:¹

¹ FAR 52.212-4

- Inspection/Acceptance
- Assignment
- Changes
- Disputes
- Definitions
- Excusable delays
- Invoice



Refer to Website

To access the *Federal Acquisition Regulation* (FAR), visit:
<https://www.acquisition.gov>

6.3 SERVICE AND SUPPLY CONTRACTS—NONCOMMERCIAL

FAR 52.232-1 is the basic FAR Payment clause for supply and service contracts.

52.232-1 Payments (Apr 1984)

The Government shall pay the Contractor, upon the submission of proper invoices or vouchers, the prices stipulated in this contract for supplies delivered and accepted or services rendered and accepted, less any deductions provided in this contract. Unless otherwise specified in this contract, payment shall be made on partial deliveries accepted by the Government if—

- (a) The amount due on the deliveries warrants it; or
 - (b) The Contractor requests it and the amount due on the deliveries is at least \$1,000 or 50 percent of the total contract price.
- (End of clause)

The FAR 52.232-1 clause serves well when specific completed items (computers, materials, office supplies) are delivered or certain completed services (laundry, monthly cleaning, other) have been performed and can be accepted. On many occasions, however, it may be that specific services (gathering data and preparation of reports) are to be performed over several months' time.

In that situation, it is probably not good to pay on the basis of the expense associated with the effort nor would it be wise to require a contractor to wait until final service performance and acceptance for some payment. When those types of services are under contract, it might be desirable to specify a payment schedule, i.e., upon completion of phase 1, data gathering, a payment in the amount of X% of the contract price can be made. Then, when the final report is completed, the remaining portion of the contract price can be billed.

6.4 CONSTRUCTION CONTRACTS—NONCOMMERCIAL

6.4.1 Progress Payments

FAR 52.232-5, Payments under Fixed-Price Construction Contracts, contains payment provisions unique to construction work. Progress payments, cash flow to the contractor, are allowed.

52.232-5, Payments under Fixed-Price Construction Contracts

(b) Progress payments. The Government shall make progress payments monthly as the work proceeds, or at more frequent intervals as determined by the Contracting Officer, on estimates of work accomplished which meets the standards of quality established under the contract, as approved by the Contracting Officer.

(1) The Contractor's request for progress payments shall include the following substantiation:

- (i) An itemization of the amounts requested, related to the various elements of work required by the contract covered by the payment requested.
- (ii) A listing of the amount included for work performed by each subcontractor under the contract.
- (iii) A listing of the total amount of each subcontract under the contract.
- (iv) A listing of the amounts previously paid to each such subcontractor under the contract.
- (v) Additional supporting data in a form and detail required by the Contracting Officer.

6.4.2 Materials and Preparatory Work

According to FAR 52.232-5, Payments under Fixed-Price Construction Contracts, and under specific circumstances, construction contracts allow for payment of materials or preparatory work.

52.232-5, Payments under Fixed-Price Construction Contracts

(2) In the preparation of estimates, the Contracting Officer may authorize material delivered on the site and preparatory work done to be taken into consideration. Material delivered to the Contractor at locations other than the site also may be taken into consideration if—

- (i) Consideration is specifically authorized by this contract; and
- (ii) The Contractor furnishes satisfactory evidence that it has acquired title to such material and that the material will be used to perform this contract.

6.4.3 Certification

Under construction contracts and according to FAR 52.232-5, the payment request must contain a certification.

52.232-5, Payments under Fixed-Price Construction Contracts, continued

(c) Contractor certification. Along with each request for progress payments, the Contractor shall furnish the following certification, or payment shall not be made: (However, if the Contractor elects to delete paragraph (c)(4) from the certification, the certification is still acceptable.)

I hereby certify, to the best of my knowledge and belief, that—

- (1) The amounts requested are only for performance in accordance with the specifications, terms, and conditions of the contract;
- (2) All payments due to subcontractors and suppliers from previous payments received under the contract have been made, and timely payments will be made from the proceeds of the payment covered by this certification, in accordance with subcontract agreements and the requirements of Chapter 39 of Title 31, United States Code;
- (3) This request for progress payments does not include any amounts which the prime contractor intends to withhold or retain from a subcontractor or supplier in accordance with the terms and conditions of the subcontract; and
- (4) This certification is not to be construed as final acceptance of a subcontractor's performance.

(Name)

(Title)

(Date)

6.4.4 Refunds

If the construction contractor invoices for work that is not in compliance or is unearned, it must take the corrective action specified in FAR 52.232-5, Payments under Fixed-Price Construction Contracts.

52.232-5, Payments under Fixed-Price Construction Contracts, continued

(d) Refund of unearned amounts. If the Contractor, after making a certified request for progress payments, discovers that a portion or all of such request constitutes a payment for performance by the Contractor that fails to conform to the specifications, terms, and conditions of this contract (hereinafter referred to as the “unearned amount”), the Contractor shall—

- (1) Notify the Contracting Officer of such performance deficiency; and
- (2) Be obligated to pay the Government an amount (computed by the Contracting Officer in the manner provided in paragraph (j) of this clause) equal to interest on the unearned amount from the 8th day after the date of receipt of the unearned amount until—
 - (i) The date the Contractor notifies the Contracting Officer that the performance deficiency has been corrected; or
 - (ii) The date the Contractor reduces the amount of any subsequent certified request for progress payments by an amount equal to the unearned amount.

6.4.5 Retention

When a construction contractor is not making satisfactory progress during the work, the government has a right to retain a percentage of the payment.

52.232-5, Payments under Fixed-Price Construction Contracts, continued

(e) Retainage. If the Contracting Officer finds that satisfactory progress was achieved during any period for which a progress payment is to be made, the Contracting Officer shall authorize payment to be made in full. However, if satisfactory progress has not been made, the Contracting Officer may retain a maximum of 10 percent of the amount of the payment until satisfactory progress is achieved. When the work is substantially complete, the Contracting Officer may retain from previously withheld funds and future progress payments that amount the Contracting Officer considers adequate for protection of the Government and shall release to the Contractor all the remaining withheld funds. Also, on completion and acceptance of each separate building, public work, or other division of the contract, for which the price is stated separately in the contract, payment shall be made for the completed work without retention of a percentage.

6.4.6 Title to Property and Work

Because construction contractors receive progress payments, FAR 52.232-5 protects the government by making it clear that work and materials covered by the progress payment become the property of the government.

52.232-5, Payments under Fixed-Price Construction Contracts, continued

(f) Title, liability, and reservation of rights. All material and work covered by progress payments made shall, at the time of payment, become the sole property of the Government, but this shall not be construed as—

- (1) Relieving the Contractor from the sole responsibility for all material and work upon which payments have been made or the restoration of any damaged work; or
- (2) Waiving the right of the Government to require the fulfillment of all of the terms of the contract.

6.4.7 Payment for Bond Premiums

Because construction contracts over specific thresholds require bonding, the payment clause at FAR 52.232-5 permits reimbursement for bond premiums paid by the contractor.

52.232-5, Payments under Fixed-Price Construction Contracts, continued

(g) Reimbursement for bond premiums. In making these progress payments, the Government shall, upon request, reimburse the Contractor for the amount of premiums paid for performance and payment bonds (including coinsurance and reinsurance agreements, when applicable) after the Contractor has furnished evidence of full payment to the surety. The retainage provisions in paragraph (e) of this clause shall not apply to that portion of progress payments attributable to bond premiums.

6.4.8 Final Payment

Unlike many other contracts, the construction contract specifically requires a release from claims from the contractor at the time of making final payment.

52.232-5, Payments under Fixed-Price Construction Contracts, continued

- (h) Final payment. The Government shall pay the amount due the Contractor under this contract after—
- (1) Completion and acceptance of all work;
 - (2) Presentation of a properly executed voucher; and
 - (3) Presentation of release of all claims against the Government arising by virtue of this contract, other than claims, in stated amounts, that the Contractor has specifically excepted from the operation of the release. A release may also be required of the assignee if the Contractor's claim to amounts payable under this contract has been assigned under the Assignment of Claims Act of 1940 (31 U.S.C.3727 and 41 U.S.C. 6305).

A release of claims is also required for architect-engineer contracts under FAR 52.232-10.

6.5 OTHER PAYMENT CLAUSES

The FAR contains other specific payment clauses that are designed for several other types of contracts, such as:

- FAR 52.232-2, Payments under Fixed-Price Research and Development Contracts
- FAR 52.232-3, Payments under Personal Services Contracts
- FAR 52.232-4, Payments under Transportation Contracts and Transportation- Related Services Contracts
- FAR 52.232-7, Payments under Time-and-Materials and Labor-Hour Contracts
- FAR 52.232-10, Payment under Fixed-Price Architect-Engineer Contracts

6.6 PROMPT PAYMENT

In addition to providing a variety of clauses relating to payment, the FAR has clauses requiring prompt payment under the Prompt Payment Act. These clauses state the due dates for payments, explain how interest will be paid for late payments, specify the format for a proper invoice, and address when discounts will be taken.

The due date for services is to make payment within 30 calendar days. For most supplies, the due date is also 30 days (the due dates for food items are less). For construction contracts, the due date for progress payments is 14 calendar days and final payment within 30 days. These dates assume the receipt of a proper invoice and that there is no disagreement over quantity, quality, or contractors' requirements with the contract.

It is important to know when the clock counting down a 30- or 14-day due date period starts ticking. The ending date is the date of the payment itself—the date of the electronic funds transfer by the government. The Prompt Payment Act clauses address due dates in some detail. A COR should have a clear understanding of the clauses in the contract as well as other related payment sections of the contract.



Payment should be made within 30 calendar days

The appropriate prompt payment clauses in the FAR are:

- 52.212-4(i), Payment (Contract Terms and Conditions—Commercial Items)
- 52.232-25, Prompt Payment
- 52.232-26, Prompt Payment for Fixed-Price Architect-Engineer Contracts
- 52.232-27, Prompt Payment for Construction Contracts

FAR 52.232-25(a) details the due date for payment for a service contract.

52.232-25 Prompt Payment

(a) Invoice payments—(1) Due date. (i) Except as indicated in paragraphs (a)(2) and (c) of this clause, the due date for making invoice payments by the designated payment office is the later of the following two events:

(i) Except as indicated in paragraphs (a)(2) and (c) of this clause, the due date for making invoice payments by the designated payment office is the later of the following two events:

(A) The 30th day after the designated billing office receives a proper invoice from the Contractor (except as provided in paragraph (a)(1)(ii) of this clause).

(B) The 30th day after Government acceptance of supplies delivered or services performed. For a final invoice, when the payment amount is subject to contract settlement actions, acceptance is deemed to occur on the effective date of the contract settlement.

(ii) If the designated billing office fails to annotate the invoice with the actual date of receipt at the time of receipt, the invoice payment due date is the 30th day after the date of the Contractor's invoice, provided the designated billing office receives a proper invoice and there is no disagreement over quantity, quality, or Contractor compliance with contract requirements.

Prompt payment also depends on the contractor submitting a proper invoice. Clause 52.232-25, Prompt Payment, also addresses what constitutes a proper invoice.

52.232-25 Prompt Payment, continued

(3) Contractor's invoice. The Contractor shall prepare and submit invoices to the designated billing office specified in the contract. A proper invoice must include the items listed in paragraphs (a)(3)(i) through (a)(3)(x) of this clause. If the invoice does not comply with these requirements, the designated billing office will return it within 7 days after receipt (3 days for meat, meat food products, or fish; 5 days for perishable agricultural commodities, dairy products, edible fats or oils, and food products prepared from edible fats or oils), with the reasons why it is not a proper invoice. The Government will take into account untimely notification when computing any interest penalty owed the Contractor.

(i) Name and address of the Contractor.

(ii) Invoice date and invoice number. (The Contractor should date invoices as close as possible to the date of the mailing or transmission.)

(iii) Contract number or other authorization for supplies delivered or services performed (including order number and contract line item number).

(iv) Description, quantity, unit of measure, unit price, and extended price of supplies delivered or services performed.

(v) Shipping and payment terms (e.g., shipment number and date of shipment, discount for prompt payment terms). Bill of lading number and weight of shipment will be shown for shipments on Government bills of lading.

(vi) Name and address of Contractor official to whom payment is to be sent (must be the same as that in the contract or in a proper notice of assignment).

(vii) Name (where practicable), title, phone number, and mailing address of person to notify in the event of a defective invoice.

(viii) Taxpayer Identification Number (TIN). The Contractor shall include its TIN on the invoice only if required elsewhere in this contract.

(ix) Electronic funds transfer (EFT) banking information.

(A) The Contractor shall include EFT banking information on the invoice only if required elsewhere in this contract.

(B) If EFT banking information is not required to be on the invoice, in order for the invoice to be a proper invoice, the Contractor shall have submitted correct EFT banking information in accordance with the applicable solicitation provision (e.g., 52.232-38, Submission of Electronic Funds Transfer Information with Offer), contract clause (e.g., 52.232-33, Payment by Electronic Funds Transfer— System for Award Management, or

52.232-34, Payment by Electronic Funds Transfer—Other Than System for Award Management), or applicable agency procedures. EFT banking information is not required if the Government waived the requirement to pay by EFT.

(x) Any other information or documentation required by the contract (e.g., evidence of shipment).

6.7 PAYMENT PROBLEMS

Typical problems with invoices that contribute to a slow payment are:

- Invoice for items not yet furnished
- Invoice for work that has been rejected and not yet corrected
- Invoice for defective work and failing to include the agreed-upon deduction
- Invoice for work not yet performed
- Invoice not containing proper contract number and work item information
- Invoice sent to the improper location
- Invoice sent timely to proper locations, but government slow in processing
- Invoice lacks EFT or other information to transmit payment
- Discount or other invoice terms differ from the contract
- Contractor taxpayer information number (TIN) missing

6.8 EXERCISE: PAYMENT SITUATIONS

Directions

1. Working in groups as assigned by your facilitator, use the materials in this topic to address the following situations.
2. Discuss what actions you, as the COR, would take as they relate to payment.
3. Address actions for the immediate problem and actions you can take to eliminate or reduce this type of problem in the future.
4. Be prepared to share your answers with the class.

Questions

1. Your contractor has not submitted its monthly invoice (as required by the contract).

2. You've been asked by your contractor if offering a cash discount will help it get an earlier payment. An earlier payment, the contractor states, would really help in purchasing a rather expensive piece of equipment that will be up for auction in two weeks. The contractor is considering a 10% discount if the government can pay within five days.

3. There has been little interest in your solicitation. You and the CO are concerned no one will respond by the due date/time. The CO requests you make inquiries of the five firms who previously had contracts of this type. Upon inquiring, the firms state they no longer want to obtain contracts with the government because of the long wait for payments.

4. An invoice has been received requesting a progress payment in an amount that does not, you believe, represent the amount due the contractor.

5. You return from a vacation and, upon reviewing your e-mail, see an invoice that was routed to you for your review and approval. It was sent to you two weeks ago.

6. The CO, based on your recommendations, has been retaining 10% from your construction contractor's monthly invoices for the past six months. The contractor is now performing satisfactorily, is meeting contract requirements, and has submitted another invoice. You are halfway through the contract. Should you recommend withholding 10% from this invoice?

The contractor would like the retainage from previous invoices returned at this time. What is your answer to the contractor?

7. Reference question 6 above: Would your answers be different if this were an architect-engineer contract containing FAR 52.232-10 (following)? Explain.

**FAR 52.232-10 Payments under Fixed-Price Architect-Engineer Contracts
(Apr 2010)**

(a) Estimates shall be made monthly of the amount and value of the work and services performed by the Contractor under this contract which meet the standards of quality established under this contract. The estimates, along with any supporting data required by the Contracting Officer, shall be prepared by the Contractor and submitted along with its voucher.

(b) After receipt of each substantiated voucher, the Government shall pay the voucher as approved by the Contracting Officer or authorized representative. The Contracting Officer shall require a withholding from amounts due under paragraph (a) of this clause of up to 10 percent only if the Contracting Officer determines that such a withholding is necessary to protect the Government's interest and ensure satisfactory completion of the contract. The amount withheld shall be determined based upon the Contractor's performance record under this contract. Whenever the Contracting Officer determines that the work is substantially complete and that the amount retained is in excess of the amount adequate for the protection of the Government, the Contracting Officer shall release the excess amount to the Contractor.

(c) Upon satisfactory completion by the Contractor and final acceptance by the Contracting Officer of all the work done by the Contractor under the "Statement of Architect-Engineer Services", the Contractor will be paid the unpaid balance of any money due for work under the statement, including all withheld amounts.

(d) Before final payment under the contract, or before settlement upon termination of the contract, and as a condition precedent thereto, the Contractor shall execute and deliver to the Contracting Officer a release of all claims against the Government arising under or by virtue of this contract, other than any claims that are specifically excepted by the Contractor from the operation of the release in amounts stated in the release.

(e) Notwithstanding any other provision in this contract, and specifically paragraph (b) of this clause, progress payments shall not exceed 80 percent on work accomplished on undefinitized contract actions. A "contract action" is any action resulting in a contract, as defined in FAR Subpart 2.1, including contract modifications for additional supplies or services, but not including contract modifications that are within the scope and under the terms of the contract, such as contract modifications issued pursuant to the Changes clause, or funding and other administrative changes.

(End of clause)

8. Your contractor has asked you to explain the Prompt Payment Act and your agency's payment process. The contractor does not understand why payment on its service contract cannot be made within 20 days (from the date on the invoice) and wonders if they can charge the customary (per the industry) 10% late payment fee if they're not paid within 20 days.

9. You are the COR for a proposed gravel supply contract. The proposed work requires the contractor to crush and stockpile the gravel at a government-owned rock pit. The gravel supplied is for the installation for future repair and maintenance of roads. Your market research determines that the service to crush the supply of gravel is a commercial item and that the gravel is typically measured by the ton. Market research also indicates that the process of the gravel production usually results in under- or overproduction of the gravel. Therefore, you recommend a variation in quantity clause be added to the solicitation/contract.

The CO accepts your recommendation. The solicitation and resulting contract for the work contains FAR clause 52.211-16, Variation in Quantity. The CO also includes 52.211-17, Delivery of Excess Quantities (see following clauses). The government awards the contract for the work. The contract is a firm-fixed-price with one contract line item that has a unit price of \$16.77 for 6,000 tons of gravel. The payment clause for the contract provides that only whole tons will be paid for and any fraction of a ton will be paid for by rounding any fraction of a ton down to the nearest whole ton.

Work is complete, and, based on measurement conducted by the contractor and confirmed by the government, the contractor produced exactly 6,614 tons of gravel. How much (how many tons) of the produced gravel can the contractor be paid for?

FAR 52.211-16 Variation in Quantity (Apr 1984)

(a) A variation in the quantity of any item called for by this contract will not be accepted unless the variation has been caused by conditions of loading, shipping, or packing, or allowances in manufacturing processes, and then only to the extent, if any, specified in paragraph (b) of this clause.

(b) The permissible variation shall be limited to:

10 Percent increase

10 Percent decrease

This increase or decrease shall apply to contract line item 1, Gravel.

FAR 52.211-17 Delivery of Excess Quantities (Sept 1989)

The Contractor is responsible for the delivery of each item quantity within allowable variations, if any. If the Contractor delivers and the Government receives quantities of any item in excess of the quantity called for (after considering any allowable variation in quantity), such excess quantities will be treated as being delivered for the convenience of the Contractor. The Government may retain such excess quantities up to \$250 in value without compensating the Contractor therefor, and the Contractor waives all right, title, or interests therein. Quantities in excess of \$250 will, at the option of the Government, either be returned at the Contractor's expense or retained and paid for by the Government at the contract unit price.

10. Approximately six months after the crushing contract is complete, your agency awards a contract for placing aggregate onto roads being reconstructed. The contractor must use the (government-furnished) material they are to load, haul and place, compact, and finish the road reconstruction. The construction contract has an estimated quantity of 4,800 tons and includes the Variation in Estimated Quantity clause (see following clause).

The method of measurement was tons in place and the price for the work was \$7.50 per ton. After placing crushed aggregate on the road designated, the final quantity actually required was 5,528 tons. How many tons are paid for at the unit price?

How is pricing in excess of the 15% variation handled?

FAR 52.211-18 Variation in Estimated Quantity (Apr 1984)

If the quantity of a unit-priced item in this contract is an estimated quantity and the actual quantity of the unit-priced item varies more than 15 percent above or below the estimated quantity, an equitable adjustment in the contract price shall be made upon demand of either party. The equitable adjustment shall be based upon any increase or decrease in costs due solely to the variation above 115 percent or below 85 percent of the estimated quantity. If the quantity variation is such as to cause an increase in the time necessary for completion, the Contractor may request, in writing, an extension of time, to be received by the Contracting Officer within 10 days from the beginning of the delay, or within such further period as may be granted by the Contracting Officer before the date of final settlement of the contract. Upon the receipt of a written request for an extension, the Contracting Officer shall ascertain the facts and make an adjustment for extending the completion date as, in the judgement of the Contracting Officer, is justified.

6.9 EXERCISE: LESSON 6 QUIZ

Directions

Answer the quiz questions that follow.

1. All FAR payment clauses allow the government to routinely hold back 10% of the monies due the contractor until closeout.
 - a. True
 - b. False
2. The Prompt Payment Act applies to all payments.
 - a. True
 - b. False
3. All contracts contain the same Prompt Payment clause
 - a. True
 - b. False
4. What should a contractor for a commercial item contract do when it becomes aware of a duplicate payment?
 - a. Apply it to the next invoice
 - b. Immediately stop work and wait for direction
 - c. Notify the CO and request instructions
 - d. Immediately return the duplicate payment
5. You have a \$1,000 contract for 100 widgets to be delivered in 60 days. The contract contains FAR clause 52.232- 1. On day 30 of the contract, you receive 40 of the widgets along with an invoice. All items meet contract requirements and are acceptable. Should the invoice be paid?
 - a. Yes, all invoices should be paid immediately upon receipt
 - b. No, the invoice must be at least \$1,000 or 50 percent of the total contract price
 - c. Yes, the amount due on the deliveries warrants it
 - d. No, invoices up to \$1,000 are only paid upon completion of the contract
6. Final payment for a construction contract will not be paid until:
 - a. All work has been completed and is acceptable
 - b. The contractor has presented a proper invoice
 - c. A release of claims has been presented to the government
 - d. All of the above

Action Planning

Refer to the Action Plan and record ideas to implement from this lesson.



Remedies

LESSON 7

REMEDIES

Lesson Objective

After completing this lesson, you will be able to:

- 7.1 Describe the COR's role in identifying corrective actions or remedies available during contract administration
- 7.2 Identify situations when it is the COR's responsibility to take corrective action and when the COR recommends corrective action to the CO

This lesson addresses the various remedies available during contract administration. As the contracting officer's representative (COR), you need to understand the available remedy to a given situation—in some cases, there may be more than one. Each party to the contract looks to the contract provisions for the remedy they deem appropriate from their perspective. A single set of facts may permit multiple courses of action. The COR has the opportunity to consider actions and remedies available and who can take the action.

Frequently, the COR does not have the authority to take corrective action or apply the prescribed contract remedy. In such instances, the COR must have the facts of contract performance and should provide suggested resolutions to the contracting officer (CO), who can then apply the appropriate contract remedy.

This lesson will address remedies, specifically:

- The various Changes clauses
- Other clauses providing remedies within the contract

7.1 ISSUES, CLAUSES, AND REMEDIES

In some cases, the contract specifically includes a remedy for something that has happened during contract performance. In many cases, however, the contract does not specifically address action. In these cases, the COR or others may need to gather information, examine rights and responsibilities of the parties, try to determine which party has accepted the risk, and then take some course of action.

When actions are outside the authority of the COR, the COR likely needs to submit facts and recommendations to the CO. Resolving situations that come up in contracts also requires documentation in case someone challenges the resolution taken.

When the contract provides remedies, they often appear within FAR clauses.

TABLE: REMEDIES FOR COMMON ISSUES

Issue/Topic	FAR Clause	Basic Remedy
Changes	52.243 (several)	<ul style="list-style-type: none"> • Negotiation of an equitable adjustment (for the change) • Failure to agree results in a dispute

Issue/Topic	FAR Clause	Basic Remedy
Delays, excusable	52.249-14	Revise a delivery schedule
Dispute	52.233-1	<ul style="list-style-type: none"> • Claim, alternative dispute resolution • Contractor must proceed pending resolution
Failure to perform	52.249 (several)	Termination of contract; damages
Inspection, work not in compliance	52.246 (several)	Rework at contractor's expense
Inspection, contractor not ready (construction)	52.246-12	Charge the contractor additional cost of the government inspection or test
Inspection, removing completed work (construction)	52.246-12	If work meets contract requirements, equitable adjustment for additional services involved in examination and reconstruction
Labor—wage payments or other labor issues	52.222 (several)	<ul style="list-style-type: none"> • Typically will require restitution/payment for any underpayments • Contractor is subject to suspension or debarment by the Department of Labor
Payment, prompt	52.232 (several)	Late payment by the government usually means the government will have to pay interest on the late payment
Precedence, order of	52.214-29 52.215-8	Identifies which section of a contract takes priority over another if there is a conflict between parts of a contract
Property, government-furnished	52.245-1	When late or defective, will allow for equitable adjustment
Quantity, variation in	52.211-18	Equitable adjustment
Site conditions, differing	52.236-2	Equitable adjustment
Termination, government convenience	52.249 (several)	Equitable adjustment (reasonable costs incurred)
Work, defective	52.246 (several)	Rework or price adjustment
Work delay	52.242-17	Adjustment for increase in cost (excluding profit); adjustment in time

Issue/Topic	FAR Clause	Basic Remedy
Work, suspension of	52.242-14	Adjustment for increase in cost (excluding profit)
Work, stop	52.242-15	Equitable adjustment in schedule, price, or both

7.2 VARIOUS CONTRACT CHANGES CLAUSES

All contracts contain clauses addressing changes to the contract. Changes are often the remedy for contractual issues. It is important to know what can be changed in a government contract.

According to FAR 52.212-4(c), changes to commercial items may be made only by written agreement of the parties (bilateral only).

Changes to noncommercial items, within the general scope of the contract, can be made unilaterally. Noncommercial contract changes clauses are listed in Table: Various Noncommercial Contract Changes Clauses.

TABLE: VARIOUS NONCOMMERCIAL CONTRACT CHANGES CLAUSES

Type of Contract	Changes That Can Be Made
Noncommercial supply, fixed-price or cost-reimbursement FAR 52.243-1 FAR 52.243-2	<ul style="list-style-type: none"> • Drawings, designs, or specifications when supplies to be furnished are specifically manufactured for the government in accordance with the drawings, designs, or specifications • Method of shipping or packing • Place of delivery
Noncommercial service, fixed-price or cost-reimbursement FAR 52.243-1, Alt I or II FAR 52.243-2, Alt I or II	<ul style="list-style-type: none"> • Description of services to be performed • Time of performance (i.e., hours of the day, days of the week, etc.) • Place of performance of services
Time-and-materials or labor-hour FAR 52.243-3	<ul style="list-style-type: none"> • Drawings, designs, or specifications • Method of shipping or packing • Place of delivery • Amount of government-furnished property
Architect-engineer or other professional services, fixed-price FAR 52.243-1, Alt III	Services to be performed
Transportation services, fixed-price FAR 52.243-1, Alt IV	<ul style="list-style-type: none"> • Specifications • Work or services • Place of origin • Place of delivery • Tonnage to be shipped • Amount of government-furnished property

Type of Contract	Changes That Can Be Made
Research and development, fixed-price, or cost-reimbursement FAR 52.243-1, Alt V FAR 52.243-2, Alt V	<ul style="list-style-type: none"> • Drawings, designs, or specifications • Method of shipping or packing • Place of inspection, delivery, or acceptance
Construction or dismantling, demolition, or removal of improvements, fixed-price FAR 52.243-4	<ul style="list-style-type: none"> • Specifications (including drawings and designs) • Method or manner of performance of the work • Government-furnished facilities, equipment, materials, services, or site • Acceleration in the performance of the work
Construction—Cost-reimbursement FAR 52.243-2, Alt III	Plans and specifications or instructions incorporated in the contract.

7.3 EXERCISE: REMEDY SCENARIOS

Directions

1. Working in groups as assigned by your facilitator, address the following real-life situations that have been encountered during contract administration. In each case, the COR has a role in resolution of the issue.
2. As you consider each situation, describe the course of action you would take.
3. Include reference to the applicable FAR clause(s) you would use to remedy the situation.
4. Be prepared to share your answers with the class.



Scenario 1

The notice to proceed with work on your contract was issued 10 days ago with instructions to start work the day after the notification. The contractor has not shown up, acknowledged your e-mails, or returned phone calls. You have heard rumors the contractor will soon declare bankruptcy.

Scenario 1 Questions

1. List the applicable clause(s):

2. What course of action would you take?



Scenario 2

You have a time-and-materials contract for an emergency situation. You directed the contractor (within your authority) to begin work immediately. You also requested the contractor to keep track of its own time-and-materials usage until you reach the site of work. Now that you are on site, reviewing the contractor's documentation, you do not believe the contractor's figures are accurate.

Scenario 2 Questions

3. List the applicable clause(s):

4. What course of action would you take?



Scenario 3

You find out that the contract interpretation you made yesterday is not correct and is not what the writer of the specification intended. Your interpretation is likely to cost the contractor \$1,000 in increased costs.

Scenario 3 Questions

5. List the applicable clause(s):

6. What course of action would you take?

**Scenario 4**

The contractor submitted a work schedule that shows work on weekends. The contract does not limit working hours/days. You do not have an overtime authorization, and someone must be on site to escort the contractor employees while they work in the government building.

Scenario 4 Questions

7. List the applicable clause(s):

8. What course of action would you take?

**Scenario 5**

Your contractor has not provided the required safety plan for review. Field activities are now being performed, including work that you believe requires steel-toed shoes. You note several employees wearing tennis shoes.

Scenario 5 Questions

9. List the applicable clause(s):

10. What course of action would you take?

**Scenario 6**

The contractor has been working but is currently behind schedule. Completion by the required due date is critical. The contractor has requested a time extension due to an excusable delay: unusual weather. You do not believe the weather interfered with contract performance.

Scenario 6 Questions

11. List the applicable clause(s):

12. What course of action would you take?

**Scenario 7**

Critical work is under way on your contract. The contract requires the contractor to have an authorized representative on site at all times when work is in progress, but for three days, no representative has been on site.

Scenario 7 Questions

13. List the applicable clause(s):

14. What course of action(s) would you take?



Scenario 8

You are administering two contracts in the same general area. Contractor A complains to you that Contractor B is taking their markers and barriers down. When barriers and markers are down, there is a greater risk to the work being performed by Contractor A.

Scenario 8 Questions

15. List the applicable clause(s):

16. What course of action would you take?



Scenario 9

The contractor is required to display security badges (provided by the government) whenever working within the government facility. Contract employees are wearing their badges to pass through security but then put them in their pockets instead of having them out and visible at all times.

Scenario 9 Questions

17. List the applicable clause(s):

18. What course of action would you take?

**Scenario 10**

The contractor requested that you meet to furnish the government property (as provided for in the contract). On the way to the meeting location, you get delayed (a bad vehicle accident closes the freeway for three hours) and are unable to make it to the meeting location until the next day.

Scenario 10 Questions

19. List the applicable clause(s):

20. What course of action would you take?

**Scenario 11**

Yesterday, you rejected two sections of the contractor's work (computer lines installed between headquarters and the warehouse). When you tested the lines with your Dyno 88822 test equipment, the line load requirement was not met. This morning, you find that the Dyno 88822 is not working correctly and that the warranty has expired.

Scenario 11 Questions

21. List the applicable clause(s):

22. What course of action would you take?



Scenario 12

The contract requires all work in unit A to be completed and accepted before the contractor and crew can start on unit B. How long do you have to inspect and accept (or recommend acceptance) of unit A so you don't delay the contractor from starting work on unit B?

Scenario 12 Questions

23. List the applicable clause(s):

24. What course of action would you take?

**Scenario 13**

Upon inspection of a work activity (critical task 3), you find that the work does not meet contract requirements. This contract is one of four contracts the contractor has with your agency for the same type of work. You are not the COR for the other contracts.

Scenario 13 Questions

25. List the applicable clause(s):

26. What course of action would you take?

**Scenario 14**

The contractor has been performing some quality control checks (you saw the reports being prepared) but declines to give you access to the documents. The contract is a commercial item contract.

Scenario 14 Questions

27. List the applicable clause(s):

28. What course of action would you take?

**Scenario 15**

An employee of the contractor tells you (during the lunch break) that they have not been paid for two weeks. The employee states she mentioned this to the contractor earlier in the week and was told she could not get paid until the contractor received payment from the government (scheduled for another two weeks).

Scenario 15 Questions

29. List the applicable clause(s):

30. What course of action would you take?

**Scenario 16**

Payrolls per the Wage Rate Requirements (Construction) statute from your construction contractor have not been received for two weeks. You believe that work was being performed on site during that period.

Scenario 16 Questions

31. List the applicable clause(s):

32. What course of action would you take?

**Scenario 17**

A local supplier of equipment to your contractor called and left you a voice message saying the contractor has not yet paid for last month's rental.

Scenario 17 Questions

33. List the applicable clause(s):

34. What course of action would you take?

**Scenario 18**

You have a commercial service contract to cover janitorial services in your office. Anticipating that the warehouse next door may be needed for seasonal work space, the CO wrote the contract to contain an optional item for warehouse janitorial services. It now appears you may need that service. In mentioning this to the contractor, prior to requesting the CO to exercise the option item, the contractor states they cannot take on this additional work.

Scenario 18 Questions

35. List the applicable clause(s):

36. What course of action would you take?



Scenario 19

You are told by the area supervisor that there has been a cutback in funding. Your contract is 90% complete when the leadership team asks you to start action to eliminate two items of work from your contract. This would result in line item reductions totaling \$8,000.

Scenario 19 Questions

37. List the applicable clause(s):

38. What course of action would you take?



Scenario 20

The contractor tells you that a reference in the contract for specific materials (required) is no longer correct. The contractor states work cannot continue until this is resolved and has stopped work, awaiting your response.

Scenario 20 Questions

39. List the applicable clause(s):

40. What course of action would you take?



Scenario 21

Your contractor informs you it is opting to postpone this project until fuel prices come back down. The contractor maintains that because of the increase in fuel prices, it is entitled to an excusable delay.

Scenario 21 Questions

41. List the applicable clause(s):

42. What course of action would you take?



Scenario 22: Part 1

You are the COR for a grounds maintenance contract for a federal facility. The contract is a requirements type. About every two weeks, delivery orders have been issued for the contractor to deliver its maintenance services. The government, via the quality assurance surveillance plan (QASP) and the master contract, has the contractual right to inspect the work and to require reperformance of unacceptable portions of the work. Under the contract to date, nine task orders have been issued. Inspections of the work found parts of the work to be unacceptable on all nine of the task orders. Based on this performance, you have recommended to the CO termination of the contractor for default.

After making this recommendation, further facts are brought to your attention by the contractor. The contractor alleges the inspector has been making overzealous inspections, causing delay and incurring added expense for the contractor. The inspector's comments regarding performance also caused the contractor to experience overtime performance to correct the alleged deficiencies. The inspector also worked overtime to observe the rework.

In following up on the contractor's allegations and facts provided, you determine the inspector has demanded strict compliance with task order performance work statements. For example, the inspector uses a ruler to measure the height of grass after mowing.

Scenario 22: Part 1 Questions

43. Based on what you now know, what action would you take as the COR?

Scenario 22: Part 2

After handling the situation in Part 1, above, you feel pretty good, and no new complaints are voiced about inspection procedures, although work frequently fails and rework is done under overtime requirements. You did not notify the CO of your action. Your recommendation is still before the CO to terminate the contractor. Subsequently, you receive confirmation from a reliable third-party source regarding the following facts:

- The inspector has made statements about his desire to break the contractor
- The inspector has boasted about his ability to make the contractor work overtime (which, in turn, feathers the inspector's own nest with overtime) and tells a coworker that it will pay for a grand vacation
- The inspector informed the contractor, "I am very near the CO, and you had just better do what you are told ... no questions asked."

Scenario 22: Part 2 Questions

44. List the applicable clause(s):

45. Based on the additional information, what action(s), if any, would you take regarding the inspector?

46. What are your recommendations regarding default?

7.4 EXERCISE: DISPUTES AND DECISIONS



Refer to Resource

Handout: CBCA Decisions

Directions

1. Working in groups, review decisions as assigned by your facilitator.
2. In your review, note the actions taken by both contracting parties (good and bad).
3. Address the questions that follow each scenario.



Scenario 1

- CBCA Decision Number: CBCA 2137, 2141
- Case Name: Healthcare Technology Solutions International v. Department of Veterans Affairs

Scenario 1 Questions

1. Identify the strengths and weaknesses of each party's argument.

2. Could the agency have done anything to avoid the dispute?

3. What lessons have you learned from this decision?

4. List any other concerns about this decision that you would like to discuss further.

**Scenario 2**

- CBCA Decision Number: CBCA 464
- Case Name: Business Management Research Associates, Inc. v. General Services Administration

Scenario 2 Questions

5. Identify the strengths and weaknesses of each party's argument.

6. Could the agency have done anything to avoid the dispute?

7. What lessons have you learned from this decision?

8. List any other concerns about this decision that you would like to discuss further.

**Scenario 3**

- CBCA Decision Number: CBCA 1564
- Case Name: Parkview Engraving LLC v. Department of Veterans Affairs

Scenario 3 Questions

9. Identify the strengths and weaknesses of each party's argument.

10. Could the agency have done anything to avoid the dispute?

11. What lessons have you learned from this decision?

12. List any other concerns about this decision that you would like to discuss further.



Scenario 4

- CBCA Decision Number: 975
- Case Name: In-Finn-Ity Geotech Service v. Department of the Interior

Scenario 4 Questions

13. Identify the strengths and weaknesses of each party's argument.

14. Could the agency have done anything to avoid the dispute?

15. What lessons have you learned from this decision?

16. List any other concerns about this decision that you would like to discuss further.



Scenario 5

- CBCA Decision Number: 923
- Case Name: Global Ship System LLC v. Department of Homeland Security

Scenario 5 Questions

17. Identify the strengths and weaknesses of each party's argument.

18. Could the agency have done anything to avoid the dispute?

19. What lessons have you learned from this decision?

20. List any other concerns about this decision that you would like to discuss further.



Scenario 6

- CBCA Decision Number: 1895
- Case Name: Pearson E. Dubar v. Department of Agriculture

Scenario 6 Questions

21. Identify the strengths and weaknesses of each party's argument.

22. Could the agency have done anything to avoid the dispute?

23. What lessons have you learned from this decision?

24. List any other concerns about this decision that you would like to discuss further.

**Scenario 7**

- CBCA Decision Number: 641
- Case Name: Pacific Legacy, Inc. v. Department of Agriculture

Scenario 7 Questions

25. Identify the strengths and weaknesses of each party's argument.

26. Could the agency have done anything to avoid the dispute?

27. What lessons have you learned from this decision?

28. List any other concerns about this decision that you would like to discuss further.

7.5 EXERCISE: LESSON 7 QUIZ

Directions

Answer the quiz questions that follow.

1. Changes to commercial item contracts must be by mutual agreement of the parties.
 - a. True
 - b. False
2. The Changes clause used in noncommercial contracts gives the government the right to unilaterally change the contract as long as the change:
 - a. Is within the scope of the contract
 - b. Is in the best interest of both parties
 - c. Does not adversely affect the rights of unsuccessful bidders
 - d. Is known to the contractor in advance of the change
3. If a contractor fails to perform, the government must terminate the contract for default.
 - a. True
 - b. False
4. Your contractor has filed a claim. Can the government offer to handle it through alternative dispute resolution (ADR)?
 - a. Yes, ADR can be offered prior to or after a claim is received
 - b. No, once a claim is received, ADR cannot be undertaken
5. Your contract is 90% complete, and there have been problems getting acceptable performance from the contractor. What are the government's options?
 - a. Accept the work as is with consideration to the government
 - b. Consider a termination for default
 - c. Order the contractor to rework the unacceptable portions of the contract
 - d. All of the above
6. An equitable adjustment under the Suspension of Work clause may include:
 - a. Only those direct costs plus profit
 - b. Time extension plus damages
 - c. Increases in the cost of performance (excluding profit)
 - d. Impact fee for concurrent delay

Action Planning

Refer to the Action Plan and record ideas to implement from this lesson.



Performance Evaluation and Contract Closeout

LESSON 8

PERFORMANCE EVALUATION AND CONTRACT CLOSEOUT

Lesson Objective

After completing this lesson, you will be able to:

- 8.1 Identify the responsibilities of the COR in evaluating a contractor's performance of the contract
- 8.2 Discuss the COR's role in closing out the contract

Many tasks are associated with the closeout of a contract beyond the physical completion of contract work. This topic addresses those tasks, specifically:

- Past performance and contractor performance reports
- Contractor past performance systems (database)
- Other contract closeout activities

8.1 PAST PERFORMANCE

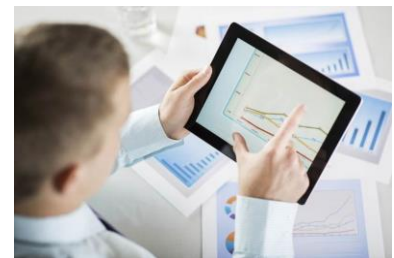
Past performance is one evaluation factor that should be considered, if not required, in developing the right evaluation factors to enable best value contractor selections.

Past performance is required as an evaluation factor in all negotiated competitive acquisitions exceeding the simplified acquisition threshold (SAT), unless the contracting officer (CO) documents why it would not be appropriate. Including a past performance evaluation factor on any acquisition under the SAT is optional.

To effectively evaluate past performance in source selections, the information must be gathered and maintained. Contracting officer's representatives (CORs) play a significant role in this process, as the CO typically tasks them with the initial evaluation of the contractor's performance. Through these evaluations, the government is better prepared to obtain best value in the future.

FAR 42.1501, General (Contractor Performance Information), states that past performance information regarding a contractor's actions under previously awarded contracts is relevant for future source selection purposes. It includes:

- The contractor's record of conforming to contract requirements and standards of good workmanship
- Record of controlling costs
- Adherence to contract schedules
- History of reasonable and cooperative behavior



Performance evaluations help the government decide whether they want to do business with a contractor in the future

- Reporting into databases (FAR 4.14)
- Record of integrity and business ethics
- Business-like concern for the interest of the customer

8.1.1 Requirements for Reporting and Documenting Past Performance

On July 1, 2009, the *Federal Register* announced a final rule amending the *Federal Acquisition Regulation* (FAR) to revise the contractor performance information process.¹ This change primarily emphasizes the use of a standard reporting system, the Past Performance Information Retrieval System (PPIRS).

This change aligns with the March 4, 2009 Presidential Memorandum on government contracting, specifically with regard to managing the government's risk associated with the goods and services being procured and ensuring projects are completed effectively and efficiently.² Accordingly, several changes were made to the FAR, particularly within subpart 42.15, Contractor Performance Information.

In 2019, PPIRS was retired and merged with the Contractor Performance Assessment Reporting System (CPARS). CPARS now serves as the single official repository for recording and maintaining contractor performance information.

Further, no new systems will be built. Agencies must not invest any resources in developing or improving a capability for past-performance reporting. This decision was based on the National Institutes of Health's (NIH's) retirement of their Contractor Performance System, the ongoing efforts to establish a standard method and criteria for conducting past-performance reporting, and the recent implementation of the Federal Awardee Performance and Integrity Information System, which already requires agency use of CPARS as the data entry module.

FAR 42.1502, Policy (Contractor Performance Information), states that past performance evaluations shall be prepared at least annually and at the time the work under the contract or order is completed. In addition, interim evaluations shall be prepared as specified by the agencies to provide current information for source selection purposes, for contracts or orders with a period of performance, including options, exceeding one year. These evaluations are generally for the entity, division, or unit that performed the contract or order. The content of the evaluations should be tailored to the size, content, and complexity of the contractual requirements.

The intent is to be able to provide current information for future discussion purposes and for source selection purposes. With this in mind, many agencies encourage interim performance evaluations as part of good contract management.

Other requirements of FAR 42.1502 include the following:

- Agencies shall prepare an evaluation of contractor performance for each contract that exceeds the SAT
- Agencies shall prepare an evaluation of contractor performance for each order that exceeds the SAT placed against a Federal Supply Schedule contract or under a task order contract or a

¹ 74 FR 31557

² White House 2009

delivery order contract awarded by another agency (i.e., governmentwide acquisition contract or multiagency contract)

- For single-agency task order and delivery order contracts, the CO may require performance evaluations for each order in excess of the SAT when such evaluations would produce more useful past-performance information for source selection officials than that contained in the overall contract evaluation (e.g., when the scope of the basic contract is very broad and the nature of individual orders could be significantly different)
- Past performance evaluations shall be prepared for each construction contract of \$700,000 or more and for each construction contract terminated for default regardless of contract value. Past performance evaluations may also be prepared for construction contracts below \$700,000.
- Past performance evaluations shall be prepared for each architect-engineer services contract of \$35,000 or more and for each architect-engineer services contract terminated for default regardless of contract value. Past performance evaluations may also be prepared for architect-engineer services contracts below \$35,000.
- Past performance evaluations shall include an assessment of contractor performance against, and efforts to achieve, the goals identified in the small business subcontracting plan when the contract includes the clause at 52.219-9, Small Business Subcontracting Plan

Past performance evaluations are not required for contracts awarded under the Committee for Purchase from People Who Are Blind or Severely Disabled statute and the rules of the Committee for Purchase from People Who Are Blind or Severely Disabled (41 USC chapter 85), which implements the AbilityOne Program.



Refer to Website

The Contractor Performance Assessment Reporting System (CPARS) can be found at: <https://www.cpars.gov>

8.1.2 Subcontractors, Teaming, and Joint Venture Partners

It is important to maintain a record, on the contractor's performance evaluation form, of the major subcontractors and any team or joint venture partners on the contract. This is a listing of the firms participating, the work they are responsible for (if they can be divided up for team or joint venture partners), and the key personnel. As the government has privity of contract only with the prime contractor, subcontractor teams and joint venture partners should not be given a separate rating.

The ratings for the prime contractor reflect any comments on the performance of these firms. Listing these firms allows them to cite the contract for past performance purposes in proposals for future work, either as prime contractors or as subcontractors or other partners.

8.1.3 Who Assesses Contractor Performance?

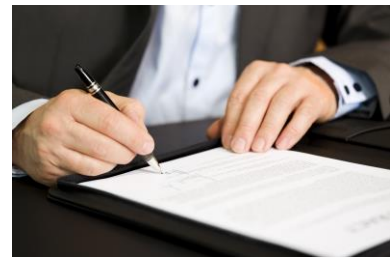
The FAR requires agencies to identify those responsible for preparing interim and final contractor performance evaluations. Typically, this responsibility falls upon the CO and the COR, with joint responsibility. However, the COR is typically tasked with preparation of the contractor's performance evaluation (report). The COR must ensure the evaluation reflects a collective assessment of the contractor's performance, with input from the technical office, contracting office, and, where appropriate, end users of the product or service.

8.1.4 Contractor Response and Agency Review

Agencies must prepare and submit all past performance evaluations electronically in the CPARS system online at cpars.gov. Agency evaluations of contractor performance are provided to the contractor as soon as practicable after completion of the evaluation. The contractor will receive a CPARS-system generated notification when an evaluation is ready for comment. Contractors are afforded up to 14 calendar days from the date of notification to submit comments, rebutting statements, or additional information. Agencies must provide for review at a level above the contracting officer to consider disagreements between the parties regarding the evaluation. The ultimate conclusion on the performance evaluation is a decision of the contracting agency. The government updates CPARS with any contractor comments provided after 14 days, as well as any subsequent agency review of comments received.

8.1.5 Supporting the Performance Evaluation

The CO and COR's discussion regarding the process for performance reports should include an understanding of what is needed to support the contractor's performance evaluation, which includes the rating system to be used. All rating systems contain a satisfactory level of performance. The discussion should include the meaning of the word *satisfactory* in relationship to the specific contract requirements. It should also include a discussion of contractor performance that would lead to a rating higher or lower than satisfactory.



Make sure your evaluation is focused on actual contract requirements and supported by documentation

Identifying documentation necessary to support ratings—whether satisfactory, above satisfactory, or below satisfactory—should also be a topic of discussion. Although inspection reports and diaries may be sufficient to support a higher than satisfactory rating, one must ask whether that same level of documentation is acceptable to support a less than satisfactory rating. Will the CO require work orders, notices of noncompliance, meeting notes, or other types of documentation to support a downgraded rating? If anything beyond diaries and inspection reports is necessary for supporting performance ratings, it should be identified.

8.2 CONTRACT CLOSEOUT

Contract closeout is an important aspect of contract administration. Contract closeout begins when the contract has been physically completed, i.e., all services have been performed and products delivered. Closeout ends when all administrative actions are taken, all disputes are settled, and final payments are made. The process can be simple or complex, depending on the contract type. The closeout process requires coordination among the contracting office, finance office, program office, and contractor.

Contract audits, required on cost-reimbursement contracts, determine the reasonableness, allowability, and ability of costs incurred to be allocable. Although there is a preaward 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, contracting officials often cannot complete the closeout process for many cost-reimbursement contracts.

Although the FAR does allow agencies to use quick closeout procedures (desk reviews) to close some cost-reimbursement contracts without a closeout audit, inconsistencies have been noted in the use of the procedures. It is important that contracting officials have a good working relationship with the agency's auditors and the cognizant audit agency to accomplish contract closeout under cost-reimbursement contracts.

FAR provisions (subpart 4.8) regarding contract closeout follow.

**4.804-1 Closeout by the office administering the contract
[partial FAR reference]**

(a) Except as provided in paragraph (c) of this section, time standards for closing out contract files are as follows:

- (1) Files for contracts using simplified acquisition procedures should be considered closed when the contracting officer receives evidence of receipt of property and final payment, unless otherwise specified by agency regulations.
- (2) Files for firm-fixed-price contracts, other than those using simplified acquisition procedures, should be closed within 6 months after the date on which the contracting officer receives evidence of physical completion.
- (3) Files for contracts requiring settlement of indirect cost rates should be closed within 36 months of the month in which the contracting officer receives evidence of physical completion.
- (4) Files for all other contracts should be closed within 20 months of the month in which the contracting officer receives evidence of physical completion.

(b) When closing out the contract files at 4.804-1(a)(2), (3), and (4), the contracting officer shall use the closeout procedures at 4.804-5. However, these closeout actions may be modified to reflect the extent of administration that has been performed. Quick closeout procedures (see 42.708) should be used, when appropriate, to reduce administrative costs and to enable deobligation of excess funds.

(c) A contract file shall not be closed if—

- (1) The contract is in litigation or under appeal
- (2) In the case of a termination, all termination actions have not been completed.

4.804-2 Closeout of the contracting office files if another office administers the contract

- (a) Contract files for contracts using simplified acquisition procedures should be considered closed when the contracting officer receives evidence of receipt of property and final payment, unless otherwise specified by agency regulation.
- (b) All other contract files shall be closed as soon as practicable after the contracting officer receives a contract completion statement from the contract administration office. The contracting officer shall ensure that all contractual actions required have been completed and shall prepare a statement to that effect. This statement is authority to close the contract file and shall be made a part of the official contract file.

4.804-3 Closeout of paying office contract files

The paying office shall close the contract file upon issuance of the final payment voucher.

4.804-4 Physically completed contracts

- (a) Except as provided in paragraph (b) of this section, a contract is considered to be physically completed when—
 - (1)(i) The contractor has completed the required deliveries and the Government has inspected and accepted the supplies;
 - (ii) The contractor has performed all services and the Government has accepted these services; and
 - (iii) All option provisions, if any, have expired; or
 The Government has given the Contractor a notice of complete contract termination.
- (b) Rental, use, and storage agreements are considered to be physically completed when—
 - (1) The Government has given the contractor a notice of complete contract termination; or
 - (2) The contract period has expired.

4.804-5 Procedures for closing out contract files

(a) The contract administration office is responsible for initiating (automated or manual) administrative closeout of the contract after receiving evidence of its physical completion. At the outset of this process, the contract administration office must review the contract funds status and notify the contracting office of any excess funds the contract administration office might deobligate. When complete, the administrative closeout procedures must ensure that—

- (1) Disposition of classified material is completed;
- (2) Final patent report is cleared. If a final patent report is required, the contracting officer may proceed with contract closeout in accordance with the following procedures, or as otherwise prescribed by agency procedures:
 - (i) Final patent reports should be cleared within 60 days of receipt.
 - (ii) If the final patent report is not received, the contracting officer shall notify the contractor of the contractor's obligations and the Government's rights under the applicable patent rights clause, in accordance with 27.303. If the contractor fails to respond to this notification, the contracting officer may proceed with contract closeout upon consultation with the agency legal counsel responsible for patent matters regarding the contractor's failure to respond.
- (3) Final royalty report is cleared;
- (4) There is no outstanding value engineering change proposal;
- (5) Plant clearance report is received;
- (6) Property clearance is received;
- (7) All interim or disallowed costs are settled;
- (8) Price revision is completed;
- (9) Subcontracts are settled by the prime contractor;
- (10) Prior year indirect cost rates are settled;
- (11) Termination docket is completed;
- (12) Contract audit is completed;
- (13) Contractor's closing statement is completed;
- (14) Contractor's final invoice has been submitted; and
- (15) Contract funds review is completed and excess funds deobligated.

(b) When the actions in paragraph (a) of this subsection have been verified, the contracting officer administering the contract must ensure that a contract completion statement, containing the following information, is prepared:

- (1) Contract administration office name and address (if different from the contracting office).
- (2) Contracting office name and address.

- (3) Contract number.
- (4) Last modification number.
- (5) Last call or order number.
- (6) Contractor name and address.
- (7) Dollar amount of excess funds, if any.
- (8) Voucher number and date, if final payment has been made.
- (9) Invoice number and date, if the final approved invoice has been forwarded to a disbursing office of another agency or activity and the status of the payment is unknown.
- (10) A statement that all required contract administration actions have been fully and satisfactorily accomplished.
- (11) Name and signature of the contracting officer.
- (12) Date.
- (c) When the statement is completed, the contracting officer must ensure that—
 - (1) The signed original is placed in the contracting office contract file (or forwarded to the contracting office for placement in the files if the contract administration office is different from the contracting office); and
 - (2) A signed copy is placed in the appropriate contract administration file if administration is performed by a contract administration office.

8.2.1 Checklist for Closeout Documentation

A checklist can be helpful in closing contracts. They help ensure all actions have been completed. It would be beneficial for the COR to prepare and include a checklist in the contract file, at award, for later use in contract closeout.

The COR checklist might include items such as:

- Government property reconciled
- Final inspection completed
- Contractor release of claims obtained (see paragraph following regarding release of claims)
- Contractor performance report completed
- Final payment reviewed
- Final documents to CO

8.2.2 Release of Claims

Some contracts (e.g., construction and architect- engineering services) require a release of claims from the contractor at the time of making final payment. The purpose of obtaining a contractor-signed release of claims is to have the contractor acknowledge, in writing, that there will be no claims against the government in relation to the contract and that there are no concerns or reservations regarding the contract for which the contractor wants the option of filing a claim in the

future. Any reservations the contractor may have must be listed on the release of claims. Claims would then be limited to only those items listed. By completing the release of claims, the contractor also acknowledges that it has received final payment.

8.3 EXERCISE: PERFORMANCE EVALUATION SCENARIO

Directions

Read the scenario and answer the questions that follow.



Scenario

You are the COR for a commercial item firm- fixed- price contract for the supply of widgets from a small business contractor. The value of the contract is \$2 million. The contract has been completed and, in your view as COR, it is a complete success. The widgets were delivered in advance of the required date. All actions by the contractor related to the contract were flawless, from providing the first article for review to accomplishing all related paperwork.

In response to the CO request for a performance rating of the contractor's performance, you rate the contractor as exceptional in all areas based on the Office of Federal Procurement Policy's (OFPP's) Best Practices Guide regarding performance.

Questions

1. When you provide the performance evaluation to the CO, what other recommendations to the CO could you make regarding this very successful contract?

2. It is now four years after completion of contract performance, and you are contacted by another agency to give your opinion of the contractor's performance, including providing a copy of your (COR) performance evaluation.

8.4 EXERCISE: REVIEW/ANALYZE A GAO DECISION



Refer to Resource

Handout: GAO Decision B-310617

Directions

1. Working in groups, review the GAO decision regarding the use of past performance as an evaluation factor in source selection.
 - Note the reliance on existing past performance information the agency had within its automated performance risk system
2. Address the issues/questions related to the GAO decision.

Questions

1. Identify the strengths and weaknesses of each party's argument.

2. Could the agency have done anything to avoid the protest?

3. What lessons have you learned from this decision?

4. List any other concerns about this decision you would like to discuss further.

8.5 EXERCISE: PREPARE FOR AND PARTICIPATE IN A CONTRACTOR PERFORMANCE EVALUATION

Directions

1. Working in groups as assigned by your facilitator, use the information provided regarding a contractor's performance.
2. You will be asked to prepare a contractor performance report and participate in a performance evaluation.
3. This is a roleplaying exercise for which you may be assigned as either the COR or the contractor.

General Information

A contract was awarded to ABC Training for the development and presentation of five courses on data gathering and analysis techniques. After developing the course materials, the contractor was to prepare a one-day course on the materials covered. The course would then be presented to select audiences at five separate locations during the year. The outcome for the course would be for each group of students to develop a set of best practices that are applicable and could be adopted for use in their organization.

A postaward orientation was held to review the contract requirements and objectives. ABC Training provided a work plan/schedule that met all of the specific timeline requirements. Attending the meeting were Mr. John Best, ABC Training owner; Ms. Tammy Data, ABC Training project manager; I.M. Good, Contracting Officer; Redi Freddi, COR; and Thomas Edison, Agency Director of Analysis.

The parties to the postaward orientation agreed upon the dates for the submission of materials, review time, correction requirements, and locations for the five course presentations. The contract stated that the government would provide the training facility (presentation room with audio/video capacity that could handle 25 students per session); no special need requirements were noted.

A closeout session has been scheduled between the COR and ABC Training. The objective of the closeout session is to complete required forms, such as final payment, release of claims, and the contractor performance evaluation. A collaborative approach to the performance evaluation is to be done. Both parties will prepare a performance report. The final rating will be done at the meeting after discussion of each party's report.

Contractor Information

Shortly after award, Tammy Data received a request from Thomas Edison requesting that the data analysis techniques to be covered in the course also include a new analytical tool developed at the agency headquarters. The rationale was that the traditional tools used to identify advantages and disadvantages of certain alternatives tended to create friction between organizations offering comments and agency personnel. The new analytical tool would encourage work in a more collaborative manner. When the draft course manual and presentation materials were furnished for review, the government review team only identified two significant items:

1. The course materials provide an emphasis on historical techniques for data gathering and traditional evaluation techniques only.
2. The materials do not provide an equal emphasis on software programs currently under development by researchers in the field or commercial software developers.

From your point of view, there were no specific contract requirements to emphasize new techniques versus traditional techniques. Although your firm has some experience with the newer computer/electronic analysis techniques, they seem to eliminate the human judgment needed to select a truly viable alternative. Even though you do not believe the contract requires these new techniques, in order to please the government, you incorporate references and methodologies for use of the newer techniques.

After the first presentation, the students reported that the materials and presentation were both excellent. They really appreciated the blending of traditional and new analytical techniques. The best practices exercise was a truly productive activity because it prompted students to communicate with others who did similar work and they were able to gain commitment to the best practices that would work at their respective organizations.

The primary complication encountered during the remaining four presentations was that in two instances, the need to obtain building passes and gain access to the classroom was a major complaint of several students. In fact, at one location, their restrictions were such that individuals attending the course were not permitted to bring their own laptop computers into the facility. Someone said that Homeland Security Presidential Directive 12 (HSPD-12) was to blame. You remember encountering problems with HSPD-12 a year earlier but did not think about it in this contract.

The COR was good to work with, payments for each course were received within the 30-day window, and you really went out of your way to accommodate the information that Thomas Edison wanted. Your exercise to develop best practices really got a lot of praise from students.

You have been provided with an envelope from the company that contains the final payment request and a request to prepare an evaluation of your own performance. You quashed the complaints about facility access and limit on bringing in laptops, and said nothing negative to the agency. What you recently realized is that with the current emphasis on best value acquisition and a heavy rating on past performance, it is likely a well-qualified firm like yours (a little higher in cost) will not get selected if it has an unacceptable—or even a satisfactory—rating.

The policy of your firm is to work toward receiving an outstanding rating. It may be the only way to get future government work, especially when some evaluators place heavy emphasis on satisfying their requirements and being responsive. You believe you did both. Based on the praise of your work, you are even considering publishing a book of best practices and starting your road trips of one-day seminars. Why not be optimistic? You look forward to the collaborative approach to your performance evaluation and are ready for the meeting.

If there is too much objection to an outstanding performance rating, you may want to try to put a price on the extra effort required to satisfy Tom Edison by incorporating the agency-developed analytical tool. Maybe you should not sign anything until agreement is reached on the performance.

Government Information

You had very limited experience as a COR and are really happy that this first experience was not too painful. You have been given a Release of Claims form to have the contractor sign. You anticipate receiving the final invoice for the last of the training sessions, and you were told that you would need to evaluate the overall performance of the contractor.

The CO said that three factors need to be documented. They are:

1. Quality of work.
2. Timeliness of work.
3. Business relations.

A fourth factor could be cost control, but since you are dealing with a fixed-price contract, that factor will not be evaluated. The CO has provided the Contractor Performance Report form for your use.



Refer to Resource

Handout: Sample Contractor Performance Report Template

You are not aware of any real problems during the course of the presentations. You have heard nothing negative regarding the contractor's performance. There were no complaints from the contractor, the government review team (reviewing draft materials), or the students.

In your monitoring of the contractor's performance, you required the contractor to obtain student critiques of all five sessions and inform you of any problems or concerns. You decided to review the critiques after the first presentation (but not after the remaining four). After the first presentation, students reported that both the materials and the presentation were excellent. More than one student expressed appreciation for the "blending of traditional and new analytical techniques," stating that this was of extreme benefit in developing the best practices. Interesting.

Do these new techniques have anything to do with the note received from Tom Edison soon after contract award? In that note, he stated: "Thank you, Redi, for making sure the newly developed analytical tool was incorporated into the contract. I'm sure this will enable successful development of best practice techniques." There were no contract modifications issued for the contract. How did it get incorporated into the contract?

Now that you have had some experience with administering a contract, you hope you will again be assigned as a COR and, also, have a chance to write a statement of work and serve on an evaluation panel. You hope all contracts and contractors are as easy to work with as this one was.

For this closeout meeting, you plan to take along several other people who have experience with contracts of this type so if any issues or questions come up, they can assist you. Completion of the performance evaluation form and getting the contractor's signature on the Release of Claims form are your primary objectives for this meeting.

8.6 EXERCISE: LESSON 8 QUIZ

Directions

Answer the quiz questions that follow.

1. Contractor performance evaluations are:
 - a. Only for the contractor's use
 - b. For future use by the government in source selections
 - c. Required for every contract
 - d. Not applicable to government contracts
2. The database required to be used by the government to maintain contractor performance reports is:
 - a. The Contractor Performance Assessment Retrieval System (CPARS)
 - b. The NIH (National Institutes of Health) database
 - c. Any database, as designated by the agency
 - d. Databases are not required
3. Past performance is required as an evaluation factor in all negotiated competitive acquisitions exceeding the simplified acquisition threshold (SAT) unless the CO documents why it would not be appropriate.
 - a. True
 - b. False
4. Your contractor has asked for an interim performance report. Can you provide it?
 - a. No, performance reports can only be done at the completion of the contract
 - b. Yes, but only if the contract is over the SAT
 - c. Yes, interim reports are optional
 - d. Yes, if the contractor has requested it within the required time frame
5. A contract release of claims prevents the contractor from filing any claim after contract completion.
 - a. True
 - b. False
6. The FAR prescribes the use of a checklist in closing out a contract.
 - a. True
 - b. False

Action Planning

Refer to the Action Plan and record ideas to implement from this lesson.



Action Plan

RESOURCE A

ACTION PLAN

OVERVIEW

Participating in a training course is only the first step to mastering a discipline. In order for your learning to continue, it is important that you put the tools and techniques presented in this course into action.

PART I: KEY LEARNING POINTS

At the end of each module or lesson, time is allotted for you to document ideas that you want to remember.

Module/Lesson Title	Key Learning Points

Module/Lesson Title	Key Learning Points

Module/Lesson Title	Key Learning Points

PART II: ON THE JOB

Review your key learning points and select three to five that you want to implement when you return to your job.

Use the table provided on the next page to:

- Prioritize your implementation items
- Write a **SMART** objective for each item
 - **S**pecific
 - **M**easurable
 - **A**ttainable
 - **R**ealistic
 - **T**ime-bound
- Identify the content that supports your objectives
- Document your strategy to achieve your objective
- Set a due date for achievement

Once back on the job, post this action plan in a visible location to remain focused on the completion of these goals.

ACTION PLAN

Priority	Objective	Supporting Content	Strategy	Due
1.				
2.				
3.				
4.				
5.				



Acronyms and Glossary

RESOURCE B

ACRONYMS AND GLOSSARY

ACRONYMS

TABLE: ACRONYMS

Acronym	Full Term
ADR	alternative dispute resolution
BCA	Board of Contract Appeals
BPA	blanket purchase agreement
BV	best value
CFR	<i>Code of Federal Regulations</i>
CI	commercial item
CICA	Competition in Contracting Act
CO	contracting officer
COC	Certification of Competency program
COR	contracting officer's representative
COTS	commercial, off-the-shelf
CPARS	Contractor Performance Assessment Reporting System
D&F	determination and finding
DoD	Department of Defense
DOL	Department of Labor
EC	electronic commerce
EFT	electronic funds transfer
FAC	Federal Acquisition Circular (periodic update of the FAR)

Acronym	Full Term
FAI	Federal Acquisition Institute
FAR	<i>Federal Acquisition Regulation</i>
FASA	Federal Acquisition Streamlining Act
GAO	Government Accountability Office
GFP	government-furnished property
GSA	General Services Administration
HCA	head of the contracting activity
IFB	invitation for bids
MR	market research
MSPA	Migrant and Seasonal Agricultural Worker Protection Act
NAICS	North American Industry Classification System
OFPP	Office of Federal Procurement Policy
OMB	Office of Management and Budget
ORCA	Online Representations and Certifications Application (now part of SAM)
PBA	performance-based acquisition
PR	procurement request
PWS	performance work statement
QA	quality assurance
QC	quality control
RFI	Request for Information
RFP	Request for Proposals
RFQ	Request for Quotations
SAM	System for Award Management
SAP	simplified acquisition procedure

Acronym	Full Term
SAT	simplified acquisition threshold
SBA	Small Business Administration
SBSS	Small Business Source System
SF-44	Standard Form 44 (used by the military for procurement)
SIC	standard industrial classification
SOO	statement of objectives
SOW	statement of work
VETS-4212 Report	Federal Contractor Reporting

GLOSSARY

Administrative change. A unilateral contract change, in writing, that does not affect the substantive rights of the parties.

Allowable cost. A cost, either direct or indirect, which, if in agreement with published costs principles, may be allocated and deemed reimbursable under an anticipated or existing contract.

Amendment. A written change to a solicitation.

Bid bond. A form of security ensuring the bidder (a) will not withdraw a bid within the period specified for acceptance and (b) will execute a written contract and furnish required bonds. Also called a bid guarantee.

Board of Contract Appeals. A designated administrative tribunal within an executive agency authorized to hear, examine, and decide on written appeals of contracting officer decisions.

Cardinal change. A modification to a contract outside the scope of work and, therefore, outside the Changes clause.

Change order. A written order, signed by the contracting officer, directing the contractor to make a change that the Changes clause authorizes the contracting officer to order without the contractor's consent.

Competitive negotiation. A method of acquisition that:

- Is initiated by a Request for Proposals that sets out the government's requirements and the criteria for evaluation of offers
- Contemplates the submission of timely proposals by the maximum number of possible offerors
- Usually provides discussion with those offerors found to be within the competitive range
- Concludes with the award of a contract to the offeror whose offer, price, and other factors considered is most advantageous to the government

Competitive range. A group of offerors whose proposals meet the requirements of a solicitation and have a reasonable chance of being selected for award as determined by the evaluation of technical, management, and cost/price considerations as well as other stated factors.

Constructive change. During contract performance, an oral or written act or omission by the contracting officer or other government official (e.g., COR, inspector) that is of such a nature so as to be construed to have the same effect as a written change order. A constructive change has two elements: first, an order, and second, a change in the contract.

Contracting officer. A person having delegated authority to enter into, administer, and terminate contracts as well as make determinations and findings on behalf of the government.

Contracting officer's representative. An individual, designated in writing by the contracting officer, with authorization to take certain delegated actions on behalf of the contracting officer.

Delegation. The conferring of authority from one authorized representative to another to accomplish contract administrative tasks. Authority may be limited, shared, or recalled.

Design specification. A document (which may include drawings) setting forth required characteristics of a particular component, part, subsystem, and/or system construction item. Design specifications are frequently described as how- to specifications.

Direct cost. Any cost that can be identified specifically with a particular activity, project, or cost objective.

Evaluation factors. Factors considered in evaluating proposals and tailored to each acquisition. This includes only those factors that affect the source selection decision.

Fair and reasonable. An evaluation of what each party deems equitable consideration in areas such as terms and conditions, cost or price, assured quality and timeliness of contract performance, or any other area of negotiation.

Forward pricing. A term related to the pricing of a change order or supplemental agreement before the work is performed.

General and administrative (G&A) expense. Any management financial and other expense incurred by or allocated to a business unit for the general management and administration of the business unit as a whole.

Government-furnished property. Items in the possession of or acquired by the government and made available to the contractor to fulfill the requirements of a contract.

Indefinite-delivery contract. A contract in which the exact time of delivery is not known at contract award. The contract has a fixed ordering period, and placing an order schedules a delivery.

Indefinite-quantity contract. An indefinite-delivery contract that provides an indefinite quantity, within stated limits, of specified supplies or services. The government must order until the contractor delivers the stated minimum quantity.

Indirect cost. A cost not directly identified with a single project, activity, or final cost objective but identified with two or more final cost objectives or an intermediate cost objective. Indirect costs are accumulated in logical cost groupings and then allocated according to generally accepted accounting principles.

Inspector. An individual, designated in writing, having certain authorities and responsibilities for administration of a contract. The inspector generally works for or with the designated contracting officer's representative.

Modification. Any written change in the terms of a contract. Modifications can be either unilateral or bilateral.

Negotiation. Contracting through the use of either competitive or other than competitive proposals and discussions. Any contract awarded without using sealed bidding procedures is a negotiated contract.

Partial payment. A payment authorized under a contract, made upon completion of the delivery of one or more complete units (or one or more distinct items of service) called for, delivered to, and accepted by the government under the contract. Also, a payment made against a termination claim upon prior approval before final settlement of the total termination claim.

Payment bond. A bond the successful bidder provides to ensure payments as required by law to all persons supplying labor or materials in doing the work called for in the contract.

Performance bond. A bond the successful bidder provides to secure performance and fulfillment of the contractor's obligations under the contract.

Performance work statement. A statement that defines things such as form, fit, and function and that allows the contractor to choose the method of performance. Responsibility for the end result lies with the contractor. For example, the item or work must fly so high or so fast or pump at least so much or produce certain results.

Progress payment. A payment made as work progresses under a contract on the basis of percentage of completion accomplished or for work performed at a particular stage of completion. A progress payment does not constitute acceptance of the work nor does it relieve the contractor of the responsibility of meeting contract requirements.

Prospective pricing. The pricing of work activities such as change orders or supplemental agreements before the performance of work; similar to forward pricing.

Purchase description. A description of the essential physical characteristics and functions required to meet the government's minimum needs. It makes reference to specific characteristics of one or more brand name products meeting government needs.

Purchase order. A form used to document the agreement between a potential contractor and the government when using simplified acquisition procedures. The purchase order does not become a legally binding contract until the contractor properly accepts it; can be the OF 47 or other agency-developed form.

Quotation. A written or oral statement of price submitted to the government by a vendor in response to a Request for Quotations that may include, among other things, a description of the product or service and the terms of sale, delivery, or period of performance. A quotation does not constitute a legal offer that can be accepted to form the basis of a binding contract.

Requirements document. A description of technical requirements for a material, product, or service that includes the criteria for determining whether these requirements are met.

Retrospective pricing. The opposite of forward or prospective pricing. Contemplates the negotiation of price following performance of changed work.

Sealed bidding. A method of procurement that employs competitive bids, public opening of bids, and award to the low responsive and responsible bidder.

Simplified acquisition procedures. An acquisition of supplies, nonpersonal services, or construction under the simplified acquisition threshold using the Request for Quotations process.

Solicitation. A document requesting bids, offers, or quotes from vendors. Solicitations include invitations for bids, Requests for Proposals, and Requests for Quotations.

Statement of work. A document that defines and describes the work the government organization requires the contractor to perform. Similar to specifications, purchase description, or work statement. A term used more in service contracts.

Supplemental agreement. A bilateral modification used to make negotiated equitable adjustments resulting from issuing a change order or reflecting other agreements of the parties modifying the terms of a contract.



Sample Market Research Report

RESOURCE C

SAMPLE MARKET RESEARCH REPORT

FIREWORKS DISPLAYS

Background

A fireworks display on the Mall in Washington, D.C., has been planned to commemorate the safe return of the women and men who served in the successful peacekeeping mission. The display is scheduled for June 27, 20xx. A day that will feature a large parade and ceremonies on the Mall will conclude with a 30–35 minute fireworks display in the evening.

The Contractor shall provide labor, material, and equipment for presentation of an innovative and attractive aerial fireworks display. The program objective is to create a spectacular, musical, continuous-fire aerial display visible to an audience viewing from many area vantage points not immediately adjacent to the discharge site. The government believes the Contractor should use as many high-bursting pieces as possible, allowing for appropriate layering and balance of the overall program with no perceptible breaks or gaps in the display.

Schedule

The fireworks display is scheduled to commence at 9:15 p.m. on June 27, 20xx, unless modified in writing by the Contracting Officer's Representative (COR) at the launch/discharge site.

In the event of inclement weather, the display will be rescheduled for June 28, 20xx. The decision to postpone the display will be made by the COR.

The contractor will be required to allow time for adjustments to the setup if required. All the mortar tubes shall be set up, fastened together, and any foundation sand in place by 11:00 a.m. on June 26, 20xx.

Potential Suppliers

The attached mailing list was developed using sources identified in the Thomas Register, Donnally Procurement Directory, and by contacting the National Park Service in Washington, D.C., and Walt Disney World in Florida.

Other display sources were identified by the following fireworks manufacturers:

- Illinois Fireworks Co., Inc.
P.O. Box 792
Danville, IL
- New Jersey Fireworks Mfg. Co.
P.O. Box 118
Vineland, NJ

- Burnett Fireworks Co., Inc.
3502-T N. Washington St.
P.O. Box 1743
Enid, OK
- Vitale Fireworks Manufacturer
P.O. Box 3
New Castle, PA
- Ohio Fireworks Manufacturing Company
Rock Hill Place
Bellaire, OH
- Elkton Sparker Co., Inc./M/D
P.O. Box F
North East, MD

Distinguishing Characteristics

Offeror's proposal shall focus on aerial display only; ground displays and set pieces shall not be considered, and no parachute shells of any type shall be allowed. The fireworks display shall include approximately 3,000–3,500 individual shells. Suggested numbers of shells are provided as follows. (These are to be regarded as guidelines; however, innovation and creativity on the part of contractor contributing to the enhancement of the program are encouraged.)

TABLE: SIZE AND NUMBER OF SHELLS

Shell Size	Approximate Number
10–12 inch shells	90–100
6–8 inch shells	1,800–2,100
3–6 inch salutes	450–530
4–5 inch shells and candles	600–700
3 inch shells—finale only	60–70

Market Prices

\$523,000 was allocated on the PR for this requirement. A telephone survey of prospective offerors revealed prices for a 30–35 minute display ranged from \$475,000 to \$550,000. The prices paid by the National Park Service increased approximately 3.5 percent annually for the past three years' Fourth of July ceremonies. They were:

- July 4, 20XX: \$487,000
- July 4, 20XX: \$503,000
- July 4, 20XX: \$521,000

The fireworks display to be used for the dedication ceremony will be similar in scope and length of time. Therefore, funding in the amount of \$523,000 is considered reasonable when compared to current market prices.

Trends in Supply and Demand

Prices appear to be most competitive during the July 4 time period. Unfortunately, this is the peak period and most companies have been booked a year in advance. The source list developed includes all firms that have indicated an interest in responding to the requirement.

The shells have been improved to lower the risk of injury. Qualified operators are required to take a safety course twice annually for which they receive a certificate for successful completion.

Commercial Terms

Most companies manufacture, import, and distribute fireworks, and the majority of sales have been on a firm-fixed-price basis. The companies provide insurance and furnish a performance bond equal to 100 percent of the contract price.

Proper storage of live loads and overall safety in conducting fireworks displays must be in accordance with the Fireworks Safety Act of 1988 and the National Fire Protection Association Standard 1123-1982, respectively.

Substitutions are not usually made unless approved by the customer at least 30 days prior to the date of the fireworks display. Failure to provide exact brand, size, and quantity of shell as submitted in final proposal will result in reduction in payment.

Deficiencies greater than 1 percent in the number, quality, and/or sizes of shells furnished usually result in nonpayment for said shells at the contract price plus assessment of damages.

The contractor is responsible for the complete setup, cleanup of the display, and supplying all necessary materials. The contractor will furnish qualified operators for setup, launch, and takedown and abide by all Federal, State, local, and Office of Parks & Recreation regulations that apply to pyrotechnics.

The contractor is responsible for cleanup of the launch/discharge site to include: cleanup of shell fragments, bits of fusing, and any hazardous material; and gathering sand from the discharge area into piles for later removal by the customer.

The customer normally furnishes:

1. Safety fence/rope.
2. Sand (maximum of 30 tons).
3. Supplemental site security when live loads are moved onto the firing site.

Concerns about Quality

The improved shells are being used by all offerors in accordance with the Fireworks Safety Act of 1988. There are fewer accidents at the larger, controlled fireworks displays since the passage of this law. However, 95 percent of fireworks-related accidents over the past five years happened to inexperienced individuals (children and unqualified, untrained adult consumers). Qualified operators are essential in this business. Therefore, companies have a responsibility to provide adequate training programs and are required by law to provide safety training courses.

The shells are tested by a performance detector sensor. The shells that do not meet the minimum performance standard are disposed of in accordance with company policy.

Acquisition History

This office has had no previous procurements for fireworks displays.

Fireworks Source List

Atlas Display Fireworks

15-T Hamilton Ct.

P.O. Box 371

Edmonds, WA 98020

Extravaganza, Inc.

191 Halethorpe Farms Rd.

Halethorpe, MD 21227

Bursting Light Display

1101 Southlawn Avenue

Dagsboro, DE 19930

Creative Fireworks Shows

5606-B General Washington Drive

Alexandria, VA 22306



Sample COR Work Plan

RESOURCE D

SAMPLE COR WORK PLAN

SAMPLE COR WORK PLAN

This sample is excerpted from the Federal Aviation Administration *Contracting Officer's Representative Handbook*.²⁶

²⁶ FAA 2012

APPENDIXA: COR Work Plan Sample

1. Contract

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

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

Contract Type: Fixed Price

Date of Award: December 29, 2010

2. Responsibilities Under Contract

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

3. Government Points of Contact

Terry O'Day, Contracting Officer

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

Jamie Frehand, Quality Assurance Specialist

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

4. Contractor

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

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

5. Files

Federal Contracting Administration 1000 First Street Capital City, DR 11777

6. Contractor's Scope of Work

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

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

7. Place of Performance

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

8. Contractor Reporting Requirements

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

9. Contractor Milestones

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

10. Previous Contracts

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

11. Potential Problem Areas

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

12. Monitoring

Contractor technical and schedule techniques to be used:

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

13. Documentation

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

14. Action Requirements

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

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



Sample Quality Assurance Surveillance Plan

RESOURCE E

SAMPLE QUALITY ASSURANCE SURVEILLANCE PLAN

SAMPLE QUALITY ASSURANCE SURVEILLANCE PLAN

CONTRACT NO. XYZ-00-1234

- I. **OBJECTIVE:** This Quality Assurance Surveillance Plan (QASP) is for janitorial services at four administrative offices and maintenance buildings at the agency office. This is a one-year contract with four additional option years.
- II. **COR/PROJECT INSPECTOR ASSIGNMENT:** COR: John P. Jones. Project Inspectors: Stuart Martha, Emma Sweeper, and P.T. Skrubs. Delegations on file.
- III. **QUALITY ASSURANCE DUTIES**

TABLE: QUALITY ASSURANCE DUTIES

Tasks and Critical Subtasks	Quality Standards	AQLs	Method of Monitoring	Incentives/Disincentives
Basic Cleaning Services	See SOW, paragraph 1.1	95% of all facilities are without customer complaints for the month.	See IV	See V
Basic Restrooms/ Locker Rooms Cleaning Services	See SOW, paragraph 1.2	95% of all facilities with rest rooms/locker rooms are without customer complaints for the month.	See IV	See V
Periodic Cleaning Services	See SOW, paragraph 1.3	95% of all facilities receiving periodic services are without customer complaints for the reporting period.	See IV	See V

IV. SURVEILLANCE METHODS

- Basic Cleaning Services; Basic Restroom/Locker Room Cleaning Services: Random sampling of all work items; twice weekly. Sample rooms/areas are to be identified using

commercially available random sampling software White Glove. Sampling results are to be provided to the COR at the end of each month.

- Period Cleaning Services: Random sampling, as above, within 24 hours of services being performed.
- In addition to randomly-received customer complaints, customer survey forms will be sent, electronically, five days prior to the end of each month; due back to the COR by the end of the month. Customer surveys will be completed using Form 123, copy attached.
- A Notice of Noncompliance will be used for all items not in compliance with standards. The Notice will be hand-delivered to the Contractor, acknowledged and discussed. Recurring problems should generate a meeting to discuss performance problems and solutions; meeting date, time and location to be arranged between the CO, COR, and Contractor.
- In addition to meetings, as needed, to discuss performance problems, quarterly meetings will be held (CO, COR, and Contractor) to summarize and discuss past and future performance issues.

V. INCENTIVES/DISINCENTIVES

- **Incentives:** In addition to government requirements regarding option year renewal, option years will not be considered unless the Contractor's performance is at or above all AQLs, all tasks, at the end of each option period. A good to excellent performance rating (given annually) is dependent on the contractor's performance at or above the AQLs for all tasks, at the end of the contract period. A Share-In-Savings provision (see section XYZ of the contract) is included in this contract to reward the contractor for cost-savings proposals reviewed and accepted by the government.
- **Disincentives:** Work that does not meet standards shall be reworked, where possible. Where not possible, a price reduction will be taken to reflect the value of the service lost, based on the task value schedule form attached. Consistent failures may be grounds for default termination action.

VI. OTHER CONTRACT ADMINISTRATION DUTIES: COR shall designate and supervise the inspection team. COR shall arrange for delivery of government-furnished property as identified in the contract, check the adequacy of the Contractor's Safety Plan and Quality Control Plan and shall process monthly partial payments.

VII. CONTRACT CLOSEOUT: At the end of each contract period (each year), the COR shall prepare a Contractor performance evaluation. At contract completion (four years), the COR shall obtain a release of claims (form), process the final payment, prepare a final Contractor performance evaluation, coordinate the return and/or disposal of remaining Government-furnished property and identify any outstanding issues needing resolution prior to contract closeout.



Sample Statement of Work

RESOURCE F

SAMPLE STATEMENT OF WORK

PERFORMANCE WORK STATEMENT FOR CUSTODIAL SERVICES

1. Scope of Work

Except as noted under Government-furnished Property, the Contractor shall provide all management, tools, equipment, labor, supplies, and incidentals necessary to ensure custodial services are performed at Federal Complex XYZ, Anytown, USA, in a manner that will maintain a satisfactory facility condition and present a clean, neat, and professional appearance. This complex includes four buildings (administrative and maintenance). This contract will cover one year and includes options for renewal for three additional years, one year at a time.

1.1. Basic Cleaning Services

The Contractor shall accomplish all cleaning tasks to meet the requirements of this Performance Work Statement (PWS). The minimum cleaning frequencies/schedule are established in Appendix A, Estimated Workload Data, and Appendix B, Complex Map/Building Locator. [Appendices are not included with this class exercise.]

1.1.1. Maintain Floors. All floors, except carpeted areas (see 1.1.7.), shall be swept, dust mopped, damp mopped, wet mopped, dry buffed, and spray buffed, as needed, to ensure they have a uniform, glossy appearance and are free of dirt, debris, dust, scuff marks, heel marks, other stains and discoloration, and other foreign matter. Baseboards, corners, and wall/floor edges shall also be cleaned. All floor maintenance solutions shall be removed from baseboards, furniture, trash receptacles, etc. Chairs, trash receptacles, and other movable items shall be moved to maintain floors underneath these items. All moved items shall be returned to their original and proper position.

1.1.2. Remove Trash. All trash containers shall be emptied and returned to their initial location. Boxes, cans, and papers placed near a trash receptacle and marked "TRASH" shall be removed. Any obviously soiled or torn plastic trash receptacle liners shall be replaced. The trash shall be deposited in the nearest outside trash collection container. Trash receptacles shall be left clean, free of foreign matter, and free of odors.

1.1.3. Public Ashtrays and Urns. All public ashtray urns shall be emptied. Ashtrays shall be clean and free of ashes, odor, and stains. Clean all public urns and replace sand. Urns shall be repainted when necessary to maintain clean appearance.

1.1.4. Interior Glass/Mirrors. All interior glass, including glass in doors, partitions, walls, display cases, directory boards, etc. shall be cleaned. There shall be no tract of film, dirt, smudges, water, or other foreign matter.

1.1.5. Drinking Fountains. All drinking fountains (including the orifices, drain, and exterior surfaces) shall be cleaned and disinfected, and metal surfaces polished. Drinking fountains shall be free of streaks, stains, spots, smudges, scale, and other obvious soil.

1.1.6. Stairways. All floor surfaces shall be cleaned in accordance with paragraph 1.1.1 or 1.1.7, as appropriate for floor covering. Grease and grime shall be removed from stair guards, handrails, and baseboards. Contractor shall remove all marks, dirt, smudges, scuffs, and other foreign matter from adjoining stairwell walls to provide or maintain a clean, uniform appearance.

1.1.7. Carpets. Carpeted areas shall be vacuumed. After vacuuming, the carpeted area shall be free of all visible dirt, debris, litter, and other foreign matter. Any spots shall be removed by carpet manufacturer's approved methods as soon as noticed. All tears, burns, and raveling shall be brought to the attention of the Contracting Officer's Representative (COR). Area and throw rugs are included to receive this service.

1.1.7.1. Clean Carpets. Spot clean or shampoo dirty carpets over an area of 2 square feet or less. Spots must be removed immediately.

1.1.8. Vacuum and Clean Floor Mats. Vacuum and clean interior and exterior floor mats. After vacuuming or cleaning, mats shall be free of all visible lint, litter, soil, and other foreign matter. Soil and moisture underneath mats shall be removed, and mats returned to their normal location.

1.1.9. General Spot Cleaning. Perform spot cleaning on a continual basis. Spot cleaning includes, but is not limited to, removing or cleaning smudges, fingerprints, marks, streaks, spills, etc. from washable surfaces of all walls, partitions, vents, grillwork, doors, door guards, door handles, pushbars, kickplates, light switches, temperature controls, and fixtures. After spot cleaning, the surface shall have a clean, uniform appearance, free of streaks, spots, and other evidence of soil.

1.1.10. General Dusting. All horizontal surfaces must be dusted or cleaned to eliminate dust collection.

1.2. Basic Restrooms/Locker Rooms Cleaning Services

The Contractor shall accomplish all cleaning tasks to meet the requirements of this PWS and the Service Delivery Summary (SDS). [Exercise note: The SDS details tasks and the frequency of contract performance for those tasks. The SDS is not included for this class exercise.]

1.2.1. Clean and Disinfect. Completely clean and disinfect all surfaces of sinks, toilet bowls, urinals, lavatories, showers, shower mats, dispensers, plumbing fixtures, saunas, partitions, dispensers, doors, walls, and other such surfaces using a germicidal detergent. After cleaning, receptacles will be free of deposits, dirt, streaks, and odors. Disinfect all surfaces of partitions, stalls, stall doors, entry doors (including handles, kickplates, ventilation grates, metal guards, etc.), and wall areas adjacent to wall-mounted lavatories, urinals, and toilets.

1.2.2. Descale Showers, Toilet Bowls, and Urinals. Descaling shall be performed monthly as a minimum and as often as needed to keep areas free of scale, soap films, and other deposits. After descaling, surfaces shall be free from streaks, stains, scale, scum, urine deposits, and rust stains.

1.2.3. Sweep and Mop Floor. After sweeping and mopping, the entire floor surface, including grout, shall be free from litter, dirt, dust and debris. Grout on wall and floor tiles shall be free of dirt, scum, mildew, residue, etc. Floors shall have a uniform appearance without streaks; swirl marks; detergent residue; or any evidence of soil, stain, film, or standing water. Movable items shall be

tilted or moved to sweep and damp mop underneath. Floors shall be stripped, scrubbed, waxed, etc. as necessary to maintain sanitary conditions and a clean, uniform appearance.

1.2.4. Stock Restroom Supplies. Contractor shall ensure restrooms are stocked sufficiently so that supplies, including soap for the soap dispensers, do not run out. Supplies shall be stored in designated areas. No overstocking shall be allowed. If supplies run out prior to the next service date, Contractor shall refill within 24 hours of notification.

1.3. Periodic Cleaning Services

1.3.1. Strip, Scrub, Seal, and Wax Floors. Strip, scrub, seal, and wax floors as necessary to maintain a uniform glossy appearance. A non-skid wax is required. A uniform glossy appearance is free of scuff marks, heel marks, wax buildup, and other stains and discoloration.

1.3.2. Clean Interior Windows. Clean glass surfaces that are over 7 feet high. After surfaces have been cleaned, all traces of film, dirt, smudges, water, and other foreign matter shall be removed from frames, casings, sills, and glass.

1.3.3. Clean Exterior Windows. Windows are the glass surfaces that are an integral part of the outer wall of the building. Window screens shall be removed, cleaned, and replaced as needed. After windows have been cleaned, exterior frames, casings, sills, and glass shall be free of all traces of film, dirt, smudges, water, and other foreign matter.

1.3.4. Clean/Shampoo Carpets. All carpets shall be cleaned in accordance with standard commercial practices. A heavy-duty spot remover may be required in heavily soiled areas. After shampooing, the carpeted area will be uniform in appearance and free of stains and discoloration. All cleaning solutions shall be removed from baseboards, furniture, trash receptacles, chairs, and other similar items. Chairs, trash receptacles, and other items shall be moved to clean carpets underneath and returned to their original location.

1.4. Emergency or Special Event Cleaning Services

Upon notification, the Contractor shall perform emergency or special event cleaning required in any building, area, or room covered under this contract. The Contracting Officer shall order cleaning services through issuance of a delivery order for the appropriate and required work task(s).

Contractor shall begin emergency work, as determined by the Contracting Officer, within one hour of notification, which may be verbal. The Contracting Officer or designated representative will notify the Contractor as soon as a special event requirement is known, but no less than 24 hours prior to the event. Completion schedule shall be determined for each delivery order.

2. Performance Requirements Summary

The Contractor service requirements are summarized into performance objectives that relate directly to mission essential items. The performance standards briefly describe the minimum acceptable levels of service required for each requirement. These thresholds are critical to mission success.

TABLE: PERFORMANCE STANDARDS

Performance Objective	Performance Standard	SOW Para	Performance Threshold
Basic Cleaning Services	Floors, baseboards, corners, and wall edges are free of dirt, dust, and debris. Trash is empty; plastic liners are in good condition. Trash containers are free of odors and visible dirt. Trash is emptied into outdoor trash collection container. Ash containers are emptied and free of ashes, odors, and stains. Glass and mirrors have no traces of film, dirt, smudges, or water. Drinking fountains are disinfected and free of streaks, stains, spots, smudges, scale, and other deposits. Stairways are free of dirt, debris, marks, smudges, scuffs, and other foreign matter. Carpets are free of dirt, debris, litter, and other foreign matter. Dust is not visible.	1.1.	95% of all facilities are without customer complaints for the month
Basic Restrooms/ Locker Rooms Cleaning Services	Restrooms and locker rooms are disinfected and free of dirt, deposits, streaks, and odors. Showers are disinfected and free of soap films, scum, and other deposits. Toilets and urinals are disinfected and free of scale, stains, scum, and other deposits. Floors are free of litter, dirt, dust, and debris. Supplies are adequate until next service.	1.2.	95% of all facilities with rest rooms/locker rooms are without customer complaints for the month
Periodic Cleaning Services	Floors have a glossy uniform appearance free of scuff marks, heel marks, wax buildup, and other stains and discoloration. Windows are free of film, dirt, smudges, water, and other foreign matter. Carpets are free of stains and discoloration.	1.3.	95% of all facilities receiving periodic services are without customer complaints for the reporting period

3. Government-Furnished Property and Services

- Utilities
- Office space for the Contractor's use
- Closet space in all buildings
- Keys and combinations for entry access to buildings being serviced
- Paper hand towels, toilet paper, and hand soap
- HEPA vacuum system
- Industrial dumpsters at locations shown in Appendix B [not included with this class exercise]
- Insect and rodent control
- Entry and/or escort service to secure/controlled locations

4. General Information

4.1. Quality Control

The Contractor shall develop and maintain a quality program to ensure custodial services are performed in accordance with commonly accepted commercial practices. The Contractor shall

develop and implement procedures to identify, prevent, and ensure nonrecurrence of defective services.

4.2. Quality Assurance

The government will periodically evaluate the Contractor's performance in accordance with its quality assurance surveillance plan (QASP).

4.3. Government Remedies

The Contracting Officer shall follow FAR 52.212-4(a), Contract Terms and Conditions—Commercial Items, for Contractor's failure to perform satisfactory services or failure to correct nonconforming services. All re-performed work shall be completed within 24 hours of notification or prior to next scheduled cleaning, whichever is the least amount of time.

4.4. Service Schedules

Work shall be performed in a manner to create minimum disturbance or inconvenience to the users of the facility excluding recognized holidays, which include New Year's Day, Martin Luther King Jr. Day, Presidents Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, Christmas Day, and Good Friday.

The Contractor shall develop and maintain a service schedule for each building listed in Appendix B [not included with this class exercise]. The service schedule shall indicate the days/hours of the week and all tasks. The service schedule shall be submitted five days prior to the end of each month for Government review and approval. The Contractor shall comply with the submitted, approved schedule.

4.5. Security Requirements

4.5.1. Employees. The Contractor shall not employ any illegal alien and must comply with DHS preemployment checks. The Contractor shall be responsible for all individual and vehicle passes issued to employees by the Government.

4.5.2. Identification. The Contractor shall provide each employee with an identification badge that shall include the employee's name, employee's photograph, and Contractor's company name. Identification shall be available prior to assignment and shall be worn or attached to the outer garment at all times while on the installation.

4.5.3 Key Control. The Contractor shall establish and implement methods of ensuring that all keys issued to the Contractor by the Government are not lost, duplicated, misplaced, or used by unauthorized persons.

4.6. Special Requirements

4.6.1. The Contractor shall be responsible for obtaining all necessary passes, badges, and decals to perform work requirements.

4.6.2. Contract Manager. Contractor shall provide an onsite Contract Manager, who shall be responsible for all contract requirements and who fully represents the Contractor on all matters relating to the daily operation of this contract. The Contract Manager cannot also be designated the Contractor's QC person (see 4.6.3.). The Contract Manager shall read, write, speak, and

understand English well enough to effectively communicate with all personnel and building occupants. The Contract Manager's name and contact information shall be provided by the Contractor, in writing, to the Contracting Officer at the post-award conference.

4.6.3. Quality Control (QC). The Contractor shall provide a full-time, independent QC person whose sole responsibility is to implement and monitor the QC plan. The QC person cannot also be designated as the Contract Manager (see 4.6.2.). The name and contact information of the QC person shall be provided by the Contractor, in writing, to the Contracting Officer at the post-award conference.



Sample QASP Template

RESOURCE G

SAMPLE QASP TEMPLATE

SAMPLE QASP TEMPLATE

- I. Objective
 - This quality assurance surveillance plan (QASP) is for:
 - Identify project and location
- II. COR/Project Inspector Assignment
 - Identify who will perform quality assurance for the government. Include the experience/technical level or qualifications necessary for the person assigned COR duties (i.e., “must be a Level II COR”).
- III. Quality Assurance Duties
 - Identify the specific contract tasks from the PWS that the COR will monitor. The PRS, following, is typically included in the QASP to identify these tasks and provide the COR an overall look at requirements and a starting point for administration.

TABLE: QASP SAMPLE TEMPLATE

Tasks and Critical Subtasks	Quality Standards/Acceptable Quality Levels	Method of Monitoring	Incentives/Disincentives

- IV. Surveillance Methods
 - Expand the “Method of Monitoring” section from the PRS. Include inspection forms and procedures to be used, necessary tools and equipment (i.e., specific test equipment), performance evaluation meetings with the contractor, frequency of inspections and tests, etc.).
- V. Incentives/Disincentives
 - Expand the “Incentives/Disincentives” section from the PRS:
 - Address unacceptable performance and, if applicable, how long the contractor will be given to correct deficiencies
 - Address the course of action for the COR should the contractor fail to correct deficiencies



Presentation Slides

RESOURCE H

PRESENTATION SLIDES

Intermediate COR Refresher

1

Course Objectives

- ✓ Discuss the purpose, process, and the role and responsibilities of the COR as a member of the market research team
- ✓ Identify the role and responsibilities of the COR related to the development of the solicitation
- ✓ Define best value and discuss the processes to achieve it
- ✓ Identify COR responsibilities and activities for the postaward orientation and development of the COR Work Plan
- ✓ Discuss the government's method of assuring quality through inspection and the COR's role
- ✓ Explain the COR's role and responsibilities in reviewing contractor invoices and recommending payment
- ✓ Explain the COR's role in addressing contract remedies for different situations
- ✓ Explain the role of the COR in evaluating a contractor's performance and contract closeout

2

2

Market Research

3

3

1

Lesson Objectives

After completing this lesson, you will be able to:

- ✓ Describe techniques for market research
- ✓ Identify price and technical considerations to assist in market research
- ✓ Describe the COR's role in developing market research reports

4

4

Market Research

- The significance of market research
- The market research team
- Techniques for market research
- Price and technical considerations to assist in market research
- Market research reports

5

5

Benefits of Market Research

Benefits that may accrue from performing thorough market research include:

- Determining whether the item or service is commercially available
- Identifying sources and their size status
- Understanding alternatives available to fulfill the government's requirement
- Providing insight regarding potential price expectations
- Minimizing the risk of doing business, for both parties
- Uncovering and identifying potential problems
- Keeping up with latest technology and market trends
- Providing an understanding of current market conditions and practices
- Assisting overall acquisition planning
- Helping to develop, validate, and refine the requirements document

6

6

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Market Research Requirements

According to the regulation, market research must be conducted, as appropriate to the circumstances, before:

- Developing new requirements documents
- Soliciting offers for acquisitions with an estimated value in excess of the simplified acquisition threshold (SAT)
- Soliciting offers for acquisitions with an estimated value less than the SAT when adequate information is not available and the circumstances justify its cost
- Soliciting offers for acquisitions that could lead to a bundled contract
- Awarding a task or delivery order under an indefinite-delivery, indefinite-quantity contract for a noncommercial item in excess of the SAT

7

7

The Market Research Team

- COR
- End users
- Program or project managers
- Contract specialists
- Others



8

8

Discussion

Have you ever served on, or contributed information to, a market research team? If so, what type of information did you provide?

9

9

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Market Research Timing

Market research has two phases:

1. Strategic market research.
 - Ongoing process
 - Independent of any particular requirement
 - Activities performed on a continuing basis to stay abreast of product/service developments
2. Tactical market research.
 - Response to a specific requirement for a product or service
 - Focuses on details

10

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Market Research Techniques

Techniques to promote early exchanges of information include:

- Contacting knowledgeable individuals in government and industry
- Reviewing results of recent market research reports for similar items
- Publishing formal requests for information (RFIs)
- Querying information sources or databases
- Obtaining source lists from other agencies or associations
- Reviewing catalogs and product literature
- Conducting interchange meetings or holding presolicitation conferences
- Conducting site visits
- Issuing presolicitation notices
- Attending industry symposiums, trade shows, etc.

11

11

Conducting Market Research—Questions to Ask

- Historical acquisition information
- Price-related information
- What techniques will you use to gather the information?

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12
4

The Market Research Report

Benefits current
and future
acquisitions



13

13

Exercise: Market Research

Directions

1. As directed by your facilitator, work individually or in groups.
2. Address the questions as they relate to the market research required for your project.

14

14

Exercise: Lesson 1 Quiz

Directions

Answer the quiz questions that follow.

15

15
5

16

[illegible]

17

- ✓ Identify various formats the requirements document can take
- ✓ Discuss the purpose of the requirements document
- ✓ Identify the COR's role in preparing the requirements document
- ✓ Discuss contract type selection considerations
- ✓ Identify parts of the solicitation and how those parts, including the requirements document, communicate the government's needs

18

- [illegible]

Statement of Work (SOW)

The SOW is made up of two components:

- Statement of objectives (SOO)
- Performance work statement (PWS)

19

19

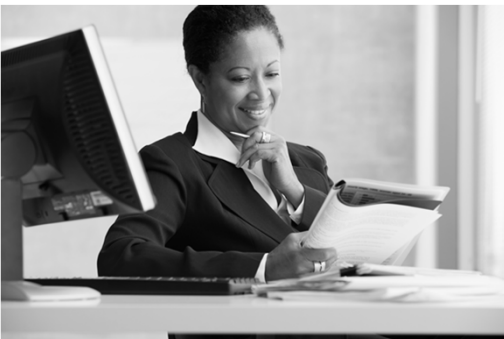
Purpose of Requirements Documents

- Communicate effectively
- Provide a basis of estimate to the contractor
- Set performance standards and contractual baseline

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20

Communicate Effectively



21
7

Planning and Preparation of the Requirements Document

1. Think the project through.
2. Model it with a work breakdown structure.
3. Choose the requirements document type.
4. Choose the contract type.
5. Consider options.

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Choose the Requirements Document Type

- 1 Documents mandated by law
- 2 Performance – oriented documents
- 3 Detailed design – oriented documents
- 4 Government issued standards, specifications, etc. outside defense or federal series

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Choose the Contract Type



- Fixed-price contracts
- Cost-reimbursement contracts
- Time-and-materials (T&M) and labor-hour contracts
- Indefinite-delivery contracts
- Options

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24
8

Discussion

Why must cost-reimbursement contracts be monitored more closely than fixed-price contracts?

25

25

The Solicitation

- Uniform contract format
- Relationship among sections C, L, and M

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Use the Uniform Contract Format

PART I The Schedule	A. Solicitation/Contract Form B. Supplies or Services and Prices/Costs C. Description/Specifications of SOW D. Packaging and Marking	E. Inspection and Acceptance F. Deliveries or Performance G. Contract Administration Data H. Special Contract Requirements
PART II Contract Clauses	I. Contract Clauses	
PART III Documents, Exhibits, Other Attachments	J. List of Attachments	
PART IV Representations and Instructions	K. Representations, Certifications, and Other statement of offerors or respondents L. Instructions, conditions, and notices to offerors or respondents M. Evaluation Factors for Award	

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27
9

Exercise: Prepare a Performance Requirements Summary

Directions

1. Work in groups to prepare a performance requirements summary (PRS) for a contract with a performance-oriented requirements document (typically called a performance-based contract).
2. After group review, address the following items:
 - Select a project for this exercise and describe the performance requirements and/or end result you expect the contractor to achieve
 - Use the PRS form provided to further describe your requirements
3. Be prepared to share the experience of this exercise with other groups.

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Exercise: Wright Brothers

Directions

1. Review the Wright Brothers Performance-Based Specification. This solicitation, dated 1907, fits the requirements of today's performance-based contract.
2. After group review, use the Performance Requirements Summary Template provided to identify the performance-based elements of this solicitation.
3. Answer the question about the acquisition method.
4. Be prepared to share the experience of this exercise with other groups.

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Exercise: Lesson 2 Quiz

Directions

Answer the quiz questions that follow.

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Best Value—Proposal Evaluation

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Lesson Objectives

After completing this lesson, you will be able to:

- ✓ Define best value and the importance of teamwork in the acquisition process
- ✓ Discuss the importance of appropriate evaluation factors and the role the COR plays in their selection
- ✓ Discuss FAR part 15 competitive negotiation methods to achieve best value
- ✓ Describe the differences in evaluation factors when employing simplified acquisition procedures
- ✓ Explain the differences in evaluation for orders against multiple award contracts
- ✓ Discuss the merits of various rating systems
- ✓ Discuss the purpose of the technical evaluation panel and the role the COR might play as evaluator
- ✓ Explain what and when preaward, award, and postaward notifications are required

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Best Value Acquisition

- Vision of the FAR
 - Deliver on a timely basis the best value product or service to the customer
 - Maintain the public's trust
 - Fulfill public policy objectives
- The role of teamwork

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Developing Evaluation Factors

Evaluation factors and significant subfactors must:

- Represent the key areas of importance and emphasis to be considered in the source selection decision
- Support meaningful comparison and discrimination between and among competing proposals



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Competitive Negotiation Approaches

- Tradeoff process
- LPTA process

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Simplified Acquisition Procedures

- Designed to reduce administrative costs and promote efficiency and economy in contracting
- Formal evaluation processes and procedures used in competitive negotiations under FAR part 15 are not mandatory

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Orders Under Multiple-Award Contracts

- All awardees of multiple-award, indefinite-delivery contracts are given a fair opportunity to be considered for each task order or delivery order exceeding \$3,500 (except for statutory exceptions listed at FAR 16.505(b)(2))
- In developing ordering procedures, the FAR states the CO should consider past performance, including quality, timeliness, and cost control for task and delivery order selections.

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Developing Rating Systems

- Adjectival
 - Adjectives (such as excellent, good, satisfactory, marginal, and unsatisfactory) indicate the degree to which the offeror's proposal meets the standard for each factor
 - Can be used independently or in connection with other rating systems
- Color coding
 - Uses colors to rate proposals
- Numerical
 - Assigns points (such as 0–10 or 0–100) to rate proposals
 - Allows for more precise distinctions of merit due to more rating levels
 - Drawbacks:
 - Apparent precision may obscure the strengths, weaknesses, and risks that support the numbers

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Discussion

Why is it important to include narratives with adjectival, color, and numerical rating systems?

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The Technical Evaluation Panel

- Role of a technical evaluation panel (TEP) varies depending on whether it is a tradeoff versus lowest price technically acceptable (LPTA) proposal
- TEPs are typically made up of an odd number of members to permit coming to a consensus rating and prohibit ties

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The Technical Evaluation Approach

Steps to ensure a comprehensive review:

1. Read the SOW.
2. Read each offeror's entire proposal.
3. Read and understand the evaluation factors and subfactors.
4. Individually evaluate and rate each proposal.
5. Develop a TEP consensus rating.
6. Prepare a TEP report (chairperson).
7. Participate in discussions where appropriate in the process.

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Importance of the TEP

Technical evaluation panel:

- Members are selected at the discretion of the agency
- COs have discretion to appoint a new TEP

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Discussions

- Persuade offerors to revise their proposals in ways that will optimize the result for the government based on the requirement and evaluation factors in the solicitation
- Should be tailored to each offeror's proposal and focus on strengths, weaknesses, deficiencies, and other aspects of the proposal
- May be oral, written, or a combination of both

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Making Preaward, Award, and Postaward Notifications

- Unsuccessful offerors must be notified promptly, and in writing, by the CO
- Notifications are made before or after the contract is awarded, depending on when the offeror is excluded

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Notifications under FAR part 15

- FAR 15.503(a) Preaward notices
- FAR 15.503(b) Postaward notices

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Debriefings under FAR part 15

The purposes of a debriefing are to:

- Explain the rationale for exclusion from the competition
- Instill confidence in the offeror that they were treated fairly
- Assure the offeror that proposals were evaluated according to the solicitation and applicable laws and regulations
- Identify weaknesses in the offeror's proposal, so the offeror can better prepare proposals in future government acquisitions
- Reduce misunderstandings and protests
- Give the offeror an opportunity to provide feedback regarding the solicitation, discussions, evaluations, and the selection process

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Debriefing Simplified Acquisitions under FAR part 13

Upon request, the CO furnishes the following (which are the same as for competitive negotiation, FAR part 15, awards):

- Number of offerors solicited
- Number of proposals received
- Name and address of each awardee
- The items, quantities, and any stated unit prices for each award
- General reasons why the proposal was not accepted

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Exercise: Ranking Evaluation Factors

Directions

1. As directed by your facilitator, work individually or in groups.
2. Select a project for which you may be using tradeoff for selection of a contractor.
3. Address the following questions as they relate to developing evaluation factors for the acquisition.

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Exercise: Develop a Rating System

Directions

1. As a group, choose one of the evaluation factors (other than past performance) from Exercise: Ranking Evaluation Factors.
2. Develop a five-step rating system for that factor.
 - Your rating system can be numbers, colors, or adjectives
 - Supporting narratives for each step are also required
 - Whatever system you use, begin by describing the acceptable level of performance for that factor, then describe levels above and below that level

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Exercise: Serving on a TEP

Directions

Working in groups, you will participate as a TEP. Your responsibilities are to:

1. Review the project information below.
2. Use the worksheet in this exercise to individually evaluate technical proposals, using the evaluation factors contained within this exercise.
 - The technical proposals for this exercise consist of summaries from five offerors
 - Identify strengths, weaknesses, risks, and deficiencies of each proposal
3. Develop a group consensus rating for each proposal (in each factor).
4. Provide an abbreviated version of a TEP report.
5. Make award decision:
 - Decide on award with or without discussions
 - Develop the competitive range and prepare discussion topics, if needed

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Exercise: Review/Analyze a GAO Decision

Directions

1. Work in groups.
2. Review the GAO decision regarding technical evaluation factors.
3. Address the questions that follow.

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Exercise: Lesson 3 Quiz

Directions

Answer the quiz questions that follow.

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Postaward Orientation and Contracting Officer's Representative Work Plan

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Lesson Objectives

After completing this lesson, you will be able to:

- ✓ Identify the COR's responsibility in preparing for the postaward orientation (including a preliminary meeting with the CO), and the COR's role during the postaward orientation
- ✓ Identify the COR's responsibility in preparing the COR work plan and carrying it out during contract administration

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The Postaward Orientation

FAR part 42, Contract Administration and Audit Services, gives some guidance on the postaward orientation. A postaward orientation aids both government and contractor personnel in:

- Achieving a clear and mutual understanding of all contract requirements
- Identifying and resolving potential problems

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Preparations for a Postaward Conference

The CO in charge of deciding whether a conference is needed for the postaward orientation is responsible for:

- Establishing the time and place of the conference
- Preparing the agenda when necessary
- Notifying appropriate government representatives (e.g., contracting/contract administration office) and the contractor
- Designating or acting as the chairperson
- Conducting a preliminary meeting of government personnel
- Preparing a summary report of the conference

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COR's Role in a Postaward Orientation

- COR's postaward orientation tasks:
 - Develop a discussion paper for the CO's preliminary briefing
 - Participate in the CO's preliminary briefing
 - Participate in the orientation
 - Review a report of the post-award orientation
 - Complete assigned action items
- COR's general approach for the postaward orientation:
 - Preparation
 - Participation
 - Follow up

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The Contracting Officer's Representative Work Plan

When preparing a work plan, the COR should:

- Include administrative information
- Consider historical factors
- Include the techniques and frequencies for monitoring the contract
- Include how performance will be documented
- Identify areas of concern or conflict

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QASP: Performance Requirements Summary

The PRS part of the QASP typically includes:

- Identification of the overall contract requirement(s)
- Identification of tasks and subtasks
- Performance standards
- Acceptable quality levels
- Method(s) of monitoring
- Positive/negative incentives—tied to performance

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Exercise: Prepare for a Postaward Orientation

Directions

1. Working in groups, prepare an agenda for a postaward orientation and answer related questions.
2. Review the project and related PRS developed in Exercise: Prepare a Performance Requirements Summary.
3. Develop an agenda for a postaward orientation for your project.
4. Decide what format the postaward orientation should take, either oral or written.
5. If your group decides the format should be oral, address the following:
 - Where will the conference take place?
 - Who will lead the conference?
 - As the COR, what role and responsibilities do you have at the conference?

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Exercise: Prepare for and Conduct a Postaward Conference (Alternate)

Directions

1. Working in groups, prepare for and conduct a postaward conference. This is a role-playing exercise for which your facilitator will organize groups—government teams and contractor teams—and assign roles.
2. Review the sample statement of work (SOW).
3. Review the additional information provided in this exercise.
4. Prepare for the postaward conference by developing an agenda and assigning roles and responsibilities as necessary.
5. Conduct the postaward conference, documenting the meeting (in outline format). Each government team will meet with a contractor team for the postaward orientation.
6. Be prepared to share the experience of this exercise with other groups.

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Exercise: Develop a QASP (COR Work Plan)

Directions

1. Work in groups to prepare a QASP.
2. Review your project and postaward orientation notes from Exercise: Prepare for a Postaward Orientation.
3. Develop a QASP using the Sample QASP Template. As you do not have a complete SOW for your project, you will need to be creative.
4. Be prepared to share the results of this exercise with other groups.

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Exercise: Develop a QASP (Alternate)

Directions

1. Work in groups to prepare a QASP.
2. Review the following information:
 - Sample Statement of Work
 - Sample QASP Template
 - Notes from the postaward conference from Exercise: Prepare for and Conduct a Postaward Conference (Alternate) and related discussions
 - Contract-specific information in this exercise
3. Be prepared to share the results of this exercise with other groups.

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Exercise: Lesson 4 Quiz

Directions

Answer the quiz questions that follow.

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Quality Management and Inspection

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Lesson Objectives

After completing this lesson, you will be able to:

- ✓ Define how the government assures quality through inspection
- ✓ Discuss the different types of quality requirements
- ✓ Explain the principles related to inspection

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Determining Quality

- **Inspection:** Examining and testing supplies or services to determine whether they conform to contract requirements
- **Acceptance:** The act of the government assuming ownership



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Purpose and Extent of Inspection

The government usually makes an inspection determination after considering several factors:

1. The integrity and reliability of the contractor as a quality producer.
2. The adequacy of the contractor's inspection system, which includes incoming material, lab testing, in-process inspection, end-item inspection, packaging, packing, crating, and marking.
3. Previous government experience with the contractor.
4. The nature and value of the item or service involved.

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Contract Quality Requirements

- Types of quality requirements:
 - Government reliance on inspection by the contractor
 - Inspection requirement
- The government's right to inspect
- Methods of inspection

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Methods of Inspection

- Random sampling
- Periodic sampling
- Trend analysis
- Customer feedback
- Third-party audits

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Principles Related to Inspection

- Government has latitude in choosing inspection methods
- Unless otherwise stated, the contractor may choose its inspection methods

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Exercise: Inspection Clause Application

Directions

1. Working individually or in groups, address the following as they relate to inspection of the contractor's work. The resource Sample COR Delegation of Authority includes inspection clauses for your reference in completing the exercise.
2. Choose a project (either service or construction), examine the applicable inspection clause, and examine the sample delegation of authority. Using the applicable clause and sample delegation, determine the rights of the government.
 - For example, it is clear the government has the right to inspect—this is the COR's or inspector's job. The government has other rights under the inspection clause; you will need to know those rights to complete this exercise.
3. List your project and the applicable inspection clause.
 - Your project:
 - Applicable inspection clause:
4. Answer the following questions. If other FAR clauses also address the situation, list those clauses with your answer.

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Exercise: Inspection Scenarios

Directions

1. Working in groups, review the scenario(s) assigned by your facilitator.
2. Use the information in this topic and, if necessary, the applicable clause(s) to answer the questions following each scenario below. Clauses may include the applicable inspection clause from the previous exercise and other applicable FAR clauses.
3. Be prepared to discuss your answers with the class.

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Exercise: Lesson 5 Quiz

Directions

Answer the quiz questions that follow.

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Invoice and Payment

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Lesson Objectives

After completing this lesson, you will be able to:

- ✓ Identify the COR's role and responsibilities in reviewing contractor invoices and recommending payment

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The Role of Payment

As a COR, it is important that you know the answers to the following questions:

- What payment clause is in the contract?
- What are the payment requirements of the contract?
- What are the invoicing requirements of the contractor after performing work?
- What are the procedures used by the agency to process the payment?

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Commercial Item Contracts

- Items accepted
- Prompt payment
- Electronic Funds Transfer (EFT)
- Discount
- Overpayments
- Interest

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Service and Supply Contracts— Noncommercial



- FAR 52.232-1
 - Payment upon submission of a proper invoice
 - Supplies or services accepted
 - Partial payments allowed

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Construction Contracts—Noncommercial

FAR 52.232-5

- Progress payments
- Materials and preparatory work
- Certification
- Refunds
- Retention
- Title to property and work
- Payment for bond premiums
- Final payment

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Other Payment Clauses

The FAR contains other specific payment clauses that are designed for several other types of contracts, such as:

- FAR 52.232-2, Payments under Fixed-Price Research and Development Contracts
- FAR 52.232-3, Payments under Personal Services Contracts
- FAR 52.232-4, Payments under Transportation Contracts and Transportation-Related Services Contracts
- FAR 52.232-7, Payments under Time-and-Materials and Labor-Hour Contracts
- FAR 52.232-10, Payment under Fixed-Price Architect-Engineer Contracts

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Prompt Payment

The appropriate prompt payment clauses in the FAR are:

- 52.212-4(i), Payment (Contract Terms and Conditions—Commercial Items)
- 52.232-25, Prompt Payment
- 52.232-26, Prompt Payment for Fixed-Price Architect-Engineer Contracts
- 52.232-27, Prompt Payment for Construction Contracts

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Payment Problems

Typical problems with invoices that contribute to a slow payment are:

- Invoice for items not yet furnished
- Invoice for work that has been rejected and not yet corrected
- Invoice for defective work and failing to include the agreed-upon deduction
- Invoice for work not yet performed
- Invoice not containing proper contract number and work item information
- Invoice sent to the improper location
- Invoice sent timely to proper locations, but government slow in processing
- Invoice lacks EFT or other information to transmit payment
- Discount or other invoice terms differ from the contract
- Contractor taxpayer information number (TIN) missing

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Exercise: Payment Situations

Directions

1. Working in groups as assigned by your facilitator, use the materials in this topic to address the following situations.
2. Discuss what actions you, as the COR, would take as they relate to payment.
3. Address actions for the immediate problem and actions you can take to eliminate or reduce this type of problem in the future.
4. Be prepared to share your answers with the class.

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Exercise: Lesson 6 Quiz

Directions

Answer the quiz questions that follow.

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Remedies

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Lesson Objectives

- After completing this lesson, you will be able to:
- ✓ Describe the COR's role in identifying corrective actions or remedies available during contract administration
 - ✓ Identify situations when it is the COR's responsibility to take corrective action and when the COR recommends corrective action to the CO

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Issues, Clauses, and Remedies

- Contract clauses containing remedies for common issues
- Contract changes clauses

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Exercise: Remedy Scenarios

Directions

1. Working in groups as assigned by your facilitator, address the following real-life situations that have been encountered during contract administration. In each case, the COR has a role in resolution of the issue.
2. As you consider each situation, describe the course of action you would take.
3. Include reference to the applicable FAR clause(s) you would use to remedy the situation.
4. Be prepared to share your answers with the class.

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Exercise: Disputes and Decisions

Directions

1. Working in groups, review decisions as assigned by your facilitator.
2. In your review, note the actions taken by both contracting parties (good and bad).
3. Address the questions that follow each scenario.

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Exercise: Lesson 7 Quiz

Directions

Answer the quiz questions that follow.

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Performance Evaluation and Contract Closeout

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Lesson Objectives

After completing this lesson, you will be able to:

- ✓ Identify the responsibilities of the COR in evaluating a contractor's performance of the contract
- ✓ Discuss the COR's role in closing out the contract

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Past Performance

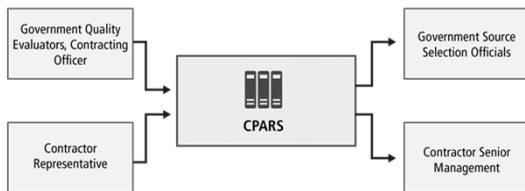
- FAR 42.1501, General (Contractor Performance Information)
- Requirements for Reporting and Documenting Past Performance
- Subcontractors, Teaming, and Joint Venture Partners
- Who Assesses Contractor Performance?
- Contractor Response and Agency Review
- Supporting the Performance Evaluation



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Requirements for Reporting and Documenting Past Performance



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Contract Closeout

- FAR provisions:
 - Closeout by the office administering the contract
 - Closeout of the contracting office files
 - Closeout of the paying office files
 - Physically completed contracts
 - Procedures for closing out contract files
- Checklist for contract closeout
 - Release of claims

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Checklist for Closeout Documentation

The COR checklist might include items such as:

- Government property reconciled
- Final inspection completed
- Contractor release of claims obtained (see paragraph following regarding release of claims)
- Contractor performance report completed
- Final payment reviewed
- Final documents to CO

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Exercise: Performance Evaluation Scenario

Directions

Read the scenario and answer the questions that follow.

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Exercise: Review/Analyze a GAO Decision

Directions

1. Working in groups, review the GAO decision regarding the use of past performance as an evaluation factor in source selection.
 - Note the reliance on existing past performance information the agency had within its automated performance risk system
2. Address the issues/questions related to the GAO decision.

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**Exercise: Prepare for and Participate
in a Contractor Performance
Evaluation**

Directions

1. Working in groups as assigned by your facilitator, use the information provided regarding a contractor's performance.
2. You will be asked to prepare a contractor performance report and participate in a performance evaluation.
3. This is a roleplaying exercise for which you may be assigned as either the COR or the contractor.

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Exercise: Lesson 8 Quiz

Directions

Answer the quiz questions that follow.

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Bibliography

BIBLIOGRAPHY

[Letter], B-277029.3 (GAO 1998a, 2/18/1998)

74 FR 31557, Final Rule, 31557-31561

Borders Consulting, Inc., B-281606 (GAO 1999c, 3/10/1999)

Code of Federal Regulations, located at
<https://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR>

Cooperativa Muratori Riuniti, B-294980; B-294980.2 (GAO, 1/21/2005)

Federal Acquisition Regulation (FAR), located in 48 CFR and at <https://www.acquisition.gov>

Federal Aviation Administration. 2012. Contracting Officer's Representative Handbook. Acquisition Policy AAP-100. Washington, D.C.

Federal Environmental Services, Inc., B-250135.4 (GAO, 5/24/1993)

General Security Services Corporation, B-280388; B-280388.2 (GAO 1998b, 9/25/1998)

Gonzales Consulting Services, Inc., B-291642.2 (GAO 2003a, 7/16/2003)

IMLCORP LLC; Wattre Corporation, B-310582; B-310582.2; B-310582.3; B-310582.4; B-310582.5 (GAO 2008a, 1/9/2008)

Innovative (PBX) Telephone Services, Inc., v. Department of Veterans Affairs, CBCA 12, 33, 365, 366, 367 (Sheridan, 09/27/2007)

Liquidity Services, Inc., B-294053 (GAO 2004b, 8/18/2004)

Metro Machine Corporation, B-281872; B-281872.2; B-281872.3; B-281872.4 (GAO 1999a, 4/22/1999)

Pemco Aeroplex, Inc., B-310372 (GAO, 12/27/2007)

Preferred Systems Solutions, Inc., B-292322; B-292322.2; B-292322.3 (GAO 2003b, 8/25/2003)

Sherrick Aerospace, B-310359.2 (GAO 2008b, 1/10/2008)

SOS Interpreting, Ltd., B-287505 (GAO, 6/12/2001)

SOS Interpreting, LTD., B-293026; B-293026.2; B-293026.3 (GAO 2004a, 1/20/2004)

Stratus Systems, Inc., B-281645 (GAO 1999b, 2/24/1999)

White House Office of the Press Secretary. Memorandum for the Heads of Executive Departments and Agencies, Subject: Government Contracting. 2009. Washington, D.C.

Williams Communications Solutions, LLC, B-283900 (GAO, 1/18/2000)