

Introduction

Approximate Length: 1 hour 30 minutes

Welcome to the **Executing the Acquisition - COR Duties** lesson.

Upon completion of this lesson you will be able to answer these questions:

- What Are the Fundamentals of Contract Administration and Invoicing?
- How Do Contracting Officer's Representatives (COR) Assess Performance?
- What Are the Types of Contract Modifications?
- What Are the Remedies For Poor Performance?

[Review the lesson learning objectives.](#)



Print Version

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- List the frequently delegated contract administration duties
- Identify proper invoice requirements
- Identify performance assessment responsibilities
- Distinguish between the types of contract changes and modifications
- Identify remedies for poor performance



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What Are the Fundamentals of Contract Administration and Invoicing?



Most services contracts require that contractors submit their invoices electronically via the Wide Area Workflow system. Contracting Officers typically delegate the task of reviewing these invoices to the COR, sometimes retaining the authority to approve the invoices for themselves.

The reviewer's job is to verify that each invoice represents the correct labor hours, labor categories, travel hours, etc.; to flag anything fishy; and to send the invoice to the reviewer for approval.

Timely review and approval of invoices is required for the Government to avoid financial penalties.

There's a saying that any time things appear to be going well, you've overlooked something. Reviewing invoices is an excellent opportunity to overlook casual, careless, and insidious mistakes, and CORs must scrutinize each invoice carefully.

Contract Administration Overview

Contract administration involves the activities performed by Government officials after a contract has been awarded. It encompasses all dealings between the Government and contractor from the time a contract is awarded until the work has been completed and accepted by the Government, payment made, and any disputes resolved.

The focus of contract administration is on obtaining supplies and services of the required quality and within the expected cost.

Although legal requirements of the contract take precedence, the skill and judgment of the [Contracting Officer \(KO\)](#) and [Contracting Officer's Representative \(COR\)](#) are often required to effectively protect the Government's interest during the contract administration process.

See the Federal Acquisition Regulation (FAR) website for more details about Contract Administration: [FAR Part 42](#).

Phases of the Services Acquisition Process



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See the Federal Acquisition Regulation (FAR) at [FAR Part 42](#).

Long Description

Conceptual graphic depicting the three phases of the Services Acquisition Process with the Execute phase highlighted.



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Contracting Officer (KO)

See the Federal Acquisition Regulation (FAR) [FAR Part 42](#).

Service member or Department of Defense civilian with the legal authority to enter into, administer, modify, and/or terminate contracts.



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See the Federal Acquisition Regulation Supplement at [FAR Part 42](#).

Contracting Officer's Representative (COR)

"Contracting officer's representative" means an individual designated in accordance with subsection 201.602-2 of the Defense Federal Acquisition Regulation Supplement and authorized in writing by the contracting officer to perform specific technical or administrative functions.

Administration:



Review the Contract



Your first task is to read the contract to which you've been assigned and continue to read it often throughout your assignment as a COR.

Things to ask yourself when you are reviewing the contract are:

- What type of contract is it?
- Are there any deliverables?
- Are we requiring any reports?
- What are the invoice procedures?
- Are there any testing, safety, or security requirements?
- Are there any special contract requirements or other terms and conditions that must be followed (usually found in Section H, if using Uniform Contract Format)?
- Is there any government furnished property identified in the contract?



It is vitally important for the COR to read the contract and review it frequently during contract performance. Although the Statement of Work and list of contract deliverables are essential contractual documents, it important for a COR to have the entire contract, not just these documents.

Invoice and Payment Procedures

Cash flow is the lifeblood of any company. Just like us, they have bills and employees to pay and need to get the cash back from goods or services they have provided.

Congress has recognized this need and passed the [Prompt Payment Act](#) that specifies that if the Government cannot make payment on a valid contractor invoice within a specified period of time, the Government is liable to pay interest on the amount of the payment computed at the Federal Funds rate.

Your role in this process is to ensure invoices receive prompt attention and are reviewed for accuracy.

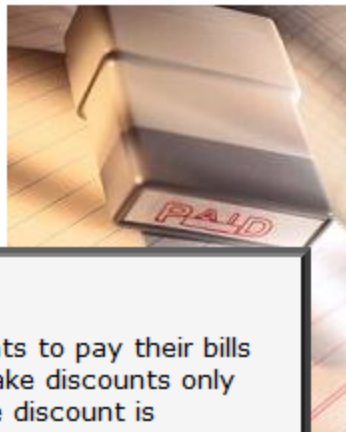


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Your role in this process is to receive prompt and accurate information.



Prompt Payment Act

Title 31, U.S. Code, Chapter 39 requires DoD components to pay their bills on time, pay interest penalties on late payments and take discounts only when payments are made by the discount date and the discount is economically justified. Guidance is found in 5 CFR 1315, the FAR Part 32.9 and the DFARS Part 232.9. For definitions that apply in the implementation of the PPA, see 5 CFR 1315.2 and FAR 32.902.

Proper Invoice Submission

Submission of invoices must include the following:

- Name and address of the contractor
- Invoice date and number
- Contract number, contract line item number and, if applicable, the order number
- Description, quantity, unit of measure, unit price and extended price of the items delivered
- Shipping number and date of shipment, including bill of lading number and weight of shipment if shipped on Government bill of lading
- Terms of any discount for prompt payment offered
- Name and address of official to whom payment is to be sent
- Name, title, and phone number of person to notify in event of defective invoice
- Taxpayer Identification Number (TIN), if required in the contract
- Electronic funds transfer (EFT) banking information

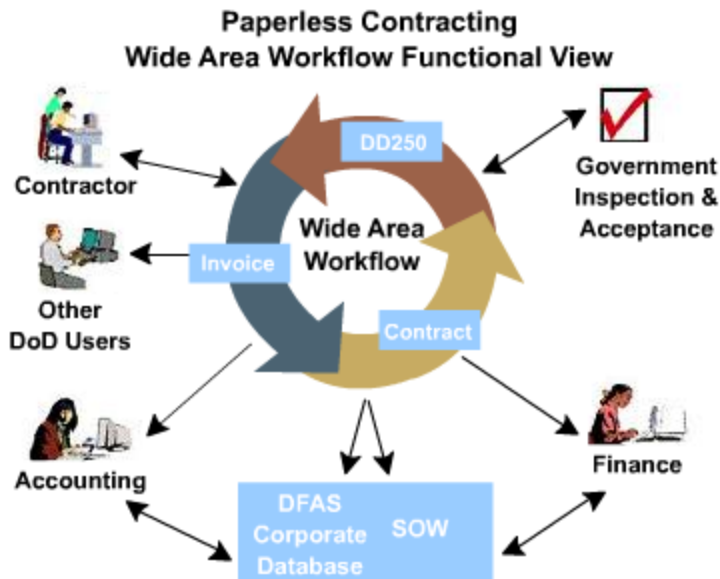
Wide Area Workflow

The 2001 Defense Authorization Act established the requirement that all contract invoicing must be done electronically. The DoD implemented this requirement via [DFARS clause 252.232-7003](#).

The Wide Area Workflow (WAWF) is the single DoD system for all vendor invoicing and Government acceptance actions (where required).

Processing invoices electronically will reduce the likelihood that the Government will have to pay an interest penalty; however, it is still important for you to understand your role in processing these invoices.

[WAWF Training Site](#)



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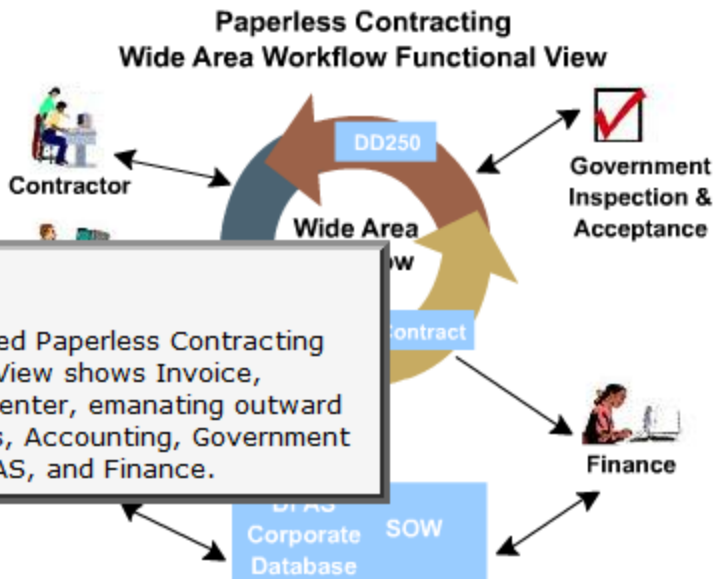
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[WAWF Training Site](#)

Long Description

Wide Area Workflow diagram titled Paperless Contracting Wide Area Workflow Functional View shows Invoice, Contract, and DD Form 250 at center, emanating outward to Contractors, Other DoD Users, Accounting, Government Inspection and Acceptance, DFAS, and Finance.



Interest Penalties

An interest penalty is paid automatically by the designated payment office, without request from the contractor, if payment is not made by the due date. This is the reason why it is so important for the COR to process payments on WAWF in a timely fashion.

For the purpose of computing an interest penalty that might be due to the contractor, Government acceptance is deemed to have occurred constructively on the 7th day after the contractor delivered the supplies or performed the services in accordance with the terms and conditions of the contract.

If actual acceptance occurs within the constructive acceptance period, the determination of an interest penalty will be based on the actual date of acceptance.

Under cost-reimbursement contracts for services, interest payments are due when interim payments are made more than 30 days after the designated billing office receives a proper invoice.



Voucher and Invoice Review

The KO is responsible for monitoring invoice payments in accordance with the terms and conditions of the contract as well as local policy and guidance. This responsibility is usually delegated to the COR.

For DoD contracts, [DFARS 242.803\(b\)](#) assigns responsibility for approving interim vouchers and reviewing final vouchers on cost reimbursable, the cost reimbursable portion of fixed price contracts, time-and-materials and labor-hour contracts to the contract auditor. The KO (or Administrative Contracting Officer [ACO]) is responsible for approving interim payment requests on fixed-price contracts and final payments on all contract types. The COR should coordinate any issues related to cost with the cognizant Defense Contract Audit Agency (DCAA) office through the KO.

You must always remember that payment to a contractor implies work is progressing according to the contract; therefore, you must be assured that the Government is getting what it is paying for. This is accomplished by monitoring contractors' performance through review of monthly reports, onsite visits, and surveillance reviews. It is vital that you review these billing statements thoroughly and in a timely manner.



Invoice Review

Your recommended approval of a voucher or invoice implies that to the best of the COR's knowledge, the nature, type, and quality of effort or materials being expended are in general accord with the progress of work under the contract. You provide support to the KO to ensure that payments are made for actual performance in accordance with the contract terms and conditions.

Remember, DCAA is responsible for approving all interim public vouchers for DoD cost reimbursement and time-and-materials contracts.

For Cost or Fixed Priced Incentive type contracting you will need to review the invoices for:

- Direct labor hours
- Overtime approval
- Direct material usage
- Travel
- Variance between ordered and actual hours
- Verification of accuracy of any high expenditures

You should verify costs by reviewing:

- Invoices (allowable costs for cost type contracting contracts)
- Job time cards

Knowledge Review

The CORs role in processing invoices is to ensure invoices receive prompt attention and are reviewed for accuracy; however there are no consequences to the Government for submitting invoices late.

☐ True

☒ False

Check Answer



Correct answer: **False.** If the Government can not make payment on a valid contractor invoice within a specified period of time, the Government is liable to pay interest on the amount of the payment computed at the Federal Funds rate. Your role in this process is to ensure invoices receive prompt attention and are reviewed for accuracy.

Knowledge Review

An interest penalty is paid automatically by the designated payment office, without request from the contractor, if payment is not made by the due date. What is the name of the system that should be used to process all invoices to reduce the likelihood that the Government will have to pay an interest penalty?

☐ DCAA

☐ DFAS

☐ EFT

☒ WAWF

Check Answer

The **Wide Area Workflow (WAWF)** is the single DoD system for all vendor invoicing and Government acceptance actions (where required).

How Do CORs Assess Performance?

As part of the COR's performance assessment responsibilities it's important to understand a few key terms and their relationship to the duties you must perform.

- Inspection
- Testing
- Acceptance
- Delays



Assessment of Contractor - Inspection and Testing

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

Read your contract for any specific inspection, testing or acceptance requirements.

In general, inspection of supplies or services may:

- Occur any time prior to acceptance
- Be announced or unannounced
- Not unduly delay contractor's work
- Not include any direction to the contractor

Testing is the inspection activity that determines the properties of items, including their functional operation, by applying established scientific principles and procedures.



Acceptance

[Acceptance](#) is the act of an authorized representative of the Government to assume ownership of identified supplies or services rendered as partial or complete in the performance of the contract. After acceptance, the contractor can no longer be held responsible for unsatisfactory effort, unless otherwise specified in the contract.

Acceptance can occur in two ways. The preferred method is through the DFAS Wide Area Work Flow - Receipts and Acceptance System (WAWF-RA). Individuals authorized to accept services then receive notification of pending actions and can accomplish acceptance using digital signature. The second method of acceptance involves preparing a written receiving report. *Select each tab for additional information.*

Contractor's Proposal Repair

If the services do not comply with the contract, a notice of rejection should be provided to the contractor. As a COR, you can reject services if authorized in your Letter of Designation. Otherwise, you must recommend rejection to the KO.

The rejection notice should contain the reasons for rejection and a stated time period for the contractor to reply. You should notify the KO whenever services are rejected and provide him/her with documentation on the number of observations made, the number and type of defects, actions taken to notify the contractor, and any corrective actions already taken by the contractor. You can use the receiving report to document the rejection.



The KO will normally consult with you when considering the contractor's reply. You can provide advice on the appropriateness of the contractor's corrective action plan, the impact of accepting non-conforming services, or whether or not the contractor's rebuttal is valid.

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Services Do Not Comply

Contractors will reply to a notice of rejection by submitting a proposal to repair or correct the deficiencies, offer to provide an adjustment to cost or price as a basis for accepting non-conforming services, or challenge the deficiency assessment.

If you are authorized to reject services, you may only approve a contractor's proposed course of action to repair or correct the deficiencies. Other courses of action that require a change in the contract (a price reduction) or that result in a dispute (contractor challenges the assessment) must be forwarded to the KO for resolution.



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Service

Acceptance

Acceptance can mean agreeing to a tendered offer in order to create a contract. In this context, it is one of the elements of a contract. Acceptance can also mean (and this meaning is more likely to be the one used by CORs) the act of an authorized representative of the government by which the government, for itself or as an agent of another, assumes ownership of existing identified supplies tendered or approves specific services rendered as partial or complete performance of the contract. (FAR 46.101)



The KO will normally consult with you when considering the contractor's reply. You can provide advice on the appropriateness of the contractor's corrective action plan, the impact of accepting non-conforming services, or whether or not the contractor's rebuttal is valid.

Delays



The COR is required to notify the KO about a delay in the delivery or performance schedule under the contract.

The contractor is not liable for any excess costs if the failure to perform the contract arises from causes beyond the control and without the fault or negligence of the contractor. This is also known as an [Excusable Delay](#).

The COR is often the individual responsible for advising the KO of delay. The COR should try to correctly identify delays in contract delivery or performance schedule before the delays actually occur. The technical analysis made by the COR should be sufficient to support the action taken by the KO to remedy the delay.

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The COR is often responsible for identifying delays in the contract. The COR should conduct a technical analysis of the delay.

Excusable Delay

An excusable delay is a delay arising from causes beyond the control and without the fault or negligence of the contractor. Examples include: acts of God or of the public enemy, acts of the government in its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather.

Delays - COR Tasks

There are three tasks that the COR will be required to perform in assisting the KO with a delay under the contract. *Select each tab for additional information.*

Task Two

Task Three

Identify and Verify a Delay in Performance Under the Contract

Every contract includes a delivery or performance schedule. CORs should assist the KO by performing two steps:

Step 1 - Identify the Existence of a Delay

- A delay has occurred if the contractor fails to perform in accordance with the delivery or performance schedule in the contract, or the Government caused the contractor to stop performing. The COR should review the contract for any applicable clauses and any modifications to ensure the performance and/or delivery schedule was not previously extended by the KO before identifying the situation and reasons for a delay.

Step 2 - Verify the Delay

- The COR can confirm the delay by:
 - Obtaining feedback from Government individuals responsible for monitoring the performance and/or delivery schedule.
 - Reviewing the notice and supporting documents from the contractor regarding the delay.
 - Reviewing the contractor claim regarding the delay.

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Task One

Task Three

Notify the KO of the Technical Impact of the Delay

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

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

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Task One

Task Two

CORs may be asked to assist the KO in evaluating the contractor's response.

In their response, contractors may be asked to:

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

Before allowing the contractor to recover costs as a result of the delay, the contractor's response must provide verifiable documentation of the expenses incurred. The KO, with the assistance of the COR, is required to consider each expense and determine if the contractor should receive compensation.

Compensation may be in the form of dollars or time extensions.

Excusable Delays

The [Contractor Delay Assessment Tool](#) will assist your evaluation of whether or not contractor delays were excusable. You must rely upon your knowledge of how the contract was executed and any additional information that may affect your determination of whether a contractor delay was excusable. Before making a final decision, you must be certain that the contractor had no control over the circumstances that caused the delay. If you can answer "Yes" to any of the questions on the checklist, then the delay was probably excusable! *Select each item for additional information.*

[Delays when neither
the Government nor
the contractor is
responsible](#)

[Delays caused by
actions taken by the
Government official](#)

[Delays caused by
the Government's
failure to act](#)



Refer to [FAR 52.249-14](#) for the excusable delay clause.
Refer to [FAR 52.212-4](#) for information on commercial excusable delay.

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[Delays caused by the Government's failure to act](#)

Delays when neither the Government nor the contractor is responsible:

- Acts of God
- Unusually severe weather
- Strikes and labor disputes
- Public enemy causes
- Causes beyond the control of the subcontractors and suppliers



Refer to [FAR 52](#)

Refer to [FAR 52.212-4](#) for information on commercial excusable delay.

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[Delays when neither the Government nor the contractor is responsible](#)

[Delays caused by actions taken by the Government official](#)

[Delays caused by the Government's failure to act](#)

Delays caused by actions taken by the Government official:

- Direct the contractor to stop work
- Make a change to the contract
- Perform other acts within the Government's sovereign capacity



Refer to [FAR 52](#)

Refer to [FAR 52.212-4](#) for information on commercial excusable delay.

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[Delays when neither the Government nor the contractor is responsible](#)

[Delays caused by actions taken by the Government official](#)

[Delays caused by the Government's failure to act](#)

Delays caused by the Government's failure to act:

- Failure to make site available when required
- Failure to process approvals
- Failure to obtain funding
- Failure to issue changes in a timely manner
- Failure to respond to contractor's requests
- Failure to furnish Government property when required
- Failure to inspect or accept when required



Refer to [FAR 52](#)

Refer to [FAR 52.212-4](#) for information on commercial excusable delay.

Managing Government Property

Normally, contractors furnish all equipment and material necessary to perform Government contracts. However, there are times when it is in the best interest of the Government to provide Government furnished property to the contractor.

For example, the Government usually provides office space, computers and office furniture to contractor employees performing at the Government site. When Government property is provided, the COR frequently will be asked to advise or assist the KO in administering its use.



As a COR, you should ensure that an inventory is conducted prior to signing the equipment over to the contractor, ensure that Government property is delivered to the contractor on time so as not to delay contractor performance, and that adequate property control procedures are in effect. During contract performance, report loss, damage or destruction of Government property to the KO. Also report any incidents of unauthorized use.

You should supervise the return of Government property upon contract completion or when no longer required by the contractor. To learn more about the categories of Government property, please visit DAU's the [Government Property CoP](#).



[FAR Part 45](#) prescribes policies and procedures for providing Government property to contractors, contractors' management and use of Government property, and reporting, redistributing, and disposing of contractor inventory.

Contractor Travel

In evaluating contractor requests for travel, the COR will assure that travel is in accordance with the performance of the contract and that the contract authorizes such actions.

In evaluating contractor requests for travel, as a minimum, the COR will assure that:

- The proposed travel is essential to the effective performance of the contract
- The contractor and any subcontractor have screened reimbursement travel to avoid nonessential participation in conferences, meetings, or conventions
- The contractor and any subcontractors are limiting the mode of travel to the most economical method and are relating travel to production time
- When unable to use any Government contracted carrier, the contractor and any subcontractors are making reservations for air travel sufficiently in advance to obtain business class or coach rates
- The contractor and any subcontractors limit the cost of travel to federal per diem rates



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Long Description

Image of man on phone standing in front of a departure sign.

Security

If a contract involves access to information by contractor personnel, which is determined by local personnel to be confidential or proprietary, a security clause will be included in the contract.

Select each item for additional information.

[Access to Security Information](#)

[Requests for Classified Documents](#)

[Control of Contractor Personnel](#)

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Access to Security Information

As soon as it is determined that a contractor will require access to security information, the COR should determine, in consultation with appropriate agency officials, levels of clearances for personnel and for the facilities involved in the classified aspects of the contract.



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[Control of Contractor Personnel](#)

Requests for Classified Documents

The COR may evaluate requests for classified documents. Requests received by the KO will be forwarded to the COR for certification of the need-to-know and transmittal to your organization or bureau security office for approval.

The COR should also ensure that visit authorization requests are received from contractors in advance of and vice versa, contractor visits/access to information.

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Control Of Contractor Personnel

As a COR you need to be aware of security clearance and badging requirements for contractor personnel. You also are responsible for issuance and retrieval of common access cards.

Contractor Work Hours and Safety Standards Act

Depending on the nature of your contract and your designation letter, another area you may get involved with is review of the contractor's time charges. The Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333) requires that certain contracts contain a clause ([FAR 52.222-4](#)) specifying that no laborer or mechanic doing any part of the work contemplated by the contract shall be required or permitted to work more than 40 hours in any work week unless paid for all additional hours at not less than 1-1/2 times the basic rate of pay.

Violations of the Act may be detected during a labor interview; a part of the interview requires the employee to divulge the total number of hours he/she has worked during the previous week. Contractors in violation of this contract provision must pay back wages owed the employee plus liquidated damages per day per affected employee.



This amount can be withheld from monies owed the contractor under the instant contract or from any other contract that the contractor has with the federal government.

Knowledge Review

If the failure to perform the contract arises from causes beyond their control, such as unusually severe weather or strikes and labor disputes, the contractor is still liable for any excess costs.

☐ True

☒ False

Check Answer



Correct answer: **False.** The contractor is not liable for any excess costs if the failure to perform the contract arises from causes beyond their control and without the fault or negligence of the contractor.

Knowledge Review

As a COR, you should ensure that an inventory is conducted prior to signing the equipment over to the contractor. This ensures that the Government property _____ .

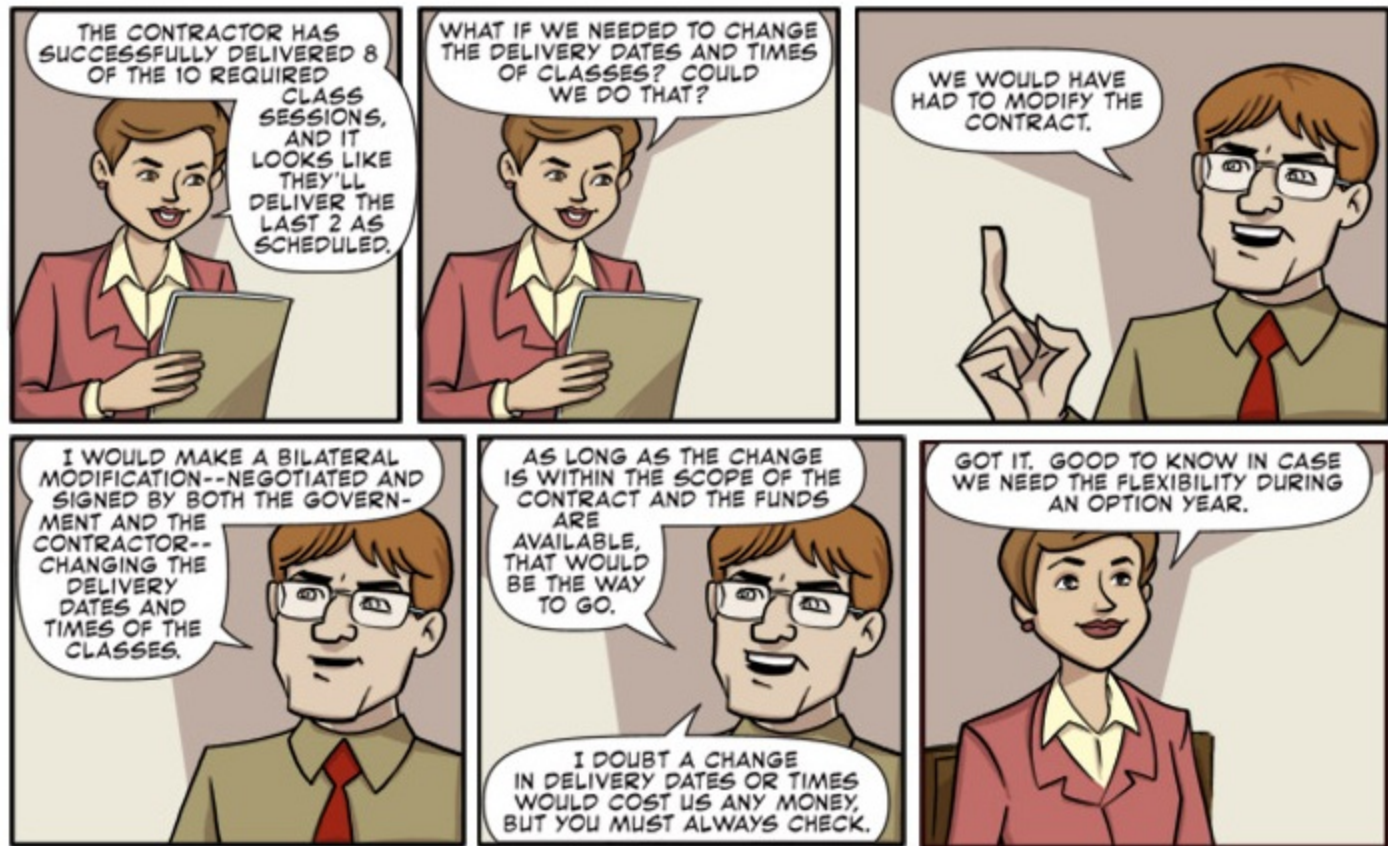
- ☐ is now the contractor's property
- ☐ is no longer an item that you need to manage
- ☐ is no longer being tracked for property control
- ☒ is delivered to the contractor on time so as not to delay contractor performance

Check Answer



As a COR, you should ensure that an inventory is conducted prior to signing the equipment over to the contractor. This ensures that the Government property **is delivered to the contractor on time so as not to delay contractor performance.**

What Are the Types of Contract Modifications?



[D](#)

What Are the Types of Contract Modifications?

Long Description

Setting: Interior Office, John and Mary are meeting to discuss contract details.

Mary: The contractor has successfully delivered 8 of the 10 required class sessions, and it looks like they'll deliver the last 2 as scheduled. what if we needed to change the delivery dates and times of classes? could we do that?

John: We would have had to modify the contract. I would make a bilateral modification -- negotiated and signed by both the government and the contractor-- changing the delivery dates and times of the classes. As long as the change is within the scope of the contract and the funds are available. That would be the way to go. I doubt a change in delivery dates or times would cost us any money. But you must always check.

Mary: Got it. Good to know in case we need the flexibility during an option year.

Change Management

Many things can impact a contract once it has been awarded. The agency might need to reduce or increase quantities of supplies or services, the requirement could disappear, performance levels could change, or any number of unanticipated events may occur.

A contract modification is a written alteration of the contract's terms and conditions (e.g., work statement, period of performance, quantity, price or other conditions with the contract). Only KOs, acting within the scope of their authority, can execute contract modifications on behalf of the Government.



The KO must not execute a contract modification that causes an increase in funds required for performance without having first obtained a certification of funds availability.

Contract Options

Options provide the Government with the ability to order additional quantities or additional periods of service beyond those established in the initial contract. Normally, options pre-establish the quantity, price, and delivery schedule for these additional products or services.

Options are used when there is a clearly defined quantity or requirement for the product or service, but due to funding rules or other restrictions, the goods or services cannot be ordered at the time of contract award. Prior to exercising an option, the KO, with the assistance of the COR, must determine that this is in the best interests of the government.

The KO must ensure that the conditions present when the original products or services were ordered did not change to a degree that would make the option exercise inappropriate.



At a minimum, market research must be conducted to look at the current extent of competition, particularly from small and small disadvantaged business firms, the prevailing market price for similar goods and services, and the current status of the incumbent contractor to include his/her financial and management capacity, and the quality of the goods and services that are being provided.

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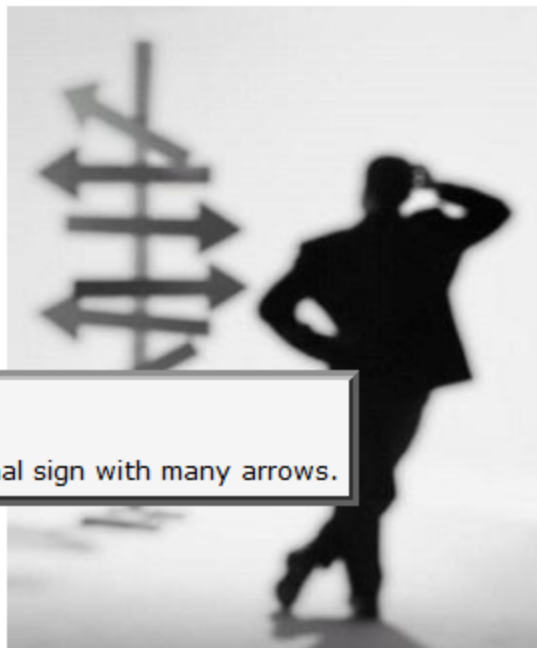
Long Description

Image of a man standing in front of a directional sign with many arrows.

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Types of Contract Modifications

During the contract life, different types of modifications may be necessary to incorporate new requirements or to handle problems that develop after contract award. Contract modifications must be made in writing by the KO in order to preclude any misunderstanding between the parties concerning work to be performed. Generally there must be consideration whenever a contract is modified. "Consideration" is the benefit each party confers upon the other for the modification. The requirement for consideration is that no officer or employee of the Government may alter a contract to the prejudice of the Government unless the Government receives corresponding, tangible contractual benefits.

There are two general types of contract modifications. *Select each item for additional information.*

[Unilateral](#)

[Bilateral](#)



There is really no such thing as a "no cost" extension to the period of performance of a contract. If the Government allows a long period of time for delivery, the "cost" to the Government is its right to delivery of the product or service by the date agreed upon. The law requires the contractor to provide some form of consideration for the Government's giving up of that right.

Types of Contract Modifications

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There are two general types of contract modifications. *Select each item for additional information.*

[Unilateral](#)

[Bilateral](#)

Unilateral

A contract modification signed only by the KO. They are used to:

- Make administrative changes
- Issue change orders
- Make changes authorized by clauses other than the "Changes" clause
- Issue termination notices
- Exercise options



There is really no
If the Government
right to delivery
contractor to pr

act.
s

Popup Text

Bilateral

A contract modification signed by both the contractor and the KO. They are used to:

- Make negotiated equitable adjustments resulting from the issuance of a change order
- Definitize letter contracts
 - Definitized - Any contract action for which the terms, specifications, or price are agreed upon before performance is begun under the action. As part of the change order modification, a schedule for "definitization" is established to encourage the submission of the contractor's proposal and negotiation of the final change.
 - Letter Contracts - A written preliminary contractual instrument that authorizes the contractor to begin immediately manufacturing supplies or performing services before a formal contract is in place.
- Reflect other agreements of the parties modifying the terms and conditions of contracts

The "Changes" Clause

The "Changes" clause provides, in essence, that the KO may, by written order, make any change in the work within the general scope of the contract. Such changes may also result in an appropriate upward or downward equitable adjustment in the contract price, delivery schedule, or time for performance. Legally, a change outside the scope of the contract is a new procurement that the KO is not authorized to order and the contractor is not obligated to perform. Change orders are accomplished by issuing written change orders on [Standard Form 30](#), Amendment of Solicitation/Modification of Contract.

Moreover, the "Changes" clause provides that any dispute about the equitable adjustment is a matter covered by the "Disputes" clause, and nothing in the clause excuses the contractor from proceeding with the contract as changed.

This power, unique to Government acquisition, allows the KO to alter performance without unnecessary interruption and to subsequently determine the appropriate contract price adjustment. *Select each item for additional information.*

[Fixed Price
Contract for
Supplies](#)

[Fixed Price
Contract for
Services](#)



Commercial contracts do not have a "Changes" clause. Modifications are bilateral agreements. [FAR 52.212-4](#)

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This power, unique to Government contracts, allows the Government to suspend or interrupt the contract, without interruption and to substitute the contractor without notice for additional information.

[Fixed Price Contract for Supplies](#)

[Fixed Price Contract for Services](#)

Fixed Price Contract for Supplies

The changes permitted under the "Changes" clause vary by contract type and category. Under a Fixed-Price Contract for Supplies, changes can be made in:

- Drawings, designs, or specifications when the supplies are specially manufactured for the Government
- Method of shipment or packing
- Place of delivery



Commercial contracts do not have a "Changes" clause. Modifications are bilateral agreements. [FAR 52.212-4](#)

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This power, unique to Government acquisition, allows the KO to alter performance without unnecessary interruption and to subcontract for additional information.

[Fixed Price Contract for Supplies](#)

[Fixed Price Contract for Services](#)

Fixed Price Contract for Services

If the contract is a Fixed-Price Contract for Services, changes can be made in:

- The description of the services to be performed
- Time of performance (hours of the day, days of the week)
- Place of performance



Commercial contracts do not have a "Changes" clause. Modifications are bilateral agreements. [FAR 52.212-4](#)

Constructive Changes

Much litigation involving changes concerns the authority of Government employees who have not been officially warranted as KOs to legally commit the Government to contract changes. *Select each tab for additional information.*

Avoiding Constructive Changes

Unauthorized Commitments

Generally, persons who are not KOs have only limited authority to represent the KO, for example, to inspect the service being provided for the Government. They do not have the authority to order or authorize changes. Statements, acts, or inaction by these employees may be deemed "constructive changes" that can nevertheless bind the Government.

Constructive changes happen by your actions or inactions and must be avoided. Contracting officials, including CORs, may be held personally liable for costs that were incurred by their direction.

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Constructive Changes

Unauthorized Commitments

Careful preparation of initial contracts (removing ambiguities or inconsistencies from the specifications) is the first step in avoiding constructive change. This includes careful drafting of any modification.

The second step for avoiding constructive changes is for you to know what the contract requires. Both erroneous interpretation of specifications and overly strict inspection tend to result from a failure to read the contract carefully. When decisions are made based on what "everybody" knows the specifications ought to say rather than on what they really do say, claims frequently result.

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Constructive Changes **Avoiding Constructive Changes** 

An agreement that is not binding solely because the government representative who made it lacked the authority to enter into that agreement on behalf of the United States Government. Individuals with [apparent authority](#) can cause unauthorized commitments.

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Apparent Authority

Obvious or evident authority that a reasonable person would assume someone to possess, based on his or her actions or position. The Government does not recognize this authority for contract work.

Ratification

Ratification occurs when an authorized official approves an unauthorized commitment. [FAR 1.602-3](#), Ratification of Unauthorized Commitments, explains that although procedures are provided for ratifications, they must be used with great discretion.



Ratifications may be made only when:

- The items have been accepted by the Government, or the Government otherwise has obtained or will obtain a benefit resulting from performance of the unauthorized commitment.
- The ratifying official has the authority to enter into a contractual commitment.
- The resulting agreement would otherwise have been proper if made by a KO.
- The KO reviewing the unauthorized commitment determines the price to be fair and reasonable.
- The KO recommends payment and legal counsel concurs in the recommendation, unless agency procedures expressly do not require such concurrence.
- Funds are available and were available at the time the unauthorized commitment was made.
- The ratification is in accordance with any other limitations prescribed under agency procedures.

One of the reasons an action may not be able to be ratified is that it would violate the Anti-Deficiency Act. Congress appropriates funding for specific purposes and in specific amounts.

If the unauthorized action requires more funding than is available, or for a purpose other than that intended by Congress, it becomes a violation of the Anti-Deficiency Act. As a COR, do not create a cost increase or new performance outside the originally intended purpose of the contract, or you can be held personally liable for such actions in violation of the Anti-Deficiency Act.

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Disputes



The COR's documentation file serves as evidence to support the Government's position in any disputes and associated claims. "If it is not documented, it did not happen."

It is the Government's policy to try to resolve all contractual issues in controversy (disputes) by mutual agreement at the KO level, in accordance with the Contract Disputes Act of 1978, 41 U.S.C., section 601 et. seq, and to require the [disputes](#) procedure to be used by all executive agencies but permits appeal of KO decisions to the United States Court of Federal Claims as well as agency boards. In addition, the Act provides for:

- Payment of interest on contractor [claims](#)
- Certification of contractor claims
- Civil penalties for contractor claims that are fraudulent or based on misrepresentation of fact

Alternative Dispute Resolution (ADR) procedures increase the opportunity for relatively inexpensive and expeditious resolution of issues in controversy. It is mandatory that ADR be offered when there is a dispute but not mandatory for the parties to use. It is, indeed, voluntary. In order to use ADR, the following essential elements must exist:

- Existence of controversy
- A voluntary election by both parties to participate in the ADR or process
- An agreement on alternative procedures and terms to be used in lieu of formal litigation
- Participation in the process by officials of both parties who have the authority to resolve the issue in controversy

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Dispute

- Payment of interest
 - Certification of
 - Civil penalties for
- Any failure of the government and the contractor to agree (e.g., contract disputes, bid protests) on the equitable adjustment to which the contractor is entitled (FAR Disputes clause, 33.2-Disputes and Appeals).

Alternative Dispute Resolution (ADR) is a relatively inexpensive and expeditious resolution of issues in controversy. It is mandatory that ADR be offered when there is a dispute but not mandatory for the parties to use. It is, indeed, voluntary. In order to use ADR, the following essential elements must exist:

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Claim

- Payment
- Certificate
- Civil penalty

Claim is a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to the contract. However, a written demand or written assertion by the contractor seeking the payment of money exceeding \$100,000 is not a claim under the Contract Disputes Act of 1978 until certified as required by the Act. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim. The submission may be converted to a claim, by written notice to the contracting officer as provided in 33.206(a), if it disputed either as to liability or amount or is not acted upon in a reasonable time.

Alternative Dispute Resolution (ADR) is an expeditious resolution of a dispute but not a claim. The following essential elements are:

- Existence of a contract
- A voluntary submission to the process
- An agreement on alternative procedures and terms to be used in lieu of formal litigation
- Participation in the process by officials of both parties who have the authority to resolve the issue in controversy

Knowledge Review

Which type of contract modification is used to make administrative changes and issue change orders?

☒ Unilateral

☐ Bilateral

Check Answer



A **unilateral** contract modification is used to make administrative changes, issue change orders, make changes authorized by clauses other than the "Changes" clause, and issue termination notices.

Knowledge Review

An oral or written communication, act or omission by the contracting officer or other authorized government official that is construed as having the same effect as a written change order is called a _____.

- ☒ constructive change
- ☐ unauthorized commitment
- ☐ ratification
- ☐ unilateral modification

Check Answer

Statements, acts, or inaction by persons who are not KOs and have only limited authority to represent the KO, may be deemed **constructive changes** that can nevertheless bind the Government.

What Are the Remedies For Poor Performance?



I've heard it said that a coup that is known in advance is an unsuccessful coup. Now maybe awarding your contract to an inferior, poorly-performing contractor isn't analogous to being on the receiving end of the hostile takeover of a sovereign nation, but it's still something all contracting officers would prefer to avoid.

Annually and at the end of the period of performance, the COR summarizes the contractor's performance against the PWS in a report that becomes part of the contractor's past performance record. This CPARS data is used by other contracting officers to review contractor's performance during future source selections.

That way a contractor's performance can help earn them future contracts or help contracting officers avoid repeating mistakes.

Remedies for Poor Performance

The KO has several remedies available to address items or services which do not conform to contract requirements. They will rely heavily on your observation and documentation to take the necessary actions. When unsatisfactory contract performance is identified, you should notify the KO promptly so that remedial steps can be taken.



Unsatisfactory performance can be considered in degrees, and the Government's actions can be oriented to correct the unsatisfactory performance or to protect the Government's interest in situations where performance is so poor that it could lead to the contractor's default.

Depending upon the KO's evaluation of the seriousness of the unsatisfactory performance, he/she may:

- By letter or through a meeting, bring the particular deficiency to the attention of the contractor and obtain a commitment for appropriate corrective action;
- Extend the contract schedule if excusable delays in performance is involved;
- Withhold contract payments in cases where the contractor fails to comply with delivery or reporting provisions of the contract; or
- Terminate the contract for cause/default.



Silence on the part of the Government could be interpreted by the contractor as acceptance by the Government of substandard products or services. Such situations could adversely affect the Government's right to withhold payments, terminate for cause/default, or otherwise exercise certain rights under the contract.

Poor Performance - Notice of Failure

After a complete review of the situation, the KO may send a notice of failure of performance to the contractor. This notice, which officially notifies the contractor of the delinquency, requires the contractor to inform the KO of the cause(s) of the delinquency so that a proper determination can be made concerning continuation or termination of the contract.

In some cases [Liquidated Damages \(LDs\)](#) can be assessed against the contractor performing the service. LDs are amounts agreed to and settled on in advance that reflect the financial damage the government may incur if the contract is not completed on time.

The "Stop Work Order" is used for negotiated contracts for supplies, services, and research and development. It is imperative that the COR maintains adequate records for any actions taken under the "Suspension of Work" clause. Adequate records may reveal that the contractor contributed to the suspension or the Government's suspension was reasonable. COR records are vital for determining the amount of costs that the contractor may be entitled to, if the suspension is determined to be unreasonable.



The Stop Work clause [FAR 52.242-15](#) and the Suspension of Work clause [FAR 52.242-14](#) address these performance issues.

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Liquidated Damages

The "Stop Work" clause and research and adequate record clause. Adequate record clause. Suspension or the vital for determining the amount of costs that the contractor may be entitled to, if the suspension is determined to be unreasonable.

Damages (also referred to as liquidated and ascertained damages) whose amount the parties designate during the formation of a contract for the injured party to collect as compensation upon a specific breach.



The Stop Work clause [FAR 52.242-15](#) and the Suspension of Work clause [FAR 52.242-14](#) address these performance issues.

Contract Termination

Early identification of a problem, whether poor performance, a change in requirements, or a lack of continued funding, will minimize the ultimate cost of a contract termination. Ensure that complete and thorough documentation is maintained.

A contractor's failure to perform an action as required by the contract can be considered a default in performance. The KO is directed to immediately issue a formal "[cure notice](#)," which is to include a statement to the effect that contract payments will be withheld if the default is not "cured" or is not determined to be excusable.

A "cure notice" from the KO points out a deficiency in contractor performance and directs that it be "cured" within a specified time - usually 10 days. Your documentation is critical in supporting this action.



Contract terminations are addressed in [FAR Part 49](#).

Contract Termination

Early identification of a problem, whether poor performance, a change in requirements, or a lack of continued funding, will minimize the ultimate cost of a contract termination. Ensure that complete and thorough documentation is maintained.

A contractor's failure to perform an action as required by the contract can be considered a default in performance. The KO is directed to immediately issue a formal "[cure notice](#)" to the contractor to the effect that the default is not excusable.

A "cure notice" is a written notice to the contractor per FAR 49.101-2. The contractor must respond within a specified time period. The cure notice documentation is critical in supporting this action.

Cure Notice

Preliminary, written delinquency notice, required by the Default Clause 52.249-8, to be issued by the KO before the contract's delivery date to inform the contractor that the government may terminate the contract for default. The cure notice specifies a period (typically 10 days) for the contractor to remedy the condition.



Contract terminations are addressed in [FAR Part 49](#).

Termination for Cause or Default

If the default or failure is not determined to be excusable or a response is not received within the allotted time, the KO initiates withholding action on all contract payments and determines whether a [Termination for Cause](#) (for commercial items), [Termination for Default](#) (for Government-unique items), or other action would be in the best interest of the Government.

When a determination is made that contract payments should be withheld, the KO will immediately notify the contractor in writing that payments have been suspended until the default or failure is cured.

The Government also has a right to terminate a contract for default based upon the contractor's actual or anticipated failure to perform contractual obligations. Under a default termination the contractor has a right only to payment for delivered and accepted services.

When acquiring items deemed to be commercial, default terminations are called "Termination for Cause". The contractor is responsible to the Government for liquidated damages, administrative costs caused by the termination, and [reprocurement costs](#).



No matter what type of termination is issued, or the extent of the terminated portion of the work, the decision to terminate is a unilateral right of the Government.



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When a determination is made that contract payments should be withheld, the KO will immediately notify the contractor in writing that payments have been suspended until the default or failure is cured.



Long Description

The Government default based upon the contractor's failure to perform contract. The contractor has a right only to payment for delivered and accepted services.

Image of two men shaking hands standing on top of the mountain.

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No matter what type of termination is issued, or the extent of the terminated portion of the work, the decision to terminate is a unilateral right of the Government.



Termination for Cause

Ending a contract with a contractor before completion by the KO when the contractor has failed to deliver services or supplies. It is similar to a Termination for Default except that it applies to commercial contracts (FAR Part 12).

Termination for Cause or Default

If the default or failure is not determined to be excusable or a response is not received within the allotted time, the KO initiates withholding action on all contract payments and determines whether a [Termination for Cause](#) (for commercial items), [Termination for Default](#) (for Government-unique items), or other action would be in the best interest of the Government.

When a determination is made that contract payments should be withheld, the KO will immediately notify the contractor in writing that payments have been suspended until the default or failure is cured.

The Government also has the right to terminate a contract for default based upon the contractor's failure to perform contractual obligations. The contractor has a right only to be paid for services.

Termination for Default (T4D)

Ending a contract with a contractor before completion by the KO when the contractor has failed to deliver services or supplies per the contract stipulations.



When acquiring items deemed to be commercial, default terminations are called "Termination for Cause". The contractor is responsible to the Government for liquidated damages, administrative costs caused by the termination, and [reprocurement costs](#).



No matter what type of termination is issued, or the extent of the terminated portion of the work, the decision to terminate is a unilateral right of the Government.

Termination for Cause or Default

If the default or failure is not determined to be excusable or a response is not received within the allotted time, the KO initiates withholding action on all contract payments and determines whether a [Termination for Cause](#) (for commercial items), [Termination for Default](#) (for Government-unique items), or other action would be in the best interest of the Government.

When a determination is made that contract payments should be withheld, the KO will immediately notify the contractor in writing that payments have been suspended until the default or failure is cured.



The Government also has a right to terminate a contract for default or failure to perform. If the contractor is found to be in default or failure to perform, the Government may terminate the contract. The contractor is responsible for the costs of the termination, including the cost of the supplies or services accepted by the Government.

Reprocurement Costs

When the supplies or services are still required after termination, the Contracting Officer can repurchase the same or similar supplies or services against the contractor's account. The contractor is responsible to the Government for liquidated damages, administrative costs caused by the termination, and [reprocurement costs](#).



No matter what type of termination is issued, or the extent of the terminated portion of the work, the decision to terminate is a unilateral right of the Government.

Termination for Convenience

The Government has a unique right to terminate a contract for convenience. Under the Terminations for Convenience clause, the Government has the right to cancel a contract when to do so is in the best interest of the Government, notwithstanding the contractor's ability and readiness to perform.

A Termination for Convenience may occur when:

- The item or service is no longer needed
- The contract is no longer affordable
- It is impossible for the contractor to perform as specified in the contract (through no fault of the contractor)
- There has been a radical change in the requirement that goes beyond the contractor's expertise

A Termination for Convenience allows the contractor to submit a settlement proposal for the work that has been accomplished under the contract up to the effective date of the termination to include the cost associated with any work in progress. A settlement agreement is then negotiated between the KO and the contractor.

The contractor is entitled to be reimbursed for costs for work completed, costs to settle the termination, and a reasonable profit. The contractor also agrees to accept reasonable profits instead of "anticipatory" profits if the Government terminates the contract prior to completion. The settlement agreement is then finalized with a contract modification.



The COR's responsibilities in a Termination for Convenience, Termination for Default or a Termination for Cause are essentially the same. The CORs technical knowledge and consistent documentation are needed for all termination actions.

Documenting Past Performance

Capturing how well a contractor performs on each contract is an important part of the performance assessment process. This information goes into an automated system called the [Contractor Performance Assessment Reporting System \(CPARS\)](#). We use this information as one of the factors when selecting future contractors during the source selection process. Your input to the KO is very important in documenting a contractor's performance.



Your CPARS assessment should mirror the contractor's performance results documented during the QASP process. This assessment is done at the completion of a contract or at intervals specified by buying agencies, and should document the contractor's record of:

- Conforming to contracting requirements and standards of good workmanship
- Forecasting and controlling costs
- Adherence to contract schedules
- History of reasonable and cooperative behavior and commitment to customer satisfaction
- Business-like concern for the interest of the customer



Your documentation must be objective and focus on how well the contractor performed the actual requirements of the contract. Documentation should include both good and/or poor performance and must be factual.

Contract Closeout

Contract closeout actions are primarily the KO's responsibility, but your assistance may be required to certify that all services have been rendered in a satisfactory manner and all deliverables are complete and acceptable. Your assistance is indispensable when disputes, litigation, patent and copyright problems, etc., are involved.

Upon completion of the contract, the KO must ensure the following actions have been accomplished:

- Services have been rendered
- Articles have been delivered and accepted
- Payments and collections have been made
- Releases from liabilities, obligations, claims have been obtained from the contractor
- Assignments of refunds, credits, etc., have been executed by the contractor
- Administrative actions have been accomplished
- Excess funds de-obligated
- Contract file is properly documented



Failing to complete contract closeout in a timely manner decreases the chance of re-directing unused contract funds. It also increases the staff time needed to complete the closeouts, as the passing of time makes it difficult to obtain the required information.

Knowledge Review

Which is NOT an option when handling a contractor's poor performance?

- ☐ Bring the particular deficiency to the attention of the contractor and obtain a commitment for appropriate corrective action
- ☐ Terminate the contract for cause/default
- ☐ Withhold contract payments in cases where the contractor fails to comply with delivery or reporting provisions of the contract
- ☒ Eliminate contact with the contractor until the performance improves

Check Answer



Eliminating contact with the contractor until the performance improves is not an option when handling a contractor's poor performance

Knowledge Review

Which clause allows the contractor to submit a settlement proposal for the work that has been accomplished under the contract up to the effective date of the termination when the Government has identified an item or service as no longer needed?

☒ Termination for Convenience clause

☐ Termination for Default clause

☐ Termination for Cause clause

Check Answer



The **Termination for Convenience clause** permits the Government to terminate a contract if it is more convenient than continuing the contract.

Lesson Summary

Congratulations! You have completed the **Executing the Acquisition - COR Duties** lesson.

Select each item for a summary of each topic.

[What Are the
Fundamentals of
Contract Administration
and Invoicing](#)

[How Do CORs
Assess
Performance](#)

[What Are the
Types of Contract
Modifications](#)

[What Are the
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What Are the Fundamentals of Contract Administration and Invoicing?

The focus of contract administration is on obtaining supplies and services of the required quality and within the expected cost. Although legal requirements of the contract take precedence, the skill and judgment of the KO and COR are often required to effectively protect the Government's interest during the contract administration process.

Your role in the invoicing process is to ensure invoices receive prompt attention and are reviewed for accuracy.

The 2001 Defense Authorization Act established the requirement that all contract invoicing must be done electronically and should be done through WAWF.

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How Do CORs Assess Performance?

Inspection includes examining and testing supplies or services (including, when appropriate, raw materials, components, and intermediate assemblies) to determine whether they conform to contract requirements. The preferred method of acceptance is through the WAWF-RA, which is a paperless system that enables contractors to create and transmit invoices electronically.

There are three tasks that the COR will be required to perform in assisting the KO with a delay under the contract.

- Identify and verify a delay in performance under the contract.
- Notify the KO of the technical impact of the delay.
- Assist the KO in evaluating contractor's response.

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What Are the Types of Contract Modifications?

Only KOs, acting within the scope of their authority, can execute contract modifications on behalf of the Government.

Types of contract modifications include unilateral and bilateral:

- Unilateral contract modifications are signed only by the KO and are used to make administrative changes, issue change orders, make changes authorized by clauses other than the "Changes" clause, and issue termination notices.
- Bilateral contract modifications are signed by both the contractor and the KO and are used to make negotiated equitable adjustments.

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What Are the Remedies For Poor Performance?

Depending upon the KO's evaluation of the seriousness of the unsatisfactory performance, he/she may:

- Bring the particular deficiency to the attention of the contractor in writing and obtain a commitment for appropriate corrective action.
- Extend the contract schedule if excusable delays in performance are involved.
- Withhold contract payments in cases where the contractor fails to comply with delivery or reporting provisions of the contract.
- Terminate the contract for cause/default.

Module Completion

You have completed the content for this lesson.

At this point you should have completed all of the lessons in this module.

Please take the Module Exam and complete the Module Survey so you may receive credit for this course.

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