



# ***Essentials of Government Contracting Post-Award***

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3. Contract Changes
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6. Contract Closeout
7. Back Up

# Contract Administration Overview

## The Uniform Contract Format

16. TABLE OF CONTENTS							
(X)	SEC.	DESCRIPTION	PAGE(S)	(X)	SEC.	DESCRIPTION	PAGE(S)
PART I - THE SCHEDULE				PART II - CONTRACT CLAUSES			
	A	SOLICITATION/CONTRACT FORM			I	CONTRACT CLAUSES	
	B	SUPPLIES OR SERVICES AND PRICES/COSTS		PART III - LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACH.			
	C	DESCRIPTION/SPECS./WORK STATEMENT			J	LIST OF ATTACHMENTS	
	D	PACKAGING AND MARKING		PART IV - REPRESENTATIONS AND INSTRUCTIONS			
	E	INSPECTION AND ACCEPTANCE			K	REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF OFFERORS	
	F	DELIVERIES OR PERFORMANCE			L	INSTRS., CONDS., AND NOTICES TO OFFERORS	
	G	CONTRACT ADMINISTRATION DATA			M	EVALUATION FACTORS FOR AWARD	
	H	SPECIAL CONTRACT REQUIREMENTS					

***Page 1, Block 16 of most Federal Government Contracts (Standard Form 26) provides a roadmap to what is important to you as a Government Contract Administrator***

***Ref: FAR 15.204-1 -- Uniform Contract Format. (a) Contracting officers shall prepare solicitations and resulting contracts using the uniform contract format outlined in Table 15-1 of this subsection.***

# Part 1 – The Schedule

## A – Solicitation/Contract Form

SF26 (Award/Contract), SF 33 (Solicitation/Offer/Award), etc.

- **DPAS Rating**  
National defense-related supply chain priority system to ensure military/nat'l security/emergency support
- **Effective Date and Signatures**
- **Administered By**  
Retained by Buying office or delegated to other organization: DCMA, other buying office
- **Payment Office and Terms**

<b>AWARD/CONTRACT</b>		<b>THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 350)</b>		<b>PAGE</b>	<b>OF PAGES</b>	
2. CONTRACT (Proc. Inst. Ident.) NO.		3. EFFECTIVE DATE		4. REQUESTION/PURCHASE REQUEST/PROJECT NO.		
5. ISSUED BY		CODE		6. ADMINISTERED BY (If other than Item 5)		
				CODE		
7. NAME AND ADDRESS OF CONTRACTOR (No., street, county, State and ZIP Code)				8. DELIVERY		
				<input type="checkbox"/> FOB ORIGIN <input type="checkbox"/> OTHER (See below)		
				9. DISCOUNT FOR PROMPT PAYMENT		
10. SUBMIT INVOICES (4 copies unless otherwise specified TO THE ADDRESS SHOWN IN				ITEM		
CODE		FACILITY CODE				
11. SHIP TO/MARK FOR		CODE		12. PAYMENT WILL BE MADE BY		
				CODE		
13. AUTHORITY FOR USING OTHER THAN FULL AND OPEN COMPETITION:				14. ACCOUNTING AND APPROPRIATION DATA		
<input type="checkbox"/> 10 U.S.C. 2304(j)      ) <input type="checkbox"/> 41 U.S.C. 253(j) (      )						
15A. ITEM NO.		15B. SUPPLIES/SERVICES		15C. QUANTITY		
				15D. UNIT PRICE		
				15E. AMOUNT		
<b>15G. TOTAL AMOUNT OF CONTRACT</b> \$						
<b>16. TABLE OF CONTENTS</b>						
(X)	SEC.	DESCRIPTION	PAGES	(X)	SEC.	
PART I - THE SCHEDULE				PART II - CONTRACT CLAUSES		
	A	SOLICITATION/CONTRACT FORM			I	CONTRACT CLAUSES
	B	SUPPLIES OR SERVICES AND PRICES/COSTS			II	LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACH.
	C	DESCRIPTION/SPEC./WORK STATEMENT			J	LIST OF ATTACHMENTS
	D	PACKAGING AND MARKING			PART IV - REPRESENTATIONS AND INSTRUCTIONS	
	E	INSPECTION AND ACCEPTANCE			K	REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF OFFERORS
	F	DELIVERIES OR PERFORMANCE			L	INSTRS., COND'S., AND NOTICES TO OFFERORS
	G	CONTRACT ADMINISTRATION DATA			M	EVALUATION FACTORS FOR AWARD
	H	SPECIAL CONTRACT REQUIREMENTS				
<b>CONTRACTING OFFICER WILL COMPLETE ITEM 17 OR 18 AS APPLICABLE</b>						
17. <input type="checkbox"/> CONTRACTOR'S NEGOTIATED AGREEMENT (Contractor is required to sign this document and return copies to issuing office). Contractor agrees to furnish and deliver all items or perform all the services set forth or otherwise identified above and on any continuation sheets for the consideration stated herein. The rights and obligations of the parties to this contract shall be subject to and governed by the following documents: (a) this award/contract; (b) the solicitation, if any, and (c) such provisions, representations, certifications, and specifications, as are attached or incorporated by reference herein. (Attachments are <u>incorporated</u> .)				18. <input type="checkbox"/> AWARD (Contractor is not required to sign this document). Your offer on Solicitation Number _____ including the additions or changes made by you when additions or changes are set forth in full above, is hereby accepted as to the items listed above and on any condition sheets. This award commences the contract which consists of the following documents: (a) the Government's solicitation and your offer, and (b) the award/contract. No further contractual document is necessary.		
19A. NAME AND TITLE OF SIGNER (Type or print)				20A. NAME OF CONTRACTING OFFICER		
19B. NAME OF CONTRACTOR				20B. UNITED STATES OF AMERICA		
19C. DATE SIGNED				20C. DATE SIGNED		
BY _____ (Signature of person authorized to sign)				BY _____ (Signature of Contracting Officer)		

NEN 7540-01-152.8069  
 Previous edition is unusable.

STANDARD FORM 26 (REV. 4-85)  
 Prescribed by GSA - FAR (48 CFR) 33.214(a)

# Part 1 – The Schedule

## B – Supplies or Services and Prices/Costs

- Bid Schedule: Price lists with item descriptions, quantities, unit and extended prices for supply contracts
- Estimated cost and fee pools for cost type contracts, to include reference to applicable Allowable Cost and Payment clauses
- May include award fee allocation tables

### ***Contract Type***

#### **Fixed Price**

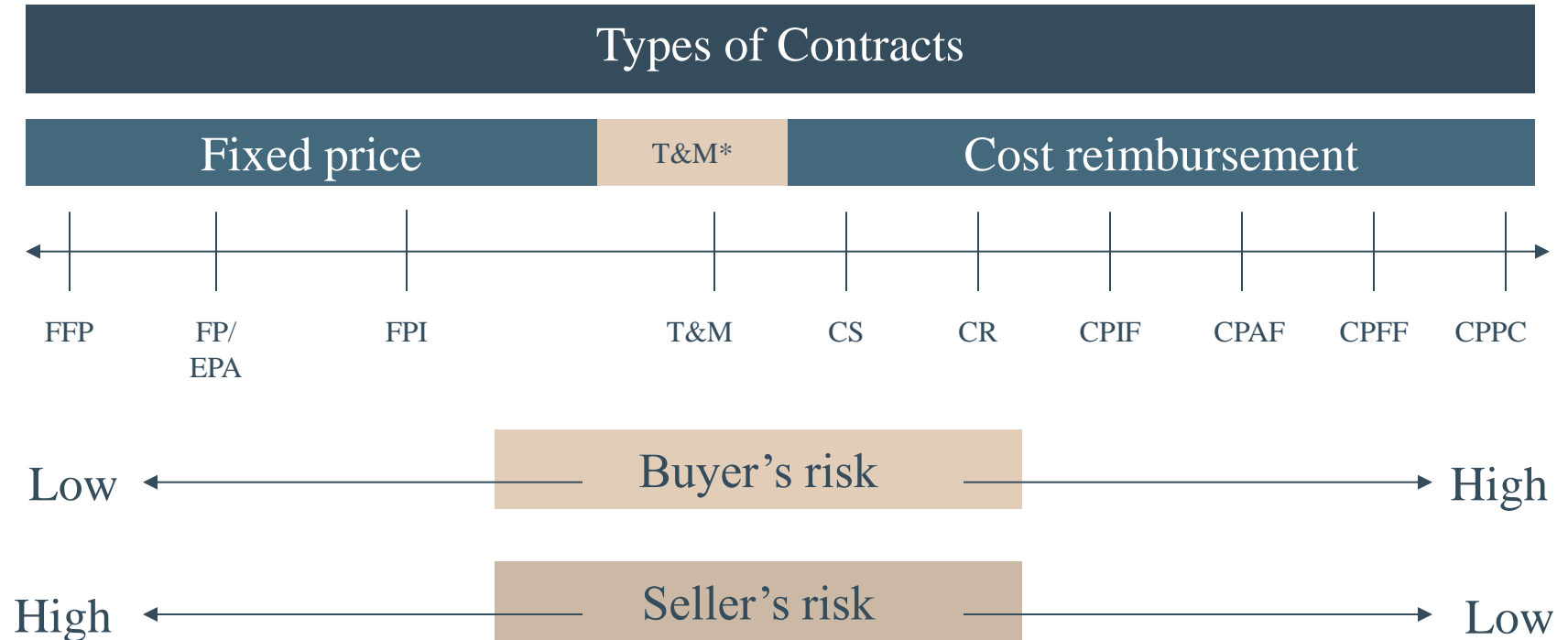
- Firm Fixed Price
- Fixed Price with EPA
- Fixed Price Incentive
- Fixed Price/LOE
- Fixed Unit Rate

#### **Cost Reimbursement**

- Cost Sharing
- Cost – no fee
- Cost Plus Award Fee
- Cost Plus Incentive Fee
- Cost Plus Fixed Fee

# Part 1 – The Schedule

## B – Supplies or Services and Prices/Costs



\*T&M contracts typically involve higher levels of risk for buyers.

▲ = CPPC contract type is illegal in U.S. government contracting

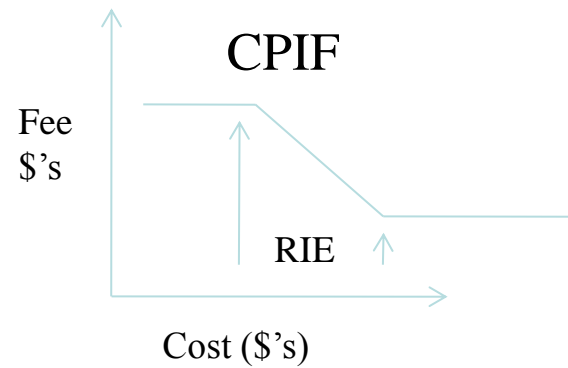
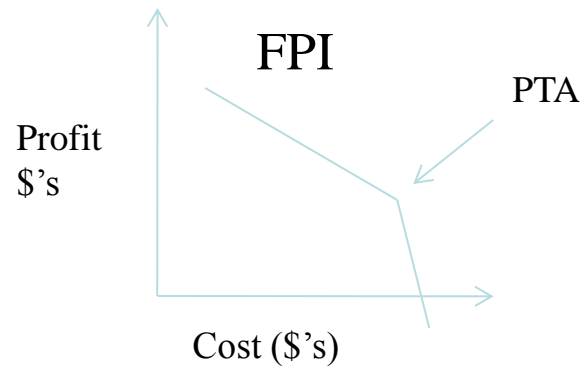
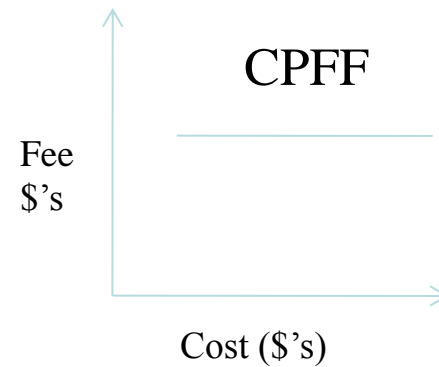
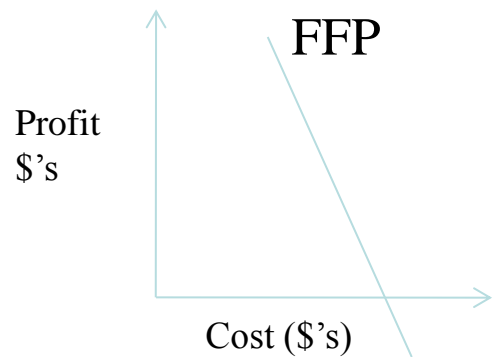
*Solicitations, Bids, Proposals, and Source Selection: Building a Winning Contract*, by Gregory A. Garrett and Gail A. Parrott, CCH, Chicago, IL, 2007, pg. 57



# Part 1 – The Schedule

## B – Supplies or Services and Prices/Costs

### CONTRACT TYPE MODELS




# Part 1 – The Schedule

## B – Supplies or Services and Prices/Costs

### Contract Category Characteristics

	<u>COST- REIMBURSEMENT</u>	<u>FIXED-PRICE</u>
<b>PROMISE</b>	<b>Best Effort</b>	<b>Shall Deliver</b>
<b>RISK TO CONTRACTORS</b>	<b>Low</b>	<b>High</b>
<b>RISK TO GOVERNMENT</b>	<b>High</b>	<b>Low</b>
<b>CASH FLOW</b>	<b>As Incurred</b>	<b>On Delivery</b>
<b>PROGRESS PAYMENTS</b>	<b>None</b>	<b>% of Actual</b>
<b>ADMINISTRATION</b>	<b>Max Government</b>	<b>Min Government</b>
<b>FEE/PROFIT</b>	<b>Max: 15/10 % CPFF 6 % A – E Contracts</b>	<b>NO Limit, Except 6 % A – E Contracts</b>



*Comparison of Major Contract Types – January 2014,  
Defense Acquisition University's Acquisition Community Connection, [acc.dau.mil/pricing](http://acc.dau.mil/pricing)*

# Part 1 – The Schedule

## **C – Descriptions/Specifications/Work Statement**

- Conflicts between requirements and/or other contract documents:
  - Order of Precedence:
    - (a) The Schedule (excluding the specifications)
    - (b) Representations and other instructions
    - (c) Contract clauses
    - (d) Other documents, exhibits, and attachments
    - (e) The specifications
- Deliverable items called out in Part C (SOW/CDRLs) may not show up in Sec B Bid Schedule or Sec F Deliverables
- Flow down of requirements from the Prime to subcontracts
- Vague terminology – communication throughout performance is key
  - **Risk to Government:** May not get the level of service/item expected, face cost overruns if a Cost type, Requests for Equitable Adjustment/change proposals
  - **Risk to Contractor:** May underestimate government's expectations --> poor award fee/past performance evaluations, schedule overruns, cost overruns if a FP contract type

***Ref: FAR 15.215-8 - Order of Precedence - Uniform Contract Format***

# Part 1 – The Schedule

## D – Packaging and Marking

- May cite commercial practices or if Defense customer, MIL Standards, for packaging requirements – ensure information gets to personnel responsible for processing shipments early to avoid delivery delays
  - Ex: MIL-STD-130 DoD Unique Identifier (UID) Requirements
- Provides specific requirements for delivering classified items
  - Industrial Security Manual for Safeguarding Classified Material (NISPOM)
- May call out marking requirements for warranted items.
  - If not, contractor should use it's own process for identifying warranted items prior to sale.

# Part 1 – The Schedule

## **E – Inspection and Acceptance**

SOURCE: At the originating Contractor's/Subcontractor's Facility

DESTINATION: At the Buyer's designated delivery address

- **Coordination for Timely Sell-off and Delivery:**
  - Contracting Officer's Representative or DCMA delegation
  - Sell-off documentation: inspection/receiving report
- **Liability for Damage: Once the Government executes acceptance, title to end-items transfers from the contractor to the government**
  - If FOB ORIGIN: Risk of loss/damage shall pass to the Government upon delivery of the supplies to a carrier, or
  - If FOB DESTINATION: Risk of loss/damage shall pass to the Government at acceptance OR delivery of the supplies to the Government at the destination specified in the contract, whichever is later

***Ref: FAR 46.3 QA Inspection Clauses, FAR 46.505 -- Transfer of Title and Risk of Loss***

# Part 1 – The Schedule

## **F – Deliveries and Performance**

- Period of Performance
  - If an IDIQ, contract may also contain Section I clauses calling out specific ordering periods for the contract
- Delivery Schedule: Watch for inconsistencies between Sec F delivery requirements and other parts of the contract: SOW, CDRL list
- Shipping Instructions – location, coordination
- Liquidated Damages terms: assesses fees for every day a contract deliverable or milestone is late
- Freight on Board (FOB) Terms:
  - DESTINATION vs ORIGIN
  - Determines who is liable for the shipment of units – both shipment costs and risk of damage/loss
- Stop Work or Government Delay of Work clauses

***Ref: FAR 52.216-18 – Ordering, -22, Indefinite Quantity***

# Part 1 – The Schedule

## G – Contract Administration Data

- **Accounting and Appropriation lines**

- **Mil Ex: AA: 21 3 2020 0132 4 65 7902 P612706 2581...**

**Component:**  
57 AF, 21 Army,  
17 Navy, 97 DoD

**Program Yr:**  
GFY 2013

**Appropriation:** O&M – 1 Yr  
RDT&E – 2 Yrs  
Procurement – 3 Yrs

<https://dap.dau.mil/acquipedia/Pages/ArticleDetails.aspx?aid=9f96cbe4-ed8f-4d20-94c9-b89130c0eb70>

- **Invoicing instructions**
- **Contract Administration delegation**
  - Different buying offices delegate different activities
    - Business System monitoring
    - Earned Value
    - Government Property Management

# Part 1 – The Schedule

## H – Special Contract Requirements

### **Clauses specific to your contract outside of terms mandated in Sec. I**

- Earned Value
- First Article Testing Requirements
- Government Furnished Property Lists
  - Maintain up-to-date listings throughout performance
- Ordering Procedures (IDIQ)
- Option Clauses
  - Periods for exercise of options: Government should allow time to execute the FAR Part 9 Responsibility Determination to ensure option can be expended in a timely manner
- Specific Security Requirements



# Part 2 – Contract Clauses

## I - Contract Clauses

**Cliff's Notes on some critical Section I clauses that you should be aware are/are not in your contracts:**

- **FAR 52.230-2 Cost Accounting Standards:** Subject to CAS?
  - Negotiated contracts/subcontracts >\$700K with Large Businesses
  - 48 CFR 9903.201-1 Exemptions: Competitive FFPs, Commercial Item FFPs, foreign entities, etc
  - Addresses measurement, assignment and allocation of costs
  
- **FAR 252.242-7005 Contractor Business Systems** (applicable to CAS covered contracts)
  - Government may be able to assess up to 10% withholds on all contracts for deficiencies in contractually required business systems – Accounting, EV, Estimating, MMAS, Property, Purchasing

# Part 2 – Contract Clauses

## I - Contract Clauses (con't)

### ➤ FAR 52.227 & DFARS 252.227 Intellectual Property Rights Clauses

- Government gets unlimited IP rights if your item, component, or process was developed exclusively with government funds or first produced in the performance of a civilian agency contract
  - Unlimited rights are not exclusive rights; Contractor retains the right to make/use/sell subject to export control and national security restrictions
  - Limited rights apply to technical data (developed at private expense)
  - Restricted rights apply to computer software developed at private expense
  - Government Purpose Rights apply when there is mixed funding for DoD development
- Beware of deferred ordering clauses 52.227-16, 252.227-7027
  - Contracting Officer “may, **at any time during contract performance or within a period of 3 years after acceptance of all items to be delivered under this contract, order any data first produced or specifically used in the performance of this contract.**”

# Part 2 – Contract Clauses

## I - Contract Clauses (con't)

### ➤ FAR 52.227 & DFARS 252.227 Intellectual Property Rights Clauses

	DoD Applicable	Civilian Agency Applicable**
Technical Data Regulations	DFARS 227.7100	FAR 27.4
Technical Data Clause	DFARS 252.227-7013, Rights in Technical Data – Noncommercial Items, DFARS 252.227-7015, “Technical Data – Commercial Items”	FAR 52.227-14, “Rights in Data -- General”
Computer Software Regulations	DFARS 227.7200	FAR 27.4
Computer Software Clause	DFARS 252.227-7014, Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation DFARS 227.7202 policy on commercial computer software (no specific clause)	FAR 52.227-14, Rights in Data General
Patent Regulations/ Clauses	FAR 27.2, FAR 52.227-1 thru -5	FAR 27.2, FAR 52.227-1 thru -5

- IP clauses specify license rights – government rights of use – **not title or ownership or possession**
- You can lose your rights if you don't mark data or software correctly

# Part 2 – Contract Clauses

## I - Contract Clauses (con't)

- **FAR 52.244-2 Subcontracts:** Government consent to subcontract required if Contractor does not have an approved purchasing system:
  - On unpriced subcontracts in a FP contract
  - On cost-reimbursement, Time and Materials, or labor hr subcontracts
  - Certain FP subcontracts over the Simplified Acquisition Threshold either/or 5% of contract value
  
- **FAR 52.232-20 and -22 Funding Limitation Clauses (CP Type)**
  - Limits Government's liability to pay/Contractor's obligation to perform above the level of funding issued on a contract/order
  - Contractor must notify the Government when obligated funds will be expended (ie – within 60 days of being 75% expended)
    - Critical to both Government and Contractor to ensure enough time to obtain and obligate the necessary funds
    - Notifications increase toward the end of the contract

# Agenda

1. Introduction
2. Uniform Contract Format
- 3. Contract Changes**
4. Claims and Disputes
5. Stop Work Orders & Terminations
6. Contract Closeout
7. Back Up

# Change, Change, Change

- *Love it...now change it!!*
- What can change?
  - Contract Scope/Statement of Work
  - Terms and Conditions
  - Quantity
  - Period of Performance
  - Method/Manner of Performance
  - Government Furnished Property
  - Place of Delivery
  - Cost
- Your Contract maybe perfect right now but change will happen to you!



# The Thing About Change...

**In order to spot change you have to know your starting line**

Do you know what is in your Contract Baseline?

- Do Contract Expectations = Contract Requirements
- Identify issues early and work quickly to resolve, do you really want to go through a costly “dispute”
- Doesn’t matter if you said it (only) in the proposal
- Leave out the subjective terms



- It is unrealistic to assume your contract will never change, let's just figure out how to deal with the “inevitable”
- How does your Contract define change?
  - FAR 52.243.1 Changes- Fixed Price
  - FAR 52.243.2 Changes- Cost Reimbursement
  - FAR 52.243.3 Changes- T&M
  - FAR 52.243–4 Changes
- Who is responsible for spotting the change...hint there is no “i” in ...
- Notification of Changes; FAR 52.243-7

# Changes Clause(s)

- Purpose
  - 1) To provide operating flexibility by giving the Government the unilateral right to order changes in work to accommodate advances in technology and changes in Government requirements.
  - 2) To provide the contractor a means of proposing changes to the work
  - 3) To furnish procurement authority to the CO to order additional work within the “general scope” of the contract without using the procedures required for “new procurement” or using new funds
  - 4) To provide the legal means by which the contractor may process claims through the administrative disputes process
- See Hand-Out for examples of FAR 52.243-X clauses



# Types of Unilateral Changes

- Constructive Change
  - Elements of a Constructive Change
    - Change occurred because of action or inaction
    - Action Example: Multiple revisions comments to data items
    - Inaction Example: Late approval of performance documents
    - Unilateral- Change(s) Clause(s)
    - Change may impacted cost/and or schedule
    - Examples (if supplies are furnished): drawings, designs and specs for manufacture, method of shipping, place of delivery
    - Examples (if services are furnished): description of services to be performed, time of performance (i.e., hours of the day, days of the week, etc.), place of performance
- Cardinal Change
  - Rare and not enforceable (completely out of scope)

# Types of Bi-Lateral Changes

- DFAR 252.243.7000 Engineering Change Proposal
  - Contracting Officer may issue an RFP OR the Contractor may propose as Not to Exceed Price
  - Engineering Changes in the technical requirements of a contract
  - Still have to follow the rules related to FAR 15.403
- FAR 52.248-1 Value Engineering
  - This is where the Contractor voluntarily submits a proposal, and will share in any “net acquisition savings” (i.e. instant contract savings, concurrent contract savings, future contract savings)
  - This type of proposal is meant to reduce overall costs to the agencies without taking away end items, research and development, or changing the contract type



# Contract Changes (TINA)

- Truth in Negotiations Act:
  - Federal law with the purpose of protecting the Government from defective pricing when negotiating sole source, non competitive contracts > \$700,000
  - Requires contractor to submit cost or pricing data that is certified to be current, accurate and complete as of the date of price agreement
- TINA can be applicable to a contract modification (>\$700,000) even if the original award was not subject to TINA

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- 4. Disputes and Claims**
5. Stop Work Orders & Terminations
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# Disputes and Claims

## Contract Disputes

- A **dispute** occurs when a controversy develops about the interpretation of payment, time or money due either party involved in a contract.
  - A dispute, when unresolved, may lead to a **claim**.
- Disputes between a contractor and the Government are governed by the contract's disputes clause.
- A **dispute** that cannot be resolved via negotiations can become a **claim**.
- Claims are resolved under the procedures prescribed by the Contract Disputes Act of 1978 (CDA)

# Disputes and Claims

## Contract Disputes Act of 1978 (CDA)

- The act waives the Government's immunity and allows contractors to file claims or contest a contracting officer's actions as it relates to the contract.
- Defines the responsibilities of the parties at each step of the disputes process
- Provides jurisdiction to the Boards of Contract Appeals or the Court of Federal Claims
  - Civilian Board of Contract Appeals (CBCA)
  - Armed Services Board of Contract Appeals (ASBCA)
  - Court of Federal Claims (COFC)
- The Boards are chartered to provide "informal, expeditious, and inexpensive resolution of disputes."

# Disputes and Claims

## Contract Disputes

- The Government's policy is to try to resolve contractual issues by mutual agreement
- If the contracting officer fails to reach mutual agreement, the contractor may seek resolution through the contract disputes process
- The Disputes process
  - Can be initiated by either Party
  - Involves a number of intermediate steps
  - Either Party can terminate the process at any time

The disputes process is resorted to when the Parties cannot settle their differences via negotiation.

For the contractor, the decision to enter a claim is a business decision and could have adverse consequences regardless of outcome.

# Claims and Disputes

- Examples of Contract Disputes
  - Inability to agree upon an equitable adjustment
  - Inability to agree upon the amount due following a termination for convenience
  - Disallowance of costs
  - Cost Accounting Standards ("CAS") noncompliance
- When does a dispute become a claim?
- A **claim** is a written demand by either the government or the contractor seeking the payment of money, the adjustment or interpretation of contract terms, or other relief arising under, or relating to the contract.
- A claim must be in **writing** and must contain **sufficient detail** to permit the CO to give meaningful reasonable consideration to the claim



# Claims and Disputes

## Contract Claims ([FAR 33.2](#))

- 33.206: Contractor claims must be submitted in writing
- 33.206: Must be submitted within 6 years of accrual of claim
- 33.207: For claims >\$100,000, contractor must provide certification

*I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the contractor believes the Government is liable; and that I am duly authorized to certify the claim on behalf of the contractor.*
- 33.207: The certification may be executed by any person duly authorized to bind the contractor with respect to the claim
- 33.210: Contracting officer's are authorized to decide or resolve all relating to a contract subject to the Act

# Disputes and Claims

## Contract Claims ([FAR 33.2](#))

- 33.211 Contracting officer's decision
  - When a claim by or against a contractor cannot be settled by mutual agreement the contracting officer shall—
    - Review the facts pertinent to the claim;
    - Secure assistance from legal and other advisors;
    - Coordinate with the contract administration officer or contracting office, as appropriate; and
    - Prepare a written decision
- Timeline:
  - For claims <\$100,000: 60 days after contractor request
  - For claims >\$100,000: 60 days after receipt of certified claim
- 33.213 Obligation to continue performance
  - The Government may require continued performance pending final resolution of the contractor's claim

# Disputes and Claims

## Types of Claims:

- Claims arising under a contract:
  - Can be resolved under a contract clause that provides for the relief sought by the claimant
  - (e.g., constructive changes, equitable adjustments, etc.).
- Claims relating to the contract:
  - Include, but are not limited to, rescission, reformation, termination and breach of contract.

## Methods of resolving claims:

- Informal discussion by direct negotiation between the parties.
- Alternative Dispute Resolution (ADR) – a method that involves an impartial third party who assists in resolving the controversy
  - Can be binding or non-binding
- Appeals process

# Disputes and Claims

## Negotiation

- Government's preferred method of resolving disputes
- Contracting officer enjoys wide latitude to negotiate disputes with contractors
- Preferred method because it is simplest and **cheapest**

## Alternate Dispute Resolution (defined in [FAR 33.201](#))

- Any procedure voluntarily used to resolve issues in controversy without the need to resort to litigation.
- Involves an impartial 3<sup>rd</sup> party who assists in resolving the controversy
- Can be 'binding' or 'non-binding'
- Results in Contracting Officer Final Decision (COFD)

## Contracting Officer's Final Decision (COFD)

- A contracting officer's final decision is **final and conclusive** unless appealed within specified timeframe

# Disputes and Claims

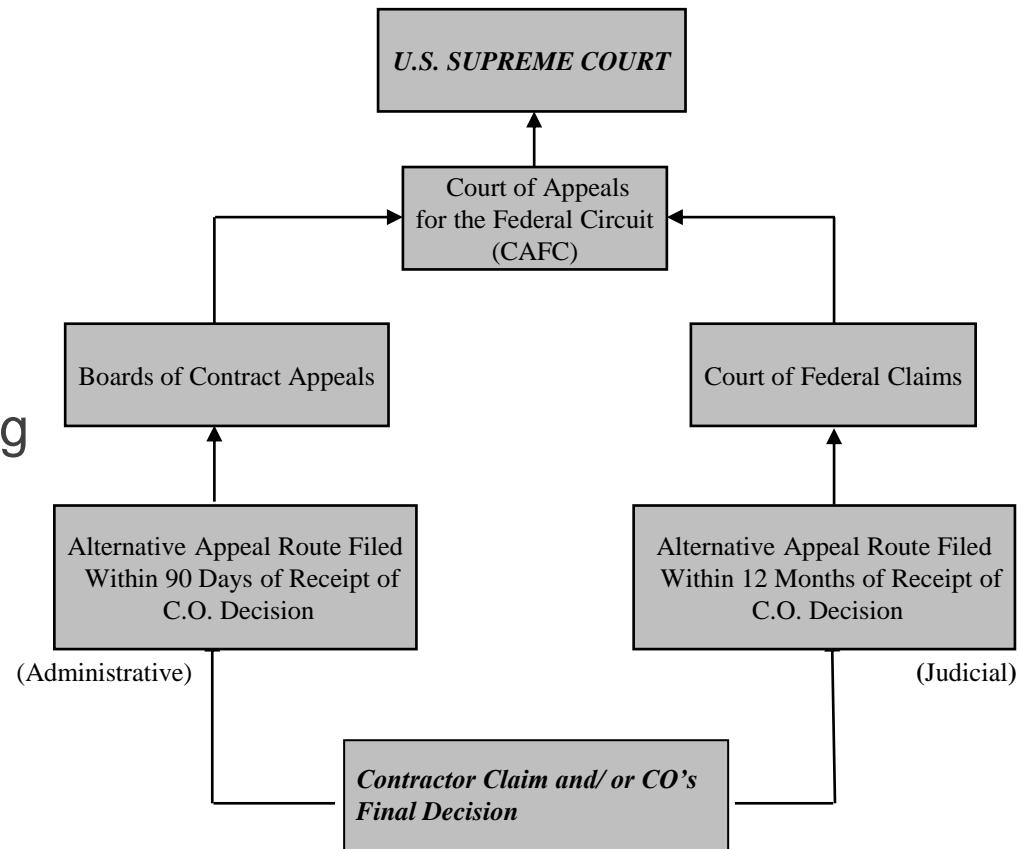
## Appellate Process

- Contractor can choose one of two appeal paths
  - That decision is **irrevocable**
- Submit appeal
  - Boards (90 days)
  - COFC (12 months)
- Present controversy to presiding official/judge
- Accept/appeal decision

Contractor can automatically appeal up to CAFC

The Supreme Court elects which appeals it will hear.

## ***Disputes Appeal Process***



*\* Use of Alternate Dispute Resolution (ADR) is Preferred*

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# Stop Work Orders & Terminations

## What is a Stop Work Order? ([FAR 42.13](#))

- A written notice from the Contracting Officer with the following:
  - Description of the work to be suspended
  - Instructions about the contractor's orders for materials or services
  - Guidance on actions to be taken on subcontracts and purchase orders
  - Suggestions to the contractor to minimize costs

**The contractor must make a good faith effort to comply with the instructions received in the Stop Work order.**

- Upon receipt of a Stop Work order the Contractor must:
  - Immediately, or as soon as possible, **stop incurring costs** on the contract
  - If the Government is providing contract financing, treat all physical material work-in-process (WIP) as government owned, and store it as such
  - If the Government does not have an ownership interest in the product, the Contractor is free to complete it and sell to another customer

# Stop Work Orders & Terminations

- Prior to the expiration of the stop work order, the contracting officer must:
  - Terminate the contract, or
  - Cancel the stop work order, or
  - Extend the stop work order (with contractor agreement)
  
- When the stop work order is lifted:
  - The contract is open to re-negotiation on both price and delivery under the Changes clause
  - Do not resume work until a contract modification is received granting price and/or schedule relief
  
- If the contract is terminated....



# Stop Work Orders & Terminations

## Contract Terminations (FAR Part 49)

- Termination for Convenience
  - Government may terminate the contract for **any reason**; T4C is a sovereign right of the Government
  - The CO must provide a written notice of termination (full or partial) to the contractor
  - The contractor is entitled to submit a Termination Settlement proposal within one year of receipt of the termination notice
  - Termination Settlement proposals can include costs not typically reimbursed during contract performance
    - Reclassification of indirect costs to direct costs
    - Unabsorbed overhead
  - T4C isn't always a bad thing

**If you receive a termination for convenience notice, get your team involved right away!**

# Stop Work Orders & Terminations

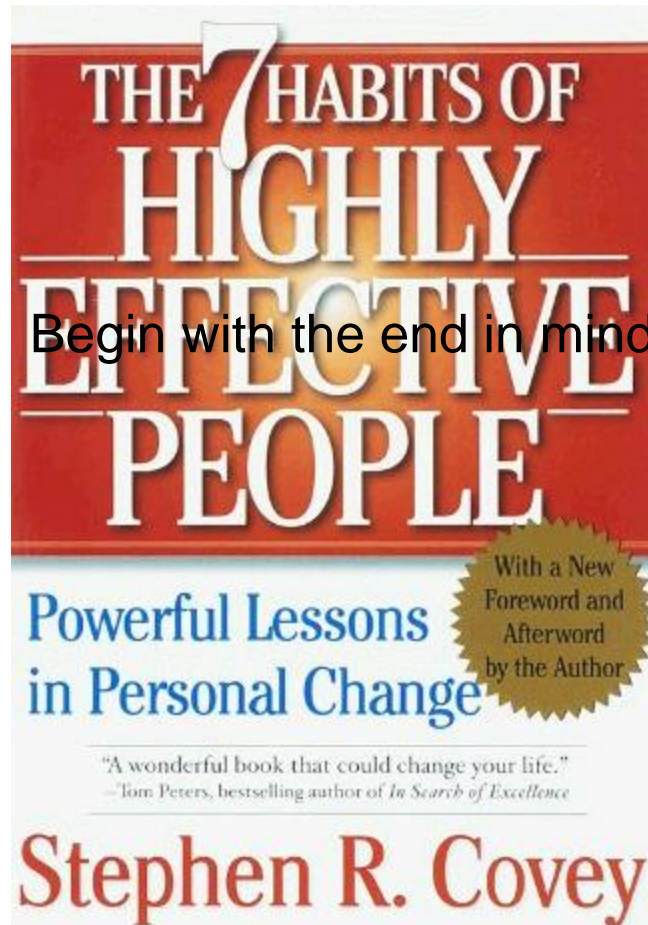
## Contract Terminations ([FAR Part 49](#))

- Termination for Default
  - Government may Terminate for Default (T4D) only with adequate **cause**
    - if the contractor fails to perform, or is **anticipated to fail to perform** their obligations
    - For failure to deliver only a termination notice is required
      - Any other reasons require failure notice to be submitted to Contractor
      - Contractor has 10 days to cure, otherwise T4D may be issued
  - The damages to the contractor may be significant! The Government:
    - Is not liable for costs incurred on the contract
    - Can recoup any payments made to the contractor for work performed
    - Can assess liquidated damages
    - Can require the contractor to pay the re-procurement costs
  - A T4D also carries the **risk of debarment**.
- **This is a BAD thing! If this happens, you'll probably already know it was coming!**

# Agenda

1. Introduction
2. Uniform Contract Format
3. Contract Changes
4. Disputes and Claims
5. Stop Work Orders & Terminations
- 6. Contract Closeout**
7. Back Up

# Contract Closeout



# Contract Closeout

What is contract closeout?

- A process to finish or resolve all contractual requirements for a physically complete contract

Why is closeout important?

- Signifies completion of all administrative actions
- All goods/services have been received
- All disputes have been settled
- Release of contract withholds
- Final payments have been made
- Final release of claims executed

When should you start thinking about contract closeout?

- Prior to contract award & during contract performance.

Completion of the closeout process means you're **DONE!**

# Contract Closeout

Procedures for contract closeout are outlined in [FAR 4.804](#)

FAR Clause	Text
4.804-1(a)	<p>(a) Except as provided in paragraph (c) below, 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 <b><u>firm-fixed-price contracts</u></b>, other than those using simplified acquisition procedures, should be closed <b><u>within 6 months</u></b> after the date on which the contracting officer receives evidence of physical completion.</p> <p>(3) Files for <b><u>contracts requiring settlement of indirect cost rates</u></b> should be closed <b><u>within 36 months of the month in which the contracting officer receives evidence of physical completion</u></b>. (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.</p>
4.804-1(b)	<p>(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. <b><u>Quick closeout procedures (see 42.708)</u></b> should be used, when appropriate, to reduce administrative costs and to enable deobligation of excess funds.</p>
4.804-1(c)	<p>(c) A contract file shall not be closed if (1) The contract is in litigation or under appeal; or (2) In the case of a termination, all termination actions have not been completed</p>

# Contract Closeout

## Standard Closeout Timeframes

(FAR 4.804)

Timeframes	Contract Types
6 Months	FIRM FIXED PRICE
36 Months	FIXED PRICE INCENTIVE COST-PLUS AWARD FEE COST CONTRACT COST SHARING COST-PLUS-FIXED-FEE COST PLUS INCENTIVE FEE TIME AND MATERIALS LABOR HOUR
20 Months	FIXED PRICE REDETERMINATION FIXED PRICE W/ECONOMIC PRICE ADJUSTMENT OTHER – BASIC ORDERING AGREEMENT/BLANKET PURCHASE AGREEMENT (BOA/BPA)

# Contract Closeout

## Closeout methods:

- Quick Closeout ([FAR 42.708](#))
- Early Closeout ([FAR 52.232-7](#))
- Standard Closeout ([42.705-1 & -2](#))

## Quick Closeout Candidates:

- Final Period of Performance (POP) generally <1 FY
- Costs incurred in last contract year relatively small
- Mutually advantageous to close quickly; not wait for final rates

## Early Closeout Candidates:

- Task orders on T&M contracts
- Delivery orders under IDIQ contracts
- Labor-hour tasks under IDIQ contracts
- Short-duration CPFF contracts (particularly small businesses)

## Standard Closeout Candidates:

- Any contract that does not qualify for quick or early closeout.



# Contract Closeout

## Quick Closeout (QC)

- Either Party (CO or Contractor) may initiate the process with written request
- Absent audited final indirect rates, QC establishes contract-specific indirect cost rates
- The indirect cost rates established are final for that contract
- Indirect cost rates on a contract undergoing QC are not considered a binding precedent on other contracts
- Once final indirect cost rates are established, Contractor may issue final voucher and complete closeout

## Benefits of QC

- Avoids lengthy waits for audited final rates
- Enhances cash flow (earlier release of withholds)
- Facilitates de-obligation of funds prior to cancellation

What if the audited final rates are different from the QC rates negotiated for the contract?

- No adjustments made to other contracts for over- or under-recovery

# Contract Closeout

## Quick Closeout [FAR 42.708](#)

FAR Clause	Text
42.708(a)	<p>(a) The contracting officer responsible for contract closeout <b><u>shall negotiate the settlement of indirect costs for a specific contract</u></b>, in advance of the determination of final indirect cost rates, <b><u>if (1) The contract is physically complete; (2) The amount of unsettled indirect cost to be allocated to the contract is relatively insignificant.</u></b> Indirect cost amounts will be considered insignificant when (i) The total unsettled indirect cost to be allocated to any one contract <b><u>does not exceed \$1,000,000</u></b>; and (ii) Unless otherwise provided in agency procedures, the <b><u>cumulative unsettled indirect costs to be allocated to one or more contracts in a single fiscal year do not exceed 15 percent of the estimated, total unsettled indirect costs allocable to cost-type contracts for that fiscal year.</u></b> The contracting officer may waive the 15 percent restriction based upon a risk assessment that considers the contractor's accounting, estimating, and purchasing systems; other concerns of the cognizant contract auditors; and any other pertinent information; and <b><u>(3) Agreement can be reached on a reasonable estimate of allocable dollars.</u></b></p>
42.708(b)	<p><b><u>Determinations of final indirect costs under the quick-closeout procedure</u></b> provided for by the Allowable Cost and Payment clause at <a href="#">52.216-7</a> <b><u>shall be final</u></b> for the contract it covers and <b><u>no adjustment shall be made to other contracts for over- or under-recoveries of costs</u></b> allocated or allocable to the contract covered by the agreement.</p>
42.708(c)	<p>Indirect cost rates used in the quick closeout of a contract shall <b><u>not be considered a binding precedent</u></b> when establishing the final indirect cost rates for other contracts.</p>

# Contract Closeout

## Early Closeout (EC)

- Early closeout reduces delays to completing final indirect cost rate audits for Task/Delivery order contracts
- EC prevents the systematic cancellation of funds; permits funds to be deobligated and reallocated
- A method to close out TOs prior to final audited indirect rates
  - EC is acceptable because TOs are not considered individual contracts
  - QC procedures may be used in conjunction with EC
- To be eligible for EC the contract must contain:
  - Payments under TM & LH Contracts – [FAR 52.232-7]
  - CR contracts: Fixed Fee – [FAR 52.216-8]
- Withholding on EC task orders
  - TM & LH – 5% of Payments Due (50K max): released upon execution of final Release of Claims (ROC)
  - CR – CO may elect to withhold fee until final rates are negotiated and final voucher is submitted (15%/100K)

# Contract Closeout

## Early Closeout

FAR Clause	Text
52.232-7(a)(7)	Unless otherwise prescribed in the Schedule, the Contracting Officer may unilaterally issue a contract modification requiring the Contractor to withhold amounts from its billings until a reserve is set aside in an amount that the Contracting Officer considers necessary to protect the Government's interests. The <b><u>Contracting Officer may require a withhold of 5 percent of the amounts due</u></b> under paragraph (a), but <b><u>the total amount withheld for the contract shall not exceed \$50,000</u></b> . The amounts withheld shall be retained until the Contractor executes and delivers the release required by paragraph (g) of this clause.
52.216-8	<p>(a) The Government shall pay the Contractor for performing this contract the fixed fee specified in the Schedule.</p> <p>(b) Payment of the fixed fee shall be made as specified in the Schedule; provided that the <b><u>Contracting Officer withholds a reserve not to exceed 15 percent of the total fixed fee or \$100,000, whichever is less, to protect the Government's interest</u></b>. The Contracting Officer shall release <b><u>75 percent</u></b> of all fee withholds under this contract after receipt of an <b><u>adequate certified final indirect cost rate proposal</u></b> covering the year of physical completion of this contract, provided the Contractor has satisfied all other contract terms and conditions, including the submission of the final patent and royalty reports, and is not delinquent in submitting final vouchers on prior years' settlements. The <b><u>Contracting Officer may release up to 90 percent of the fee withholds under this contract based on the Contractor's past performance</u></b> related to the submission and settlement of final indirect cost rate proposals.</p>

# Contract Closeout

## Standard Closeout

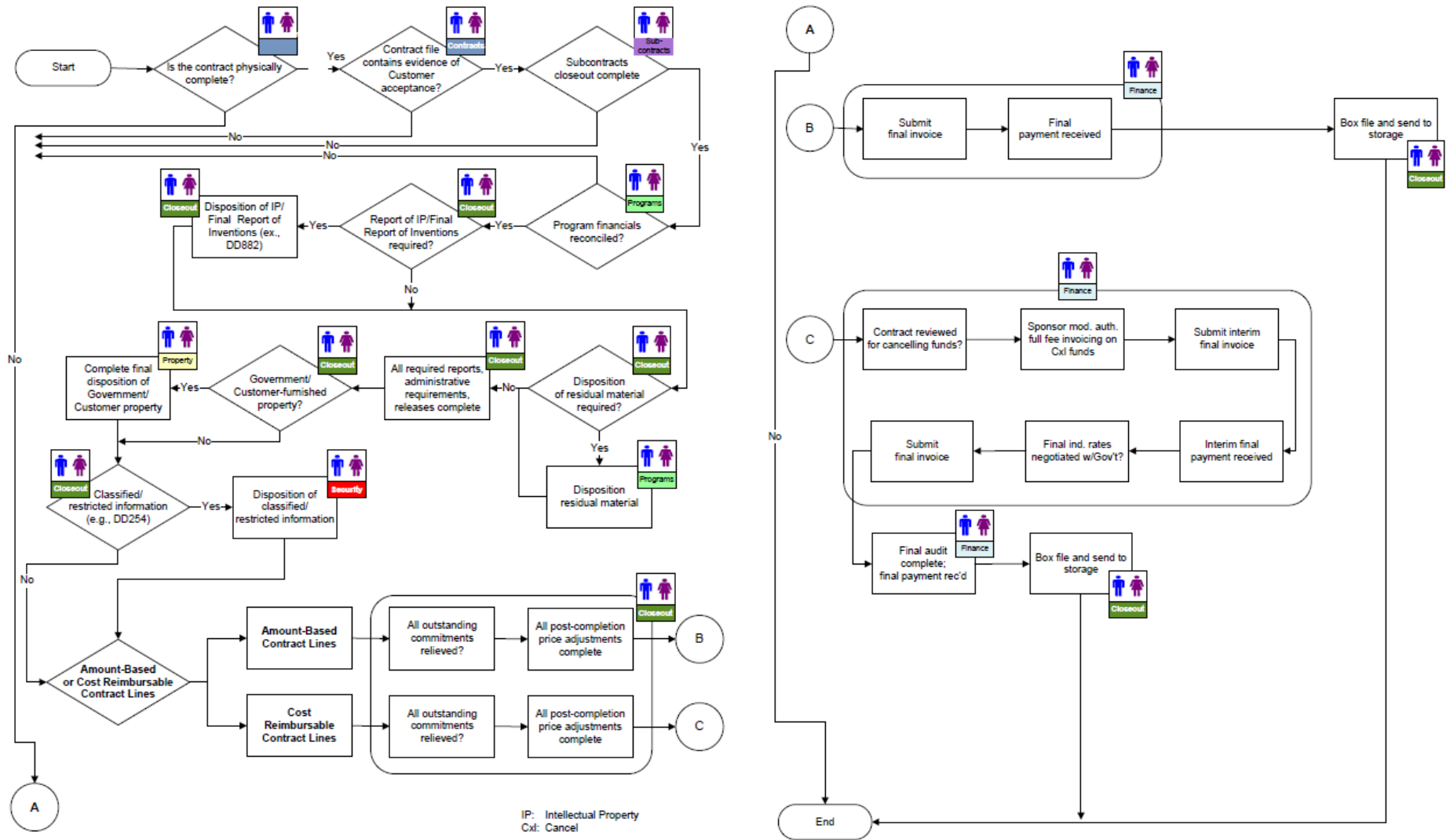
### ***During Performance***

- Verify payment accuracy and report discrepancies immediately
- Comply with Limitation of Cost [FAR 52.232-20] and Limitation of Funds [FAR 52.232-21] clauses
- Submit patent reports on time in accordance with contract instructions
- Submit Overhead Rate Proposals NLT 6 months after contractor's fiscal year end

### ***Closeout Checklist***

- Contract physically complete?
- Evidence of customer acceptance
- Subcontract closeout complete
  - Including subk release of claims!
- Reconcile Program financials
- Report of IP/Final Inventions
- Disposition of residual material
- Disposition Government Furnished Property
- Disposition of Classified Information
- Submit final invoice (FFP)
- Deobligate cancelling funds (CR)
- Submit interim final invoice (CR)
- Negotiate final indirect rates (CR)
- Final invoice/release of claims (All)

# Contract Closeout: Sample Process Flow Diagram



# Contract Closeout

## Withholding Clauses – (in addition to [FAR 4.804](#))

FAR Clause	Text
52.232-7(a)(7)	Unless otherwise prescribed in the Schedule, the Contracting Officer may unilaterally issue a contract modification requiring the Contractor to withhold amounts from its billings until a reserve is set aside in an amount that the Contracting Officer considers necessary to protect the Government's interests. The <b><u>Contracting Officer may require a withhold of 5 percent of the amounts due</u></b> under paragraph (a), but <b><u>the total amount withheld for the contract shall not exceed \$50,000</u></b> . The amounts withheld shall be retained until the Contractor executes and delivers the release required by paragraph (g) of this clause.
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# Questions





# Agenda

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7. **Back Up**

# Back Up

## Resources

- [DCAA Audit Manual](#)
- [DCMA Guidebook](#)
- [Defense Acquisition University](#)
- [Acquisition Central](#)
- [Where in Federal Contracting \(WIFCON\)](#)
- [Cornell Law School](#)

## Handouts

- [Contract Types \(DAU\)](#)
- [Change Clauses](#)