

14 FAH-2 H-520 MONITORING CONTRACTOR PERFORMANCE

*(CT:COR-1; 12-20-2005)
(Office of Origin: A/OPE)*

14 FAH-2 H-521 FIVE ELEMENTS OF CONTRACT ADMINISTRATION

(CT:COR-1; 12-20-2005)

- a. The contractor has primary responsibility for performance of the contract. However, both the contracting officer and the contracting officer's representative (COR) have a vested interest in monitoring contractor performance because unsatisfactory performance may jeopardize a project or even an entire program.
- b. It is the COR's responsibility to ensure that the Department gets what it pays for through good contractor performance. Good performance can be achieved by adherence to the five basic elements of contract administration:
 - (1) Assuring that the contractor does the work that the contract calls for;
 - (2) Assuring performance along the most beneficial lines of effort;
 - (3) Assuring satisfactory quality;
 - (4) Assuring timeliness of performance; and
 - (5) Assuring performance within available funds.

14 FAH-2 H-522 MONITORING TOOLS AVAILABLE TO THE CONTRACTING OFFICER'S REPRESENTATIVE (COR)

14 FAH-2 H-522.1 Inspecting the Work

(CT:COR-1; 12-20-2005)

- a. The best method for monitoring the contractor's work is through actual

inspection. The Inspection clause in U.S. Government contracts gives the U.S. Government's authorized representative the right to inspect and test what is being generated under the contract at all stages of performance and wherever the work is being conducted (i.e., both contractor and subcontractor work sites). However, while the U.S. Government may have the right to inspect when it chooses, the Inspection clause specifies that inspections or tests shall not be performed in such a manner as to unduly delay the work.

- b. The contracting officer's representative (COR) may perform inspections by using several techniques and procedures including spot checks, scheduled inspections of functions performed by the contractor on a periodic basis, random sampling of routine functions, use of contract monitoring and user reports, and periodic review of the contractor's quality control program and reports.
- c. The need for monitoring is variable. Factors such as the complexity of the work, the size of the job, the importance of the expected results, and the expertise of contractor and U.S. Government personnel involved, determine the amount and level of monitoring required. For example, if a contractor's quality control program works and achieves a good level of performance on a consistent basis, the amount of monitoring can be minimal.
- d. The place of performance, type of contract, and kind of work required, each influence the feasibility of using inspection as the main tool for monitoring progress. The place of performance may make frequent inspections impractical, simply because the U.S. Government does not have sufficient travel funds or personnel.

14 FAH-2 H-522.2 Reports

(CT:COR-1; 12-20-2005)

- a. Reports are generally required as a means of evaluating the contractor's work progress and utilization of resources. They are usually divided between a Technical Progress Report and a Financial Status Report. The contracting officer's representative (COR) must ensure that the contractor complies with reporting provisions that are in the contract.
- b. The COR must read and understand the progress reports to identify and initiate steps to deal with any threats to performance that they may disclose. Failure to read progress reports negates their value. Failure to read them promptly can diminish or destroy their value. Failure to understand progress reports can also render them useless. If the wording is vague or unclear, the COR should ask the contractor to clarify what he or she means. The contractor may be trying to gloss over a problem. If the technical content lies outside the COR's expertise, he or

she should seek help from Department personnel who have the necessary technical qualifications to understand what the report is saying.

- c. It is also important to take steps from time to time to check and verify what the reports say, especially if couched in general terms. The COR can ask for copies of drafts, texts, or designs prepared to date, or for other data that should be in existence if work is proceeding according to plan. Cases have occurred in which lower-level contractor personnel have intentionally or unintentionally misled their superiors, who signed out a progress report that indicated far more progress than had in fact been achieved.

14 FAH-2 H-522.2-1 Technical Progress Report

(CT:COR-1; 12-20-2005)

- a. The Technical Progress Report compares actual to planned performance and indicates the progress made in accomplishing each contract task. The report should include relevant details for assessing the status of performance, i.e., a brief, factual summary description of the technical progress made. The report should not be unduly burdensome to prepare and the contractor may submit it in letter form.
- b. The necessity for writing and analyzing progress reports provides both the contractor and the contracting officer's representative (COR) with an opportunity to periodically evaluate the work in relation to contractual requirements.
- c. As the contract progresses, unforeseen technical difficulties may threaten on-time completion of the contract. The progress report should indicate the specific task that is not progressing according to plan; the reasons for the difficulty; specific recommendations for remedial action; and the resources that will be required.

14 FAH-2 H-522.2-2 Financial Status Report

(CT:COR-1; 12-20-2005)

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

14 FAH-2 H-522.3 Site Visits

(CT:COR-1; 12-20-2005)

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

14 FAH-2 H-522.4 Reviewing Vouchers

(CT:COR-1; 12-20-2005)

- a. Contractors must periodically submit vouchers or invoices, i.e., requests for payment. Many contracts instruct the contractor to forward invoices to the contracting officer's representative (COR) with an information copy to the contracting officer.
- b. If the contract requires COR review of vouchers or invoices, the COR should review them to determine the validity of the costs claimed and relate total expenditures to the physical progress of the contract. This is particularly important under cost-reimbursement contracts, where a COR can sometimes gain evidence of performance problems through examining the contractor's vouchers. If the rate of expenditure during the billing period is unusually high, this may disclose effort to overcome significant obstacles to progress. Information submitted to substantiate or explain costs may throw further light on performance problems. Remember, however, that vouchers alone do not provide sufficient information for tracking financial progress. They should be reviewed in conjunction with the financial status reports:
 - (1) **Questioning the reasonableness of costs:** Under cost-reimbursement type contracts, the U.S. Government is entitled to ask the contractor for information that is necessary to understand whether the charges billed are "reasonable," "allocable," and "allowable"—the basic tests that the contractor's costs must pass to be reimbursed. If it appears from charges billed that the contractor may be spending more than is reasonably necessary for certain parts of the work, the COR should call the contractor for additional

explanation or substantiation for those costs. If the additional information fails to establish that the contractor is proceeding in a reasonably efficient way, the COR should discuss the matter with the contractor to make sure that there is not an equally effective way to get the work done. If agreement cannot be reached, the COR should consult with the contracting officer;

- (2) **The right to disallow costs:** While the contractor is entitled to latitude and exercise of judgment in managing the contract work, the U.S. Government has the right to "disallow" and not reimburse the contractor for costs that are unreasonable in nature or amount. This right constitutes a powerful lever for persuading a contractor to manage efficiently. The more the contractor realizes that the U.S. Government is keeping a close watch on costs and is ready to raise questions where warranted, the more effective the power to disallow costs will be as an incentive for economical management by the contractor. It should be stressed, however, that only the contracting officer may disallow costs. The COR should bring any questions or problems with a contractor's vouchers to the contracting officer's attention.
- c. Keep in mind that all U.S. Government contracts contain a Prompt Payment clause which requires that the U.S. Government make payment within 30 calendar days of acceptance of the supplies/services or the date the designated billing office receives the invoice/voucher, whichever is later. The U.S. Government pays interest if the 30-day deadline is not met. Therefore, if payment is contingent upon the COR's review, the COR must review the invoice/voucher promptly to avoid the payment of interest.
 - d. CORs must maintain a copy of all invoices/vouchers and a payment register, indicating the balance of funds remaining. It is important for the COR to know the status of funds at all times.
 - e. The following list of questions will assist CORs in determining if an invoice/voucher is proper:
 - (1) Is the contractor's name and address stated?
 - (2) Is there an invoice date?
 - (3) Does it state the contract number?
 - (4) Is the taxpayer identification number (TIN) and electronic fund payment (EFT) banking information provided, if applicable?
 - (5) Does it state the shipping and payment terms, if any?
 - (6) Does it state the name, address, and phone number of the contractor official to whom the payment is to be sent? This address must be the same address shown in the contract;

- (7) Does the description match the description in the contract?
- (8) Is the correct quantity stated?
- (9) Are the calculations correct?
- (10) Is the agreed-upon unit price correct?
- (11) Have all supplies or services been delivered and accepted?
- (12) Are the correct labor categories and number of hours listed, if applicable?
- (13) Are the supplies/equipment listed allowable costs under the contract, if applicable?
- (14) Is all the required backup material submitted, such as time cards? Check the contract to see what documentation should be submitted with the invoice/voucher.

14 FAH-2 H-522.5 Technical Direction

(CT:COR-1; 12-20-2005)

- a. A means of directing contractor performance is through "technical direction," a concept used in cost-reimbursement contracts. Because work statements in cost-reimbursement contracts are typically not specific enough in terms of approach or methodology, the U.S. Government needs to have the ability to work closely with and guide the contractor along the most beneficial lines of effort. Technical direction constitutes direction by the U.S. Government to the contractor as to which areas or lines (within and without changing the description of work) the contractor is to emphasize or pursue:
 - (1) Technical direction must not require the contractor to perform work different from that which he or she has agreed to do, nor may it change other provisions of the contract such as deliverable due dates, total price or estimated cost, total period of performance, or any administrative provisions;
 - (2) Whenever the contracting officer's representative (COR) provides technical direction, it must be **in writing**, with a copy provided to the contracting officer. It is good practice to coordinate such direction in advance with the contractor. If the contractor considers the direction an imposition of work that is over and above what the contract requires, the matter should be discussed with the contracting officer.
- b. Technical direction is not used in a fixed-price contract, where the contractor properly resists any interference with his or her freedom to perform the contract as he or she chooses, with the objective of

minimizing costs of performance and maximizing profit.

14 FAH-2 H-522.6 Contractor Personnel Assignments

(CT:COR-1; 12-20-2005)

- a. **The Key Personnel clause:** To assure that the work is performed by personnel with the qualifications needed to assure satisfactory quality, many Department contracts for professional services contain a Key Personnel clause. In this clause, the contractor:
 - (1) Promises to assign to work under the contract certain named individuals (sometimes also indicating the capacity in which each named individual will act and the number of hours they will devote to the contract); and
 - (2) Promises not to remove or divert any of the named key personnel from the contract unless the contracting officer consents.
- b. **Monitoring assignments of key personnel:** To assure that the Department benefits from the Key Personnel clause, the contracting officer's representative (COR) must keep in touch with the key personnel and with what they are doing. This will help to assure that the key personnel are not completely taken off the contract work, and also know whether they apply the kind and amount of effort that is necessary to get the work done properly. For example, it is obviously not expected that a key person designated in the contract as "project director" will personally do all the work that the contract requires. However, he or she is expected to devote the time and effort needed to direct and guide the work. Keeping in touch with the director can disclose what degree of control the director has over his or her assistants, how well he or she is informed of what they do, what is their state of progress, etc.
- c. **Monitoring assignments of nonkey personnel:** The qualifications of contractor personnel other than key personnel are also important to satisfactory contract performance. If those who perform particular parts of the contract lack the experience or training to do the job required, the COR must call it to the contractor's attention:
 - (1) The COR can monitor the number and levels of personnel working on the contract through review of charges billed on the contractor's invoices or vouchers and attached supporting material. These may disclose or suggest use of inexperienced or underqualified personnel, thus diluting the quality of effort. Because of the necessary concern with the quality of contract work, the COR has a legitimate interest in, and may properly request the contractor to supply information on, the qualifications of individuals assigned to

the contract work;

- (2) **However, the COR cannot act as the contractor's personnel manager:** Recruitment, hiring, and firing of contractor personnel must be recognized at all times as being the function of the contractor, not the U.S. Government. The U.S. Government's role, through the COR, is one of reviewing the contractor's assignments of personnel and the qualifications of those personnel, and taking steps to work out corrective measures with the contractor where personnel qualifications are inadequate.

14 FAH-2 H-522.7 The Limitation-of-Cost Clause

(CT:COR-1; 12-20-2005)

- a. All cost-reimbursement and labor-hour type contracts contain a clause entitled Limitation of Cost. This clause expressly limits the U.S. Government's obligation to reimburse the contractor to the amount stated in the contract as being the total estimated cost. Because completion of the contract work may turn out to cost more than the estimated cost, the Limitation-of-Cost clause provides, in effect, that the contractor has no obligation to continue with the work once incurred costs reach the total estimated cost. It makes no difference if the contract is unfinished when this point is reached; the contractor is entitled to stop work until and unless the contract is modified to increase the total estimated cost. The U.S. Government must reimburse the contractor for "best efforts" in completing the work within the total estimated amount.
- b. The Limitation-of-Cost clause requires the contractor to notify the contracting officer and provide a revised estimate of the total cost of the contract, whenever a contractor has reason to believe:
 - (1) That the costs he or she expects to incur in the next 60 days plus costs already incurred will exceed 75% of the total estimated cost of the contract; or
 - (2) That the total costs of performance (exclusive of fee) will exceed or be substantially less than the estimated cost stated in the contract.
- c. This notification is a useful tool for identifying and dealing with potential problems.

14 FAH-2 H-523 QUALITY ASSURANCE

(CT:COR-1; 12-20-2005)

- a. Federal Acquisition Regulation (FAR) Part 46 prescribes policies and procedures to ensure that supplies and services acquired under U.S. Government contracts conform to the contract's quality and quantity

requirements. Included are inspection, acceptance, warranty, and other measures relating to quality assurance.

- b. The requirements office is responsible for developing specifications for inspection, testing, and other quality measures to be included in solicitations and contracts. When administering the contract, the contracting officer's representative (COR) is responsible for developing quality assurance procedures, verifying whether the supplies or services conform to contract quality requirements, and maintaining quality assurance records. In some cases, the contract will contain a Quality Assurance Plan and the COR will use the procedures in this plan to evaluate the quality of services or deliverables provided.
- c. The contractor is responsible for fulfilling its obligations under the contract by:
 - (1) Monitoring product quality;
 - (2) Providing the U.S. Government only supplies and services conforming to contract requirements;
 - (3) Performing all inspections and tests required by the contract; and
 - (4) Monitoring the quality of materials supplied by its suppliers or subcontractors.
- d. Although contracts generally make the contractor responsible for performing inspection before tendering supplies to the U.S. Government, some specialized inspections are performed solely by U.S. Government personnel, e.g., tests that require use of specialized test equipment or facilities and U.S. Government testing for first-article approval.

14 FAH-2 H-523.1 Warranties

(CT:COR-1; 12-20-2005)

- a. A warranty is a promise given by the contractor to the U.S. Government regarding the nature, usefulness, or condition of the supplies or services furnished under the contract. The purpose of a warranty is to delineate the rights and obligations of the contractor and the U.S. Government for defective items and services and to foster quality performance.
- b. The use of warranties is not mandatory. The contracting officer determines whether a warranty is appropriate based on the nature and use of the supplies and services, cost, administrative system for enforcement, and trade practice.

14 FAH-2 H-523.2 Inspection

(CT:COR-1; 12-20-2005)

- a. Inspection means examining and testing supplies or services (including, when appropriate, raw materials, components, and intermediate assemblies) to determine whether they conform to contract requirements.
- b. It is the contracting officer's representative's (COR) responsibility to determine that the work is complete and conforms to the technical requirements of the contract. The COR may perform quality assurance inspections at such times and places as may be necessary to determine conformance with contract requirements, including inspections at the source or at destination.
- c. The COR must ensure that the work performed under the contract is measured against the Performance Work Statement. If performance does not meet contract requirements, the COR must identify deficiencies and advise the contracting officer so that remedial action can be taken before final payment and contract closeout.
- d. If the contract contains a Quality Assurance Plan, the COR must follow the terms established in the plan to measure contractor performance. If performance does not meet the acceptable quality levels, the contracting officer will follow the procedures established in the plan to determine the appropriate course of action.

14 FAH-2 H-523.3 Acceptance

(CT:COR-1; 12-20-2005)

- a. Acceptance is an acknowledgement by an authorized U.S. Government representative that supplies or services conform to the contract's quality and quantity requirements. Acceptance may take place before delivery, at the time of delivery, or after delivery depending on the contract provisions. However, supplies or services are not, ordinarily, accepted before quality assurance actions have been completed.
- b. The contracting officer's representative (COR) documents acceptance by executing an acceptance document such as Form DS-127, Receiving and Inspection Report, or by approving a contractor's invoice.
- c. The COR should bear in mind that once formal acceptance has been accomplished, the contractor is generally excused from further performance. After final acceptance, the contractor can no longer be held responsible for unsatisfactory effort, unless otherwise specified in the contract. However, the U.S. Government is not without some protection in the event that defects are discovered after acceptance. The terms of the standard Inspection clauses give the U.S. Government remedies after acceptance in the case of latent defects, fraud, or gross mistakes that amount to fraud. In addition, warranty clauses can be used which give the U.S. Government rights after acceptance.

14 FAH-2 H-524 THROUGH H-529 UNASSIGNED