

## Contract Administration

# Activity 32: Monitor Subcontract Management

*Procedures for consent to subcontract, purchasing system reviews and make-or-buy plans, and reviewing Small Business subcontracting plan.*

**Related Flow Charts:** [Flow Chart 32](#)

**Related Courses:** [CON 124](#)

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### Part A: Advanced Notification and Consent to Subcontracts

Tasks	FAR Reference(s)	Additional Information
1. Identify subcontracts that require contracting officer consent.	FAR 44.201-1 Consent requirements [consent to subcontracts].	<p>If the contractor has an approved purchasing system, consent is required for subcontracts specifically identified by the contracting officer in the subcontracts clause of the contract.</p> <p>If the contractor does not have an approved purchasing system, consent to subcontract is required for cost-reimbursement, time-and-materials, labor-hour, or letter contracts, and also for unpriced actions (including unpriced modifications and unpriced delivery orders) under fixed-price contracts that exceed the simplified acquisition threshold (SAT).</p>
2. When the prime contractor has an approved purchasing system, determine whether consent is required to protect Government interests.	FAR 44.201-1(a) Consent requirements [consent to subcontracts].	The contracting officer may require consent to subcontract if the contracting officer has determined that an individual consent action is required to protect the Government adequately because of the subcontract type, complexity, or value, or because the subcontract needs special surveillance. These can be subcontracts for critical systems, subsystems, components, or services. Subcontracts may be identified by subcontract number or by class of items (e.g., subcontracts for engines on a prime contract for airframes).

Tasks	FAR Reference(s)	Additional Information
3a. When the prime contractor does not have an approved purchasing system, determine if type of contract requires consent.	FAR 44.201-1(b) Consent requirements [consent to subcontracts].	
3b. When the prime contractor does not have an approved purchasing system, determine whether the unpriced action (including unpriced modifications or delivery orders) exceeds the SAT.	FAR 44.201-1(b) Consent requirements [consent to subcontracts].	
3(b)(i). Determine whether subcontracts are cost-reimbursement, time-and-materials, or labor-hour.	FAR 44.201-1(b) Consent requirements [consent to subcontracts].	
3(b)(ii). Determine whether subcontracts are fixed-price and exceed a certain threshold.	FAR 44.201-1(b) Consent requirements [consent to subcontracts].	Fixed-price subcontracts that exceed: <ul style="list-style-type: none"> <li>• For the Department of Defense, the Coast Guard, and the NASA, the greater of the SAT or five percent of the total estimated cost of the contract; or</li> <li>• For civilian agencies other than the Coast Guard and the NASA, either the SAT or five percent of the total estimated cost of the contract.</li> </ul>
3c. Determine whether consent is required under other circumstances.	FAR 44.201-1(c) Consent requirements [consent to subcontracts].	Consent may be required for subcontracts under prime contracts for architect-engineer services.

Tasks	FAR Reference(s)	Additional Information
<p>4. Respond to the contractor's advance notification of a subcontract requiring consent to subcontract.</p>	<p>FAR 9.402(a) Policy [debarment, suspension, and ineligibility].</p> <p>FAR 9.405-2 Restrictions on subcontracting [effect of listing].</p> <p>FAR 44.201-1 Advance notification requirements [consent to subcontracts].</p> <p>FAR 44.202 Contracting officer's evaluation [consent to subcontracts].</p> <p>FAR 44.203 Consent limitations [consent to subcontracts].</p>	<p>The cognizant contracting officer may grant consent or cite reasons for denying consent. Before granting consent review the contractor's notification and supporting data to ensure that the proposed subcontract is:</p> <ul style="list-style-type: none"> <li>• Appropriate for the risks involved;</li> <li>• Consistent with current policy; and</li> <li>• Consistent with sound business judgment.</li> </ul> <p>Look for factors that preclude consent, such as:</p> <ul style="list-style-type: none"> <li>• Cost-reimbursement subcontracts;</li> <li>• Subcontracts obligating the contracting officer to deal directly with the subcontractor; or</li> <li>• Repetitive or unduly protracted use of cost-reimbursement, time-and-materials, or labor-hour subcontracts (contracting officers should follow the principles of FAR 16.103(c)).</li> </ul>

### Part B: Contractors' Purchasing Systems Reviews

Tasks	FAR Reference(s)	Additional Information
<p>1. Determine whether a review of a contractor's purchasing system is appropriate.</p>	<p>FAR 44.301 Objective [contractors' purchasing systems reviews].</p> <p>FAR 44.302 Requirements [contractors' purchasing systems reviews].</p>	<p>Perform a review to determine if a contractor's purchasing system review (CPSR) is needed when:</p> <ul style="list-style-type: none"> <li>• A contractor's sales to the Government are expected to exceed \$25 million (or other agency threshold) during the next 12 months, excluding: <ul style="list-style-type: none"> <li>○ Competitively awarded firm-fixed-price contracts;</li> <li>○ Competitively awarded fixed-price with economic price adjustment contracts; and</li> <li>○ Sales of commercial items pursuant to FAR Part 12.</li> </ul> </li> <li>• Sales include those represented by prime contracts, subcontracts under Government prime contracts, and modifications.</li> </ul>

Tasks	FAR Reference(s)	Additional Information
		Once an initial determination has been made on the need for a CPSR, at least every three years the ACO shall determine whether a purchasing system review is necessary.
2. Conduct the CPSR.	FAR 44.303 Extent of review [contractors' purchasing systems reviews].	A CPSR requires an evaluation of the contractor's purchasing system.  The CPSR should address the same considerations listed in FAR 44.202-2 for consent to subcontract evaluations.
3. Determine whether to grant, withhold, or withdraw purchasing system approval.	FAR 44.305 Granting, withholding, or withdrawing approval [contractors' purchasing systems reviews].	Approve a purchasing system only after determining that the contractor's purchasing policies and practices are efficient and protect the Government's interests.  Withhold or withdraw approval when are major weaknesses or if the contractor is unable to provide sufficient information.  Withdraw approval at any time it is determined there has been deterioration of the contractor's purchasing system or to protect the Government's interest.  Withhold or withdraw approval when there is a recurring noncompliance with requirements.
4. Promptly notify the contractor in writing when granting, withholding, or withdrawing purchasing system approval.	FAR 44.305-1(b) Responsibilities [granting, withholding, or withdrawing approval].  FAR 44.305 Granting, withholding, or withdrawing approval [contractors' purchasing systems reviews].	When approval of the contractor's purchasing system is withheld or withdrawn, notify contractor in writing within 10 days after completing the in- plant review.
5. Distribute information on purchasing system approval status.	FAR 44.306 Disclosure of approval status [contractors' purchasing systems reviews].  FAR 44.307 Reports [contractors' purchasing systems reviews].	Distribute copies of CPSR reports; notifications granting, withholding, or withdrawing system approval; and Government recommendations for improvement of an approved system, including the contractor's response.  Upon request, a prime contractor may be informed that the purchasing system of a proposed subcontractor has been approved, disapproved or has not been reviewed.

Tasks	FAR Reference(s)	Additional Information
6. Establish a program for contractor purchasing system surveillance.	FAR 44.304 Surveillance [contractors' purchasing systems reviews].	A sufficient level of surveillance is required to ensure that the contractor is effectively managing its purchasing program.  Seek assistance from audit, pricing, technical, or other specialists as necessary.
7. Take measures to protect the Government's interests on specific contracts when an ACO denies or withdraws purchasing system approval.	General Practices.	Consider the additional risk to the Government due to the purchasing system weaknesses. In particular, consider purchasing system approval in evaluating subcontract prices.
8. Maintain information on the status of the contractor's purchasing system.	General Practices.	The cognizant contract administration office and affected contracting offices should maintain relevant information on purchasing system status.

### Part C: Make-or-Buy Plans

Tasks	FAR Reference(s)	Additional Information
1. Identify changes in a make-or-buy program.	FAR 2.101 Make-or-buy program [definitions].  FAR 15.407-2 Make-or-buy programs [special cost or pricing areas].	When a contract includes the Changes or Additions to Make-or-Buy Program clause (FAR 52.215-9), the contractor must perform in accordance with the make-or-buy program incorporated in this contract.  If the contractor proposes to change the program (including a change in the place of performance or any make item), the contractor must notify the contracting officer in writing; and submit justification.

Tasks	FAR Reference(s)	Additional Information
<p>2. Determine whether to accept a change in the make-or-buy program.</p>	<p>FAR 15.407-2 Make-or-buy programs [special cost or pricing areas].</p>	<p>Normally, it is not in the Government's best interest to accept changes that would permit the contractor to make supplies or services that:</p> <ul style="list-style-type: none"> <li>• Are not regularly manufactured; or</li> <li>• Are regularly manufactured or provided by the contractor, but are available—quality, quantity, delivery, and other essential factors considered—from another firm at lower prices.</li> </ul> <p>However, the supplies and services above may be accepted as "make items" if:</p> <ul style="list-style-type: none"> <li>• An overall lower Government-wide cost would result; or</li> <li>• It is otherwise in the best interest of the Government.</li> </ul>
<p>3. Negotiate an equitable adjustment.</p>	<p>FAR 15.404-3 Subcontract pricing considerations [proposal analysis]. FAR 15.407-2 Make-or-buy programs [special cost or pricing areas].</p>	<p>Negotiate an equitable adjustment considering the effect of the change on price, schedule, and technical requirements.</p>

## Part D: Small Business Subcontracting

Tasks	FAR Reference(s)	Additional Information
<p>1. Determine whether the contractor met or exceeded applicable small business subcontracting requirements.</p>	<p>FAR 19.705-6 Postaward responsibilities of the contract officer [responsibilities of the contracting officer under the subcontracting assistance program].</p> <p>FAR 19.706 Responsibilities of the cognizant administrative contracting officer [the small business subcontracting program].</p>	<p>All other than small businesses that have one or more prime contract(s) and/or subcontract(s) in excess of \$650,000 (\$1.5 million for construction of a public facility) with the federal government, and have Subcontracting Plans must submit an online Individual Subcontract Report (ISR) (formerly the SF 294 report) unless the contractor is operating under an approved Commercial Subcontracting Plan or is currently in the DOD Test Program for Negotiation of Comprehensive Subcontracting Plans. A separate ISR is required for each federal contract and/or subcontract. (FAR 19.704)</p> <p>On November 1, 2016, the FAR will be amended to implement SBA's final rule aimed at improving subcontracting regulations to increase small business opportunities. Relevant content will be updated with changes at that time.</p>
<p>2. Identify situations where small business subcontracting plan goals appears to fail due to a lack of good faith effort.</p>	<p>FAR 19.705-7 Liquidated damages [responsibilities of the contracting officer under the subcontracting assistance program].</p> <p>FAR 19.706(g) Responsibilities of the cognizant administrative contracting officer [the small business subcontracting program].</p>	<p>Review all available information for any indication that the contractor has not made a good faith effort to comply with its Small Business Subcontracting Plan.</p> <p>Consider the totality of the contractor's actions, consistent with the information and assurances provided in its plan.</p> <p>The fact that the contractor failed to meet its subcontracting goals does not, in and of itself, constitute a failure to make a good faith effort.</p> <p>Document the file with the results of the review.</p>
<p>3. Notify the contractor of any apparent failure to make a good faith effort to comply with its small business subcontracting plan.</p>	<p>FAR 19.705-7 Liquidated damages [responsibilities of the contracting officer under the subcontracting assistance program].</p>	<p>If the contracting officer decides that the contractor failed to make a good faith effort to comply with its subcontracting plan, the contracting officer shall give the contractor written notice specifying the failure, advising the contractor of the possibility that the contractor may have to pay to the Government liquidated damages.</p>

Tasks	FAR Reference(s)	Additional Information
<p>4. Determine whether to assess liquidated damages for contractor failure to make a good faith effort to comply with its small business subcontracting plan.</p>	<p>FAR 19.705-6(f) Postaward responsibilities of the contracting officer [responsibilities of the contracting officer under the subcontracting assistance program].</p> <p>FAR 19.705-7 Liquidated damages [responsibilities of the contracting officer under the subcontracting assistance program].</p>	<p>Assess liquidated damages only if available information indicates that the contractor failed to make a good faith effort to comply with its Small Business Subcontracting Plan requirements.</p>
<p>5. Issue a final decision assessing liquidated damages for contractor failure to make a good faith effort to comply with its small business subcontracting plan.</p>	<p>FAR 19.705-7(e) Liquidated damages [responsibilities of the contracting officer under the subcontracting assistance program].</p>	<p>The contracting officer will issue a final decision to the contractor and require the payment of liquidated damages in an amount stated.</p> <p>Calculate the amount of liquidated damages following the requirements of FAR 19.705-7(f)(4).</p>
<p>6. Determine the amount of any incentive payment due the contractor for exceeding its small business subcontracting plan goals.</p>	<p>FAR 19.705-1 General support of the program [responsibilities of the contracting officer under the subcontracting assistance program].</p> <p>FAR 52.219-10 Incentive Subcontracting Program.</p>	<p>Various approaches may be used such as:</p> <ul style="list-style-type: none"> <li>• A fully quantified schedule of payments based on actual subcontract achievement to an award-fee approach employing subjective evaluation criteria.</li> <li>• Follow the Incentive Subcontracting Program stated in the applicable FAR part.</li> </ul>