

Contract Administration

Activity 35: Performance Management

Ensuring that policies, regulations, guidelines and performance metrics are consistently being met in an effective and efficient manner.

Related Flow Charts: [Flow Chart 35](#)

Tasks	FAR Reference(s)	Additional Information
<p>1. Monitor contracting officer’s representatives (CORs) and other government support personnel.</p>	<p>FAR 42.302 Contract administration functions.</p>	<p>The contracting officer should—</p> <ul style="list-style-type: none"> • Obtain any required reports. • Obtain information on their contacts with the contractor, including copies of any written correspondence. • Advise them to report any verbal exchanges with the contractor that involves performance, price, or other substantive contract requirements. • Identify and, where possible, forestall constructive changes. • Ensure that the CORs properly carry out their roles and responsibilities: <ul style="list-style-type: none"> ○ Within the limits of their authority; ○ Within time limits established in the contract; and ○ Avoiding any action that may: <ul style="list-style-type: none"> ▪ Be inconsistent with any contract requirement; or ▪ Result in claims or waivers, of changes, or of other contract modifications. (See 43.102(a)) • Instruct contractors to submit notices of potential

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		<p>constructive changes per FAR 43.104.</p> <ul style="list-style-type: none"> Identify other evidence of constructive changes (e.g., through site visits, requests for change orders from the contractor, invoice items, or amounts not contemplated in contract).
<p>2. Respond to contractor requests for approval or other Government action.</p>	<p>FAR 11.302 Policy [acceptable material]. FAR 22.103-4 Approvals [overtime].</p>	<p>Examples of such requests include:</p> <ul style="list-style-type: none"> Contractor requests for overtime. Contractor requests to provide used, reconditioned, or remanufactured supplies.

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<p>3. Perform duties related to first article testing (if applicable).</p>	<p>FAR 9.307 Government administration procedures [first article testing and approval].</p>	<p>Before the contractor ships the first article, or the first article test report, to the Government laboratory or other activity responsible for approval at the address specified in the contract, the contract administration office must provide that activity with as much advance notification as is feasible of the forthcoming shipment, and:</p> <ul style="list-style-type: none"> • Advise that activity of the contractual requirements for testing and approval, or evaluation, as appropriate; • Call attention to the notice requirement in paragraph (b) of the clause at FAR 52.209-3; and • Request that the activity inform the contract administration office of the date when testing or evaluation will be completed. <p>The Government laboratory or other activity responsible for first article testing or evaluation must inform the contracting office whether to approve, conditionally approve, or disapprove the first article. The contracting officer must then notify the contractor of the action taken and furnish a copy of the notice to the contract administration office. The notice must include the first article shipment number, when available, and the applicable contract line item number. Any changes in the drawings, designs, or specifications determined by the contracting officer to be necessary must be made under the Changes clause, and not by the notice of approval, conditional approval, or disapproval furnished the contractor.</p>

Tasks	FAR Reference(s)	Additional Information
<p>4. Obtain feedback on contractor performance or deliverables.</p>	<p>FAR 42.302 Contract administration functions.</p> <p>FAR 42.4 Correspondence and visits [contract management].</p> <p>FAR 42.1106 Reporting requirements [production surveillance and reporting].</p>	<p>Conduct monitoring, data collection, inspection, and acceptance as provided in the contract and the contract administration plan.</p> <ul style="list-style-type: none"> • Obtain sufficient data to verify satisfactory performance. • Recognize any evidence of potential performance problems or other breach by either contractor or government personnel. • Handle correspondence with the contractor and visits to the contractor as prescribed in FAR 42.4. <p>Sources of information include:</p> <ul style="list-style-type: none"> • COR reports and informal feedback; • Inspection and acceptance reports; • Requiring activities and/or end users; • Personal site visits/observation of work (scheduled and unscheduled); • Contractor reports (e.g., production progress reports, shop plans, shop travelers, blueprints, stick drawings, wiring diagrams, PERT charts, and subcontract orders); and • Subcontractor complaints.

Tasks	FAR Reference(s)	Additional Information
<p>5. Verify and document evidence of actual or potential performance problems, constructive changes, or other breaches.</p>	<p>FAR 42.302 Contract administration functions.</p>	<p>When there is evidence of an actual or potential performance problem, constructive change, or other breach, identify the terms and conditions at issue (if any).</p> <p>Potential sources of information for verification and documentation include:</p> <ul style="list-style-type: none"> • Personal observation; • The contractor; • COR; • Auditor; • Quality assurance personnel; and • Requiring activity and end users. <p>Contact only those individuals necessary to verify evidence. Data should be sufficient to identify both the symptoms and causes of any potential problems. Identify and obtain corrections to any government report (e.g., inspection). Inform the requiring activity (when appropriate).</p>
<p>5a. Determine potential impact of any identified performance problems, constructive changes, or other breaches on cost, delivery, and other requirements.</p>	<p>FAR 46.103 Contracting office responsibilities [quality assurance].</p> <p>FAR 46.203 Criteria for use of contract quality requirements.</p>	<p>Establish the significance of a nonconformance when considering the acceptability of supplies or services that do not meet contract requirements.</p> <p>The extent of contract quality requirements, including contractor inspection, required under a contract must usually be based on the classification of the contract item (i.e., whether it is a supply or service) as determined by its technical description, its complexity, and the criticality of its application.</p>

Tasks	FAR Reference(s)	Additional Information
5b Resolve problems informally (where possible).	FAR 42.302 Contract administration functions. FAR 43.1 General [contract modifications].	Alternatives to a formal contractual remedy include the following: <ul style="list-style-type: none"> • Informal agreement on corrective step. • Memorandum of concern to request a written plan from the contractor for correcting performance, including: <ul style="list-style-type: none"> ○ Statement of the problem; ○ Need for corrective action; ○ Response time; and ○ Place for contractor to sign acknowledging receipt. • Contract modification.
6. Invoke formal contractual remedies to resolve identified problems.	N/A	See Activity 36, Commercial-Simplified Acquisition Remedies See Activity 37, Non-Commercial Acquisition Remedies
7a. Investigate potential or actual delays (if any).	FAR 42.11 Production surveillance and reporting.	Investigate the cause of the delay and determine if the delay is excusable.
7b. Obtain and verify evidence of delay in contract performance.	FAR 42.302 Contract administration functions. FAR 42.4 Correspondence and visits [contract management]. FAR 42.1106 Reporting requirements [production surveillance and reporting]. FAR 52.212-4 (f) Contract Terms and Conditions –Commercial Items, Excusable Delays. FAR 52.213-4 (e) Terms and Conditions – Simplified Acquisitions (Other Than Commercial Items), Excusable Delays.	Obtain and verify evidence of delay based on: <ul style="list-style-type: none"> • Feedback from monitoring, inspection and acceptance; • Notice from the contractor under: <ul style="list-style-type: none"> ○ Contract Terms and Conditions –Commercial Items, Excusable Delays (FAR 52.212-4(f)); or ○ Terms and Conditions – Simplified Acquisitions (Other Than Commercial Items), Excusable Delays (FAR 52.213-4(e)).

Tasks	FAR Reference(s)	Additional Information
<p>7c. Determine whether the delay was caused by the Government or by the contractor.</p>	<p>FAR 42.1304 Government delay of work.</p> <p>FAR 52.242-17 Government delay of work.</p>	<p>If the contract includes the Government Delay of Work clause (FAR 52.242-17), identify delays that are the result of:</p> <ul style="list-style-type: none"> • An act of the contracting officer in contract administration that was not authorized by the contract; or • A failure of the contracting officer to act within the time specified in the contract, or within a reasonable time if none is specified in the contract. <p>Examples of government-caused delays include:</p> <ul style="list-style-type: none"> • Delay in issuing the Notice to Proceed (NTP) • Delay in making construction site available to contractor • Interference with contractor's work • Failure to provide timely submittal approval • Delay in inspection of work • Delay in processing modifications

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<p>7(c)(i). If the delay was caused by the contractor, identify the type of delay.</p>	<p>FAR 52.212-4 (f) Contract Terms and Conditions –Commercial Items, Excusable Delays.</p> <p>FAR 52.213-4 (e) Terms and Conditions – Simplified Acquisitions (Other Than Commercial Items), Excusable Delays.</p> <p>FAR 52.249-8 Default (Fixed-Price Supply and Service).</p> <p>FAR 52.249-14 Default (Fixed-Price Research and Development).</p> <p>FAR 52.249-14 Excusable Delays.</p>	<p>Determine that the delay is:</p> <ul style="list-style-type: none"> • Excusable, because they were caused by an occurrence beyond the reasonable control of the contractor and without the fault or negligence of the contractor; • Nonexcusable, because they were caused by an occurrence within the reasonable control of the contractor; or • Commingled, because delay results from both excusable and nonexcusable causes. <p>In determining whether a delay is excusable, refer to the appropriate contract clause:</p> <ul style="list-style-type: none"> • Contract Terms and Conditions – Commercial Items, Excusable Delays (FAR 52.212-4(f)); • Terms and Conditions – Simplified Acquisitions (Other Than Commercial Items), Excusable Delays (FAR 52.213-4(e)); • Default (Fixed-Price Supply and Service) (FAR 52.249-8); • Default (Fixed-Price Research and Development) (FAR 52.249-9); or • Excusable Delays (FAR 52.249-14).

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<p>7(c)(i)(A). If the delay is excusable or commingled, prepare a finding of facts on the delay.</p>	<p>FAR 42.4 Correspondence and visits [contract management]. FAR 4.803 Contents of contract files.</p>	<p>Accurately document the facts related to the delay, including:</p> <ul style="list-style-type: none"> • A description of the delay; • A list of persons with factual knowledge of the delay; • Relevant statements or evidential facts relating to the occurrence that caused the delay and how that occurrence affected contract performance; • Related information on contract performance, such as: <ul style="list-style-type: none"> ○ The date work under the contract began; ○ Whether work was on schedule when the delay occurred; ○ Contract progress made to date; ○ The contractor's remaining obligations under the contract; and ○ Contractor and government expectations regarding contract completion; and ○ Reasons for believing that all or part of the delay is excusable.

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<p>7(c)(i)(B). Given a finding of an excusable or commingled delay, develop a position on modifying the delivery schedule or other contractual requirements.</p>	<p>FAR 42.302 Contract administration functions.</p> <p>FAR 43.1 General [contract modifications].</p>	<p>When modifying the delivery schedule or other contractual requirements:</p> <ul style="list-style-type: none"> • Estimate a reasonable period of additional time to perform (if applicable). • Identify potential alternatives for modifying the requirements at issue. • Consider the pros and cons of each such alternative (e.g., need for a bilateral modification and any likely equitable adjustment in price to implement the alternative). • Estimate the length of time that the excusable cause can reasonably be expected to delay performance, given current contract requirements. • When appropriate, identify alternatives to extending the delivery period, such as: <ul style="list-style-type: none"> ○ Employment by the contractor of additional shifts, personnel, or other resources; ○ Change in method of shipment (e.g., use of express mail); ○ Change in the requirement (e.g., deletion of a low priority task from the statement of work, if such deletion would shorten the time required for contract completion); or ○ Termination for convenience.
<p>7(c)(i)(C). Upon developing a position, negotiate a bilateral modification.</p>	<p>FAR 43.1 General [contract modifications].</p>	<p>Negotiate a bilateral contract modification to the delivery schedule or other contractual requirements.</p>

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<p>6(c)(ii)(A). If the delay was cause by the Government, determine the amount of the adjustment.</p>	<p>FAR 42.1304 Government delay of work. FAR 52.242-17 Government delay of work. FAR 52.243-1 Changes-Fixed Price. FAR 52.243-2 Changes-Cost Reimbursement. FAR 52.243-3 Changes-Time-and Materials or Labor-Hour.</p>	<p>Determine adjustment under the Government delay of work clause:</p> <ul style="list-style-type: none"> • The contractor is entitled to an adjustment (excluding profit) for the increased cost. • The contractor must prove the extent of the government-caused delay, and its increased costs, to prove its injury, and there was no concurrent delay. • This clause is not applicable if the contract otherwise provides for equitable adjustment due to delay (e.g., the Changes clause is included in the contract). <p>Determine adjustment under other clauses: The contractor is entitled to both time and money in accordance with the Changes clause. However, if the government-caused delay is a formal suspension, the contractor is compensated for additional costs (excluding profit) under the Suspension of Work clause and is granted time under the Default clause.</p>
<p>6(c)(ii)(B). After determining the amount of the adjustment, modify the contract accordingly.</p>	<p>FAR Part 43 Contract modifications.</p>	<p>Negotiate a bilateral contract modification to the contract amount, delivery schedule or other contractual requirements.</p>
<p>7. Maintain documentation in record of file.</p>	<p>FAR 42.1304(d) Government delay of work.</p>	<p>Retain in the file of record all negotiations leading to any adjustment, and related certified cost or pricing data, or data other than certified cost or pricing data.</p>
<p>8a. Identify a potential need to stop work.</p>	<p>FAR 42.1303(a) Stop-work orders.</p>	<p>Stop-work orders may be used in any negotiated fixed-price or cost-reimbursement supply, research and development, or service contract if work stoppage may be required for reasons such as advancement in the state-of-the-art, production or engineering breakthroughs, or realignment of programs.</p>
<p>8b. Estimate the time period that work must be stopped (i.e., period of delay).</p>	<p>FAR 42.1305(b) Contract clauses [suspension of work, stop-work orders, and government delay of work]. FAR 52.242-15(a) Stop-work order.</p>	<p>The contracting officer may, at any time, require the contractor to stop all or any part of the work for a period of 90 days or less after the order is delivered to the contractors. The work may be stopped for any further period to which the parties may agree.</p>

Tasks	FAR Reference(s)	Additional Information
8c. Determine whether or not to issue a stop-work order.	FAR 42.1303(b) Stop-work orders.	<p>Generally, a stop-work order will be issued only if it is advisable to suspend work pending a decision by the Government and a supplemental agreement providing for the suspension is not feasible. Issuance of a stop-work order must be approved at a level higher than the contracting officer. Stop-work orders must not be used in place of a termination notice after a decision to terminate has been made.</p> <p>Only issue stop work orders if there is such a clause in the contract and if it is advisable to suspend work pending a decision by the Government and a supplemental agreement providing for the suspension is not feasible. If the contract does not include FAR 52.242-15 or a similar clause, any stop-work must be accomplished using a bilateral contract modification.</p>
8d. Issue a written stop-work order to stop all or part of the work.	FAR 42.1303(c) Stop-work orders.	<p>Stop-work orders should include:</p> <ul style="list-style-type: none"> • A description of the work to be suspended; • Instructions concerning the contractor's issuance of further orders for materials or services; • Guidance to the contractor on action to be taken on any subcontracts; and • Other suggestions to the contractor for minimizing costs.
8e. Discuss the stop-work order with the contractor and modify the order (if necessary) considering the results of the discussion.	FAR 42.1303(d) Stop-work orders.	The contractor is entitled to an adjustment in the price to compensate for costs incurred because of the order plus profit.

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8f. Take appropriate action to resolve the stop-work order.	FAR 42.1303(e) Stop-work orders.	<p>As soon as feasible after a stop-work order is issued, but before its expiration, the contracting officer must take appropriate action to:</p> <ul style="list-style-type: none"> • Terminate the contract; • Cancel the stop-work order (any cancellation of a stop-work order must be subject to the same approvals as were required for its issuance); or • Extend the period of the stop-work order if it is necessary and if the contractor agrees (any extension of the stop-work order must be by a supplemental agreement).
8g. Proceed to Task 7.	FAR 42.1304(d) Government delay of work.	Retain in the file of record all negotiations leading to any adjustment, and related certified cost or pricing data, or data other than certified cost or pricing data.
9a. Determine the need to suspend work.	<p>FAR 42.1302 Suspension of work.</p> <p>FAR 52.242-14 Suspension of work.</p>	<p>Situations may occur during contract performance that cause the Government to order a suspension of work. A suspension of work is officially applied only to construction or architect-engineer contracts. The Suspension of Work clause should be included in all fixed-price construction contracts and in architect-engineer contracts</p> <p>The contract clause is intended to allow the contractor to be compensated for delays or suspensions, without profit, provided the contractor is not the cause.</p> <p>A suspension of work differs from a stop-work order, which is used in negotiated contracts for supplies and services.</p>
9b. Order the contractor, in writing, to suspend the work.	<p>FAR 42.1305 Suspension of work.</p> <p>FAR 52.242-14 Suspension of work.</p>	Suspend the contractor’s performance for a reasonable period of time appropriate for the convenience of the Government.

Tasks	FAR Reference(s)	Additional Information
<p>9c. Determine whether an adjustment should be made because of an unreasonable delay, suspension or interruption of the contract, and modify the contract accordingly.</p>	<p>FAR 52.242-14 Suspension of work.</p>	<p>An adjustment must be made for any increase in the cost of performance of the contract (excluding profit) necessarily caused by the unreasonable suspension, delay, or interruption, and the contract modified in writing accordingly.</p> <p>In order to recover under the Suspension of Work clause, a contractor must show that:</p> <ul style="list-style-type: none"> • Contract performance was delayed; • The Government directly caused the delay; • The delay was for an unreasonable period of time; and • The delay injured the contractor in the form of additional expense or loss. However, a contractor is only entitled to recover under the Suspension of Work clause when the Government's actions are the sole proximate cause for the contractor's additional loss, and the contractor would not have been delayed for any other reason during that period. <p>Recovered costs include, but are not limited to:</p> <ul style="list-style-type: none"> • The costs of visits to the work site and the government offices gathering information concerning the contract; • Costs of performance due to the suspension including an amount of unabsorbed overhead attributed to the government's delay; • The costs incurred as a result of idle hours; and • The costs of idle equipment. <p>A claim must not be allowed for any cost incurred more than 20 days before the contractor has notified the contracting officer in writing of the act or failure to act involved (but this requirement may not apply as to a claim resulting from a suspension order). The claim must be asserted in writing as soon as practicable after the termination of the suspension, delay, or interruption, but not later than the date of final payment under the contract.</p>

Tasks	FAR Reference(s)	Additional Information
9d. Proceed to Task 7.	FAR 42.1304(d) Government delay of work.	Retain in the file of record all negotiations leading to any adjustment, and related certified cost or pricing data, or data other than certified cost or pricing data.