

PHASE II: CONTRACT ADMINISTRATION

Activity 36: Commercial/Simplified Acquisition Remedies

Obtain evidence of any reported contractor failure to perform or other breach of contract.

Determine if the contractor failed to comply with contract requirements.

If no,

Do not invoke remedies.

If yes,

Select one or more formal remedies.

Issue a Cure Notice

Determine whether to issue a cure notice.

Issue the cure notice.

Obtain the contractor's response, and determine the validity of any supporting data offered by the contractor.

Determine the next step.

if the decision is to take no further action,

If the decision is to modify the contract,

If the decision is to terminate the contract for convenience or cause,

Provide written notice to the contractor and document a finding of facts.

Execute a bilateral modification.

Implement the termination.

Document the contract file.

Reject Nonconforming Supplies or Services

When payment is made using fast payment procedures, instruct the contractor to replace, repair, or correct supplies lost, damaged or not conforming to purchase requirements promptly at the contractor's expense.

Determine sufficiency of evidence to reject the work.

If the evidence is sufficient,

If the evidence is not sufficient,

Determine whether to accept a minor nonconformance.

Consider other remedies.

If rejecting a minor nonconformance,

If accepting a minor nonconformance,

Notify the contractor of the Government's rejection of nonconforming supplies or services.

Endeavor to obtain consideration.

Review the contractor's response.

Determine whether to accept the contractor's offer to cure the nonconformance.

If rejecting the contractor's offer to cure the nonconformance,

If accepting the contractor's offer to cure the nonconformance,

Determine whether to accept nonconforming supplies or services given a contractor offer of consideration.

Take no further action to remedy the nonconformance.

If rejecting the nonconforming supplies or services,

If accepting the nonconforming supplies or services,

If the contractor refuses to cure the nonconformance or offer acceptable additional consideration, determine whether to initiate termination for cause.

Take no further action to remedy the nonconformance.

Enforce Warranty Clause

Verify that the warranty clause applies.

Notify the contractor that the Government intends to exercise its rights under the warranty clause.

Consider the contractor's recommendation for corrective action (if any).

Formally instruct the contractor on the required corrective action.

Monitor contractor compliance with instructions for corrective action.

If the contractor fails to complete the required corrective action, take unilateral action against the contractor.

Enforce Implied Warranties

Verify that the deliverable is covered by an implied warranty.

Determine whether the contract disclaims the Government's rights to an implied warranty.

If applicable, determine whether the warranty of merchantability has been breached.

If applicable, determine whether the contractor has breached the warranty of fitness for a particular purpose.

Notify the contractor of the breach of the implied warranty.

Negotiate acceptable relief.

Monitor contractor compliance with agreements (if any) to make the Government whole.

If the contractor fails to provide acceptable relief within a reasonable time, take appropriate action.