

PHASE II: CONTRACT ADMINISTRATION

Activity 37: Non-Commercial Acquisition Remedies

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

Determine if the contractor has failed to comply with contract requirements.

If no,

Do not invoke remedies.

If yes,

Select one or more formal remedies.

Prepare a Cure or Show Cause 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.

Assess Liquidated Damages

Document all evidence pertinent to the assessment of liquidated damages.

Compute the dollar amount of liquidated damages.

Informally present the case for liquidated damages to the contractor.

Notify the contractor in writing that the Government intends to assess liquidated damages.

Provide the contractor with an opportunity to present any reasons why it should be relieved from the requirement to pay liquidated damages.

Determine if the contractor is entitled partial or complete relief from assessment of liquidated damages.

If liquidated damages are assessed in part or in whole, withhold payment and/or collect debt.

Reject Nonconforming Supplies or Services

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.

Select a Formal Contract Remedy Under Fraud, Gross Mistake, or Latent Defect

Determine if a latent defect existed at the time of acceptance.

Determine if the Government's acceptance was induced by suspected fraud or gross mistake amounting to fraud.

Discuss the latent defect, fraud, or gross mistake amounting to fraud with the contractor.

If the contractor refuses to make the Government whole, determine the remedy.