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 yes,

Do not invoke remedies.

Select one or more formal remedies.

Implement the termination.

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

Execute a bilateral modification.

Issue the cure notice.

Determine whether to issue a cure notice.

If no,

Do not invoke remedies.

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

If the evidence is sufficient,

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

If yes,

Reject Nonconforming Supplies or Services

Prepare a Cure or Show Cause Notice

If the evidence is not sufficient,

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

If the decision is to modify the contract,

Informally present the case for liquidated damages to the contractor.

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

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

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

Document all evidence pertinent to the assessment of liquidated damages.

Compute the dollar amount of liquidated damages.

If the decision is to take no further action,

If the decision is to modify the contract,

Determine whether to accept a minor nonconformance.

If rejecting a minor nonconformance,

Consider other remedies.

If accepting a minor nonconformance,

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

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.

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

Compute the dollar amount of liquidated damages.

Document all evidence pertinent to the assessment 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.

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

If the decision is to take no further action,

If the decision is to modify the contract,

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

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

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

If rejecting 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.

If accepting the nonconforming supplies or services,

Take no further action to remedy the nonconformance.

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

Endeavor to obtain consideration.

Review the contractor's response.

Monitor contractor compliance with instructions for corrective action.

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

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

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

Formally instruct the contractor on the required corrective action.

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

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

If the evidence is sufficient,

If the evidence is not sufficient,

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,

Document the contract file.