



## Stand By Your Contract

Learning what is within the four corners of your contract

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July 24, 2024

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## Discussion Topics

- ❖ This starts with a solicitation...
  - Breaking down the solicitation components
  - Legal structure – clauses & provision
  - Clarifying uncertainties – the importance of asking questions
- ❖ What does the contract say? What to do when...
  - Discovery of contract deficiencies, ambiguities, and unexpected changes
  - Additional work – when is it out of scope?
  - Dealing with disputes
- ❖ Contract From Contract to Subcontract
  - Privity of contract – when can a sub reach out to the contracting officer
  - Prime requirement of flow-down clauses
  - Learning to negotiate with a prime contractor
- ❖ Need help? Who's on your support team?





It starts with a  
solicitation...

How is the contract built?

## Starts with the Solicitation...

The solicitation provides the foundation of the contractual award and may include:

- ❖ Documents added to the contract from proposal submittals:
  - Completed Price Sheet
  - Performance Work Statement
    - Technical proposal\*\*
  - Small Business Participation Plan (Best Value/Tradeoff RFPs)
- ❖ Part IV pertains only to the solicitation
- ❖ RFP should state which portion of the proposal will be incorporated into the final contract.

!! The contractor has a responsibility to inform the contracting officer/specialist if clauses are missing in the solicitation.

### Uniform Contract Format (UCF)

#### PART I – THE SCHEDULE

- A – Solicitation/Contract Form
- B – Supplies or Service & Price/Cost
- C – Description/Scope of Work/Statement of Work
- D – Packaging & Marking
- E – Inspection & Acceptance
- F – Deliveries or Performance
- G – Contract Admin Data
- H – Special Contract Requirement

#### PART II – CONTRACT CLAUSES

- I – Contract Clauses (by referral and full clause)

#### PART III – LIST OF DOCUMENTS, EXHIBITS, AND OTHER ATTACHMENTS

- J – List of Attachments (Wage Determination, Pictures, Drawings, etc.)

#### PART IV – REPRESENTATIONS AND INSTRUCTIONS

- K – Representations, Certifications & Other Statements of Offerors
- L – Instructions, Conditions & Notices to Offerors
- M – Evaluation Factors for Award



## Federal Acquisition Regulation (FAR):

- ❖ FAR and supplemental agency regulations defines the legal structure and provides guiding principals under which the contract will be solicitated, awarded, performed/completed, and closed.
- ❖ Provides protections for both the government and the contractor
- ❖ Provides guidance and processes in which to:
  - Resolve disputes
  - Implement contract modifications
  - Implement optional line items or option years
  - Termination for Convenience or Cause/Default
- ❖ Incorporates legal protections for employees & other “social agenda” laws
  - Wage Determinations and DOL requirements
  - Drug free workplace
  - OSHA requirements



<https://www.acquisition.gov/far/part-1>

## Other sources include:

- Agency FAR supplements / deviations
- SBA regulations
- Statutes
- Executive Orders

### Regulations

<b>FAR</b> Federal Acquisition Regulation	<b>NMCARS</b> Navy Marine Corps Acquisition Regulation Supplement	<b>DOSAR</b> Department of State Acquisition Regulation	<b>HUDAR</b> Housing and Urban Development Acquisition Regulation
<b>Chapter 99 (CAS)</b> CFR Title 48 Chapter 99	<b>SOFARS</b> Special Operations Federal Acquisition Regulations Supplement	<b>DTAR</b> Department of Treasury Acquisition Regulation	<b>IABR</b> Broadcasting Board of Governors Acquisition Regulation
<b>DFARS</b> Defense Federal Acquisition Regulation Supplement	<b>TRANSFARS</b> Transportation Federal Acquisition Regulation Supplement	<b>EDAR</b> Department of Education Acquisition Regulation	<b>JAR</b> Justice Acquisition Regulation
<b>DFARS PGI</b> Defense Federal Acquisition Regulation Supplement PGI	<b>AGAR</b> Agriculture Acquisition Regulation	<b>EPAAR</b> Environmental Protection Agency Acquisition Regulation	<b>LIFAR</b> Life Insurance Federal Acquisition Regulations
<b>AFARS</b> Army Federal Acquisition Regulation Supplement	<b>AIDAR</b> USAID Acquisition Regulation	<b>FEHBAR</b> Federal Employee Health Benefits Acquisition Regulation	<b>NFS</b> NASA Federal Acquisition Regulation Supplement
<b>DAFARS</b> Department of the Air Force Federal Acquisition Regulation Supplement	<b>CAR</b> Commerce Acquisition Regulations	<b>GSAM/R</b> General Services Acquisition Manual/Regulation	<b>NBCAR</b> Nuclear Regulatory Commission Acquisition Regulation
<b>DAFARS MP</b> Department of the Air Force Federal Acquisition Regulation Supplement MP	<b>DEAR</b> Department of Energy Acquisition Regulation	<b>HHSAR</b> Health and Human Services Acquisition Regulation	<b>TAR</b> Transportation Acquisition Regulations
<b>DARS</b> DISA Acquisition Regulation Supplement	<b>DIAR</b> Department of the Interior Acquisition Regulation	<b>HSAR</b> Homeland Security Acquisition Regulations	<b>VAAR</b> Veterans Affairs Acquisition Regulation
<b>DLAD</b> Defense Logistics Acquisition Directive	<b>DOLAR</b> Department of Labor Acquisition Regulation	<a href="https://www.acquisition.gov/content/regulations">https://www.acquisition.gov/content/regulations</a>	

## Reviewing Clauses & Provisions

### FAR Part 52 – Solicitation Provisions and Contract Clauses

❖ FAR Part 52 consists of a group of clauses and provisions in contracts that stipulate certain Terms and Conditions (T&Cs) in the agreement between the government and a contractor. The clauses include (but are not limited to):

- Inspections and Acceptance
- Changes
- Termination
- Payment and Invoicing
- Disputes

❖ The T&Cs of a contract are defined and agreed upon by all parties involved – this will stipulate changes to the work, payment terms, delivery schedules, and other important factors of the agreement. This section is really important for contractors responding to bid opportunities.



- ❖ Pay attention to “fill-in” clauses
  - Liquidated Damages
  - Period of Performance

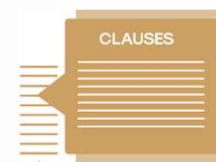
<https://info.winvale.com/blog/guide-understanding-federal-acquisition-regulation-far>

## Reviewing Clauses & Provisions

❖ FAR clauses aim to ensure consistency and compliance with federal laws, policies, and procedures throughout the procurement process. FAR clauses cover wide-ranging topics, including procurement procedures, contract terms, and compliance with various laws and regulations.

❖ FAR clauses serve several essential purposes:

1. **Legal compliance:** They help contractors and government agencies adhere to federal laws and regulations, such as labor standards, environmental protection, and small business requirements.
2. **Risk mitigation:** FAR clauses mitigate risks by outlining the rights and responsibilities of both parties, reducing ambiguity in contracts.
3. **Uniformity:** They promote uniformity and consistency in federal contracting, making it easier to navigate the procurement process.
4. **Transparency:** FAR clauses enhance transparency by clearly specifying contractual terms and conditions



#### Clauses in full vs. by reference:

Clauses that are Incorporated by Reference (IBR) have the same force and effect as clauses included in full text.

<https://www.delttek.com/en/government-contracting/guide/federal-acquisition-regulation/clauses#:~:text=FAR%20clauses%20serve%20several%20essential,protection%20and%20small%20business%20requirements.>

## Review the Contractual Requirements within the Solicitation

### ❖ Contract Compliance requirements

- Prior approval before performance (should be identified in the solicitation):
  - Safety Plans\*
  - Performance schedules
  - Environmental Plans (i.e., SWPPP)\*
  - Subcontractor approval
  - Security clearance(s)
- Maintaining an active SAM registration
- Use of payment platforms
- Reporting requirements
- Pre-construction or Pre-performance meeting
- Incorporation of labor laws and wage determinations

\$\$ Think about what you offer – is it realistic when all factors are considered?

*\*If not found in the main solicitation document then check to see if included in the attachments.*

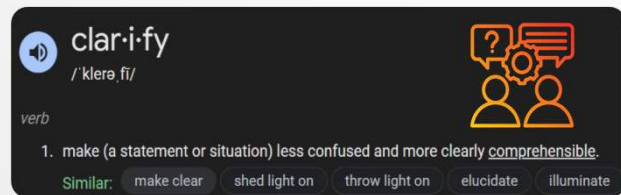
### ❖ Reviewing the work to be completed – how is the scope defined?

- Prescriptive: establishes high-level outcomes & objectives for performance that emphasize outcomes, desired results, & objectives at a more detailed measurable level.
  - Performance Work Statements (PWS) or Statement of Objectives (SOO)
    - End objectives identified
    - Progress has defined goals
    - Performance has defined minimum and maximum levels of acceptable standards
    - Process developed & submitted by contractor
      - ✓ Are permissions needed to change performance processes?
- Directed: provide explicit statements of work direction for the contractor to follow.
  - Statement of Work (SOW) or Scope of Work (SOW)



## Clarifying Uncertainties - Performance

- ❖ Things to think about when reviewing performance requirements:
  - Have actual minimums and maximums been defined and established?
  - What areas of performance or supply are not clearly defined
  - How will you determine if additional work will be “out of scope”? Is there language discussing optional activities?
  - Are parameters within the solicitation too restrictive?
- ❖ Ask clarifying questions!
  - Ask & verify. If you do not receive a timely response, set limits or use language to address assumptions
  - Do not make assumptions
  - Do not insert what others might intend

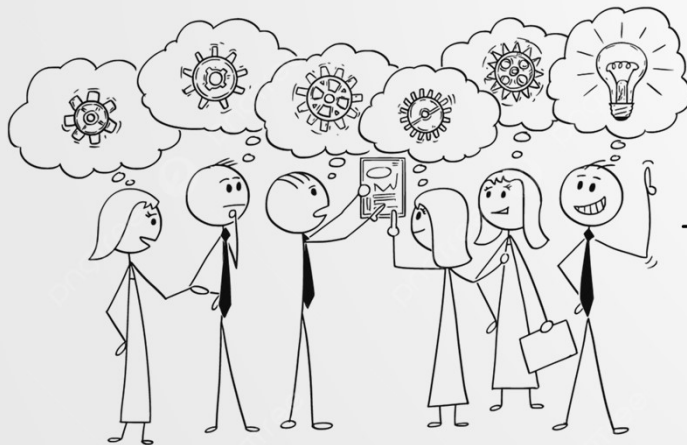


**clar·i·fy**  
/ˈklɛrɪ fi/

verb

1. make (a statement or situation) less confused and more clearly comprehensible.

Similar: make clear shed light on throw light on elucidate illuminate



## What does the contract say?

Looking for answers in all of the right places



Where Government Contracting Starts

## Deficiencies, Ambiguities, & Changes

### Performance is moving along, and then...

- ❖ Unforeseen site conditions
- ❖ Change in performance parameters
- ❖ Directed or asked to do additional work
- ❖ Subcontractors asked to do additional work
- ❖ Told to make changes that differ from the specifications
- ❖ Disputes arise
- ❖ Delays in performance due to government delay
- ❖ Delays in performance due to contractor or subcontractor delays
- ❖ Material shortages or shipping delays

What does the contract say?



EXPECT DELAYS



Where Government Contracting Starts

## Change in Site Conditions

### 52.236-2 Differing Site Conditions. (APR 1984)

(a) The Contractor shall promptly, and before the conditions are disturbed, give a written notice to the Contracting Officer of-

- (1) Subsurface or latent physical conditions at the site which differ materially from those indicated in this contract; or
- (2) Unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in the contract.

(b) The Contracting Officer shall investigate the site conditions promptly after receiving the notice. If the conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performing any part of the work under this contract, whether or not changed as a result of the conditions, an equitable adjustment shall be made under this clause and the contract modified in writing accordingly.

(c) No request by the Contractor for an equitable adjustment to the contract under this clause shall be allowed, unless the Contractor has given the written notice required; provided, that the time prescribed in paragraph (a) of this clause for giving written notice may be extended by the Contracting Officer.

(d) No request by the Contractor for an equitable adjustment to the contract for differing site conditions shall be allowed if made after final payment under this contract.

(End of clause)

<https://www.acquisition.gov/far/part-52>



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## Change in Site Conditions

### 52.243-5 Changes and Changed Conditions. (APR 1984)

(a) The Contracting Officer may, in writing, order changes in the drawings and specifications within the general scope of the contract.

(b) The Contractor shall promptly notify the Contracting Officer, in writing, of subsurface or latent physical conditions differing materially from those indicated in this contract or unknown unusual physical conditions at the site before proceeding with the work.

(c) If changes under paragraph (a) or conditions under paragraph (b) increase or decrease the cost of, or time required for performing the work, the Contracting Officer shall make an equitable adjustment (see paragraph (d)) upon submittal of a "proposal for adjustment" (hereafter referred to as proposal) by the Contractor before final payment under the contract.

(d) The Contracting Officer shall not make an equitable adjustment under paragraph (b) unless-

(1) The Contractor has submitted and the Contracting Officer has received the required written notice; or

(2) The Contracting Officer waives the requirement for the written notice.

(e) Failure to agree to any adjustment shall be a dispute under the Disputes clause.

(End of clause)

<https://www.acquisition.gov/far/part-52>



Where Government Contracting Starts

## Change in Performance Parameters

**Contract Interpretation** – the process of determining what the parties agreed to in their bargain.

- ❖ In scope vs. out of scope  
<https://smallgovcon.com/gaobidprotests/in-scope-vs-out-of-scope-modifications-gao-explains-the-difference/>
- ❖ Cardinal Changes – Out-of-Scope change that is not within the general scope of the original contract in terms of type and amount of work, period of performance, and manner of performance.
  - % of price comparison formula
  - Should this be a new bid or is it a reasonable extension and/or change of existing scope
  - Unforeseen sight conditions
- ❖ Order of Precedence Clauses
  - FAR 52.214-29 Sealed Bid
  - FAR 52.215-33 Negotiated Procurements
- ❖ Duty to Seek Clarification – If a contractor fails to inquire about an ambiguous term or conflicting requirements prior to the contract, it forfeits the opportunity to rely on its interpretation and thus bears the risk of misinterpretation. *"Managing Contract Changes" by Gregory Garret, Chapter 2*





### Order of precedence

#### 52.215-8 Order of Precedence-Uniform Contract Format.

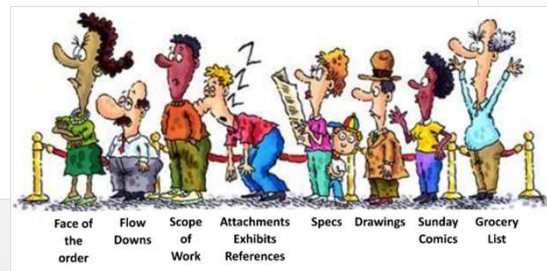
As prescribed in [15.209\(h\)](#), insert the following clause:

ORDER OF PRECEDENCE-UNIFORM CONTRACT FORMAT (OCT 1997)

Any inconsistency in this solicitation or contract shall be resolved by giving precedence in the following order:

- (a) The Schedule (excluding the specifications).
- (b) Representations and other instructions.
- (c) Contract clauses.
- (d) Other documents, exhibits, and attachments.
- (e) The specifications.

(End of clause)



<https://www.acquisition.gov/far/52.215-8>

#### 52.233-1 Disputes. (MAY 2014)

*Not full clause*

- (a) This contract is subject to 41 U.S.C chapter 71, Contract Disputes.
- (b) Except as provided in 41 U.S.C chapter 71, all disputes arising under or relating to this contract shall be resolved under this clause.
- (c) "Claim," as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. However, a written demand or written assertion by the Contractor seeking the payment of money exceeding \$100,000 is not a claim under 41 U.S.C chapter 71 until certified. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under 41 U.S.C chapter 71. The submission may be converted to a claim under 41 U.S.C chapter 71, by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.
- (d) (1) A claim by the Contractor shall be made in writing and, unless otherwise stated in this contract, submitted within 6 years after accrual of the claim to the Contracting Officer for a written decision. A claim by the Government against the Contractor shall be subject to a written decision by the Contracting Officer.
  - (2) (i) The Contractor shall provide the certification specified in paragraph (d)(2)(iii) of this clause when submitting any claim exceeding \$100,000.
  - (ii) The certification requirement does not apply to issues in controversy that have not been submitted as all or part of a claim.
  - (iii) The certification shall state as follows: "I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable; and that I am authorized to certify the claim on behalf of the Contractor."
- (3) The certification may be executed by any person authorized to bind the Contractor with respect to the claim.

<https://www.acquisition.gov/far/part-52>

### 52.242-17 Government Delay of Work. GOVERNMENT DELAY OF WORK (APR 1984)

(a) If the performance of all or any part of the work of this contract is delayed or interrupted (1) by an act of the Contracting Officer in the administration of this contract that is not expressly or impliedly authorized by this contract, or (2) by a failure of the Contracting Officer to act within the time specified in this contract, or within a reasonable time if not specified, an adjustment (excluding profit) shall be made for any increase in the cost of performance of this contract caused by the delay or interruption and the contract shall be modified in writing accordingly. Adjustment shall also be made in the delivery or performance dates and any other contractual term or condition affected by the delay or interruption. However, no adjustment shall be made under this clause for any delay or interruption to the extent that performance would have been delayed or interrupted by any other cause, including the fault or negligence of the Contractor, or for which an adjustment is provided or excluded under any other term or condition of this contract.

(b) A claim under this clause shall not be allowed-

(1) For any costs incurred more than 20 days before the Contractor shall have notified the Contracting Officer in writing of the act or failure to act involved; and

(2) Unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the delay or interruption, but not later than the day of final payment under the contract.

(End of clause)

<https://www.acquisition.gov/far/part-52>

### Critical vs. Non-Critical Delay



#### Critical Delay

Affects the completion date, causing the entire project to be delayed.

#### Non-Critical Delay

May affect the completion of specific activities, but not the date of completion or some important milestone.

### Delays in Construction Contracts

#### Excusable vs. Inexcusable Delay



#### Excusable Delay

The delay was out of the contractor's control. All excusable delays are compensable.

**Example:** Delays caused by weather, owner's change orders, errors in specifications.

#### Inexcusable Delay

The contractor was entirely responsible for the delay. These are typically non-compensable.

**Example:** Delays caused by late material shipment, poor planning, quality issues.

### Compensable vs. Non-Compensable



#### Compensable Delay

The contractor is entitled to additional time and/or compensation.



#### Non-Compensable Delay

The contractor is not given a time extension or compensation for the delay.

<https://www.procore.com/library/construction-delay-types>



## Dealing with Delays

### 52.249-14 Excusable Delays. EXCUSABLE DELAYS (APR 1984)

(a) Except for defaults of subcontractors at any tier, the Contractor shall not be in default because of any failure to perform this contract under its terms if the failure arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of these causes are (1) acts of God or of the public enemy, (2) acts of the Government in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance, the failure to perform must be beyond the control and without the fault or negligence of the Contractor. "Default" includes failure to make progress in the work so as to endanger performance.

(b) If the failure to perform is caused by the failure of a subcontractor at any tier to perform or make progress, and if the cause of the failure was beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be deemed to be in default, - unless-

- (1) The subcontracted supplies or services were obtainable from other sources;
- (2) The Contracting Officer ordered the Contractor in writing to purchase these supplies or services from the other source; and
- (3) The Contractor failed to comply reasonably with this order.

(c) Upon request of the Contractor, the Contracting Officer shall ascertain the facts and extent of the failure. If the Contracting Officer determines that any failure to perform results from one or more of the causes above, the delivery schedule shall be revised, subject to the rights of the Government under the termination clause of this contract.

(End of clause)

<https://www.acquisition.gov/far/part-52>



## Dealing with Delays

### 52.211-11 Liquidated Damages-Supplies, Services, or Research and Development (SEPT 2000)

(a) If the Contractor fails to deliver the supplies or perform the services within the time specified in this contract, the Contractor shall, in place of actual damages, pay to the Government liquidated damages of \$\_\_\_\_\_ per calendar day of delay [Contracting Officer insert amount].

(b) If the Government terminates this contract in whole or in part under the Default-Fixed-Price Supply and Service clause, the Contractor is liable for liquidated damages accruing until the Government reasonably obtains delivery or performance of similar supplies or services. These liquidated damages are in addition to excess costs of repurchase under the Termination clause.

(c) The Contractor will not be charged with liquidated damages when the delay in delivery or performance is beyond the control and without the fault or negligence of the Contractor as defined in the Default-Fixed-Price Supply and Service clause in this contract.

(End of clause)

<https://www.acquisition.gov/far/part-52>



## Dealing with Delays

### 52.211-11 Liquidated Damages-Construction (SEPT 2000)

(a) If the Contractor fails to complete the work within the time specified in the contract, the Contractor shall pay liquidated damages to the Government in the amount of \_\_\_\_\_ [Contracting Officer insert amount] for each calendar day of delay until the work is completed or accepted.

(b) If the Government terminates the Contractor's right to proceed, liquidated damages will continue to accrue until the work is completed. These liquidated damages are in addition to excess costs of repurchase under the Termination clause.

(End of clause)

### 52.211-13 Time Extensions (SEPT 2000)

Time extensions for contract changes will depend upon the extent, if any, by which the changes cause delay in the completion of the various elements of construction. The change order granting the time extension may provide that the contract completion date will be extended only for those specific elements related to the changed work and that the remaining contract completion dates for all other portions of the work will not be altered. The change order also may provide an equitable readjustment of liquidated damages under the new completion schedule.

(End of clause)

<https://www.acquisition.gov/far/part-52>



## Dealing with Delays

### 52.212-4 Contract Terms and Conditions – Commercial Products and Commercial Services (Nov 2023)

(f) **Excusable delays.** The Contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

### 52.213-4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Products and Commercial Services). (MAY 2024)

(e) **Excusable delays.** The Contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence, such as acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

<https://www.acquisition.gov/far/part-52>

### Apparent, Implied, & Express Authority

- ❖ **Apparent authority** is the power of an agent to act on behalf of a principal, even though not expressly or impliedly granted. This power arises only if a third party reasonably infers, from the principal's conduct, that the principal granted such power to the agent. [https://www.law.cornell.edu/wex/apparent\\_authority](https://www.law.cornell.edu/wex/apparent_authority)
- ❖ **Implied Authority** is an agent's power to act on behalf of a principal, intentionally granted by the principal as a result of the principal's conduct, but without an express agreement. Failure to object after a prior exercise of such power may give rise to implied authority. [https://www.law.cornell.edu/wex/implied\\_authority](https://www.law.cornell.edu/wex/implied_authority)
- ❖ **Express Authority** is an agent's power to act on behalf of a principal, explicitly granted by an agreement between the agent and principal. [https://www.law.cornell.edu/wex/express\\_authority](https://www.law.cornell.edu/wex/express_authority)
- ❖ **Actual Authority** is an agent's power to act on behalf of a principal, because such power was expressly or impliedly conferred. [https://www.law.cornell.edu/wex/actual\\_authority](https://www.law.cornell.edu/wex/actual_authority)
  - A Contracting Officer (CO) is a person who can bind the Federal Government of the United States to a contract. Contracting Officers hold a warrant that allows them to negotiate on behalf of the United States Government.
  - As the Government's agent, only COs may execute, modify, or terminate a contract.



### The contract has been awarded and performance has begun.

- ❖ What will you do when?
  - What are the actual minimums and maximums of performance
  - When to hit the pause button and/or simply say no
  - When is a requested change allowed?
  - What is "out of scope"
  - When to request a change order or REA
  - Addressing change when it impacts subcontractors
- ❖ What to do when... (*scenarios*)



## SCENARIO 1 - Question

**The Contracting Officer Representative (COR) is requesting a change in Scope, should I call the Contracting Officer?**



## SCENARIO 1 - Answer

Yes! If there is a change to the Scope of Work (SOW), Performance Work Statement (PWS), or Statement of Objectives (SOO) it will require a modification to the contract. That means that the Contracting Officer (CO or KO depending on the agency) will need to request a quote or proposal from you that will be accepted or negotiated and then a modification will be issued on the Contract to add the additional scope and revise the cost of the contract. In some cases, a modification is so urgent that it will be done in 2 parts with an initial cost increase in part one and then a final cost once the price for the additional work has been negotiated.

CORs cannot modify the contract to add scope or add or reduce cost. Only a Warranted Contracting Officer can modify a contract or in the case of the U.S. Army Corps of Engineers the Administrative Contracting Officer (ACO) who can approve modifications up to \$500K.

*Do not perform out-of-scope work without checking with the Contracting Officer first!*



## SCENARIO 2 - Question

**The Contracting Officer doesn't work at the agency anymore, what do I do?**



## SCENARIO 2 - Answer

If the COR cannot or will not provide the name of the Contracting Officer there are a few options:

- Check the contract or solicitation documents to see if the contact information for the Contract Specialist is available and check with them for the Contracting Officer now assigned to the project.
- Contact the Chief of Contracting, some agencies will have websites with Department Chiefs listed with their contact information.
- Contact the Small Business Professional at that Agency for assistance.
- Call your PCR. If they don't know, they can find out.



### SCENARIO 3 - Question

**My company is working on a contract that includes the Limitations of Subcontracting Clause, what do I do if I have to subcontract more than the percentage stated in the clause?**



### SCENARIO 3 - Answer

Limitations on Subcontracting (LOS) applies to subcontracting by Small Business Prime Contractors for the following types of contracts:

- Service Contracts: No more than 50% of the amount paid by the Government may be paid to entities that are not similarly situated.
- Supply Contracts (except procurements from nonmanufacturers): No more than 50% of the amount paid by the government may be paid to entities that are not similarly situated. Cost of materials are excluded and not considered to be subcontracted.
- Construction Contracts: No more than 85% General Construction/75% Specialty Trade Construction of the amount paid by the government may be paid to entities that are not similarly situated. Cost of materials are excluded and not considered to be subcontracted.





## SCENARIO 3 – Answer continued

Limitation of Subcontracting (LOS) does not apply to Small Business Set-Aside contracts between the micro-purchase threshold and Simplified Acquisition Threshold (SAT).

What is considered Similarly Situated:

(1) Has the same small business program status as that which qualified the prime contractor for the award (e.g., for a small business set-aside contract, any small business concern, without regard to its socioeconomic status); and

(2) Is considered small for the size standard under the North American Industry Classification System (NAICS) code the prime contractor assigned to the subcontract.

- Prime should assign NAICS that best fits the subcontractor's work
- Prime contract's NAICS does not automatically flow-down!
- Subcontract's size standard could be higher or lower than the prime contract's
- Best practice: prime should require the subcontractor to self-certify size status in a teaming agreement



## SCENARIO 4 - Time and/or Material Delays

**Whose responsibility is it when:**

1. Change in site conditions?
2. Weather delays?
3. Acts of God (force majeure)?
4. Governmental delays – lack of timely response, change in government staff?
5. Contractor & Subcontract performance delays?
6. Supply delays?

*The perfect contract is  
only a few modifications  
away!*





## From Contract to Subcontract

Changing the point of view

## From Contract to Subcontract

### Prime Contract vs. Subcontract Agreement

- ❖ Privity of Contract: common law doctrine that states that only parties to a contract can be liable for or enforce its obligations and benefits. This means that third parties cannot be held liable for or enforce contractual rights or obligations

**Q:** When can a sub reach out to the contracting officer?

**A:** When a subcontractor is not being paid.

- ❖ Mandatory flow-down clauses – from prime to first-tier subcontractor
  - Clauses that include language such as “The Contractor shall include the requirements of this clause in all subcontracts”
  - Most clauses are not mandatory flow-down and should be reviewed for applicability to subcontract agreements. Examples include:
    - Termination or default
    - Dispute resolution
    - Changes or differing site
    - Stop Work Order
    - Intellectual Property
    - NAICS codes & size standards





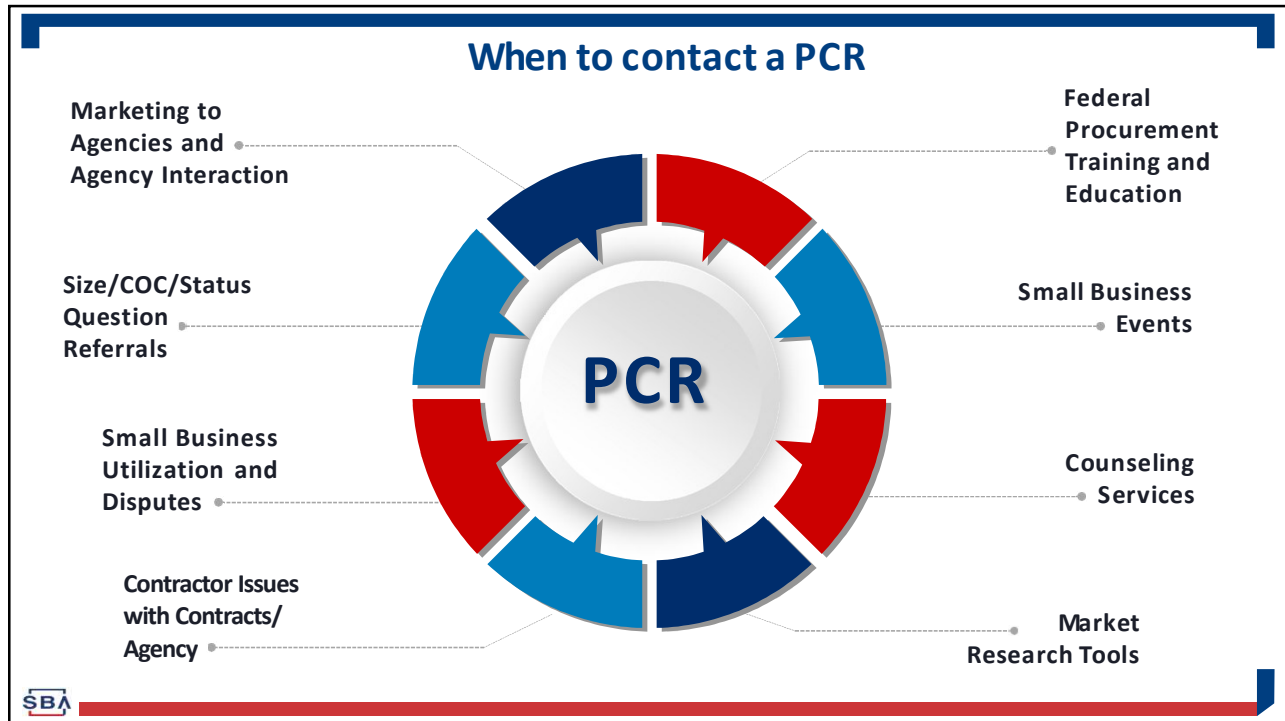
## Got Questions?

Building a support team

## Building a Support Team

- ❖ Attorneys specializing in federal contracting law
- ❖ Insurance Agents
- ❖ Certified Public Accountants (CPAs)
- ❖ Business Resources
  - SBA – PCR
  - Alaska APEX Accelerator





### How to Contact a PCR

➤ <https://www.sba.gov/federal-contracting/counseling-help/procurement-center-representative-directory>

**Counseling and help**

See *Federal Contracting Guidance for Small Businesses Impacted by Coronavirus (COVID19)*

**GET HELP**

Get the help you need

Whether you're trying to win your first government contract or you're an experienced contractor, the SBA and its partner organizations can be valuable resources.

**Procurement Center Representatives**

Procurement Center Representatives (PCRs) help small businesses win federal contracts. PCRs view many federal acquisition and procurement strategies before they're announced. This enables them to influence opportunities that should be set aside for small businesses.

PCRs also conduct market research, assist small businesses with payment issues, provide counseling on the contracting process, and more.

Subcontracting Program Assistance

## Procurement Center Representative directory

[Area 6 — AK, AZ, CA, HI, ID, NV, OR, WA, GU, MP](#)

**Ms. Kimberly (Kim) Tripp**  
 Office of Government Contracting  
 420 L Street, Suite 300  
 Anchorage, AK, 99501  
 Tel: 907-313-9811  
 Email: [kimberly.tripp@sba.gov](mailto:kimberly.tripp@sba.gov)

**Activities covered:**

- Joint Base Elmendorf – Richardson (JBER)
- Alaska National Guard

**Mr. Randall (Randy) Miller**  
 Office of Government Contracting  
 420 L Street, Suite 300  
 Anchorage, AK, 99501  
 Tel: 907-229-6939  
 Email: [randall.miller@sba.gov](mailto:randall.miller@sba.gov)

**Activities covered:**

- Eielson AFB – Interior Alaska
- Fort Wainwright (Mission and Installation Contracting Command (MICC)- Fairbanks
- Joint Base Elmendorf – Richardson (JBER)
- U.S. Army Corps of Engineers – Anchorage


**Alaska District**




SBA Alaska District Office  
 420 L Street, Suite 300  
 Anchorage, AK 99501  
 (907) 271-4022

<https://www.sba.gov/federal-contracting/counseling-help/procurement-center-representative-directory#id-area--ak-az-ca-hi-id-nv-or-wa-gu-mp>





Where Government Contracting Starts

search here 

## Program Introduction

**HOME GETTING STARTED EVENTS & TRAINING TOOLS NEWS ABOUT**

### Answers to Common Questions

Our FAQ area has info on UEI, SAM, GSA, and other government contracting topics.

[see our extensive FAQ](#)

**Are you new to government contracting?**

Government contracting is a more complex involved business process than what is usually found in the private sector.

**ARE YOU READY**  
for government contracting? >

**THE 10-STEP APPROACH**  
to government contracting >

**Now Alaska APEX Accelerator!**

- Formerly Procurement Technical Assistance Center (PTAC)
- Free assistance with all aspects of government contracting, from cradle to grave (start to finish) for federal, state and local purchasing activity
- Free one-on-one appointments
- Free workshops (Special events and extended training session may have registration fees)
- The Alaska APEX is one of 94+ other PTACs across the US, Puerto Rico, & Guam

<https://apexalaska.org/>  
<https://www.aptac-us.org/>  
<https://www.apexaccelerators.us/#/>



**UAA Business Enterprise Institute**  
UNIVERSITY of ALASKA ANCHORAGE

*The Alaska APEX is a program of the UAA Business Enterprise Institute (BEI) and funded in part through a cooperative agreement with the Department of Defense Office of Small Business Programs*



## Questions?

### Alaska APEX Accelerator Staff Contact Information

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Lynda Gregory, Program Specialist	<a href="mailto:lmgregory@alaska.edu">lmgregory@alaska.edu</a>	907-786-7258

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**General email:** [info@apexalaska.org](mailto:info@apexalaska.org)    **Website:** <https://alaskapex.org>

To request assistance, sign up here: <https://akptac.ecenterdirect.com/signup>



How can the Alaska APEX help you?