



## **Definitions**

- Closeout is the "wrap-up" of a completed contract, involving review of the contract file, the taking of necessary action to close the file, and disposal of the file. It can begin when the contract has been physically completed. Although agencies specify their own administrative procedures for closeout, FAR 4.804-5 requires that the administering office establish procedures to ensure that:
  - Disposition of classified material is completed
  - · Final patent report is cleared
  - · Final royalty report is cleared
  - No unsettled value engineering change proposals exist
  - Plant clearance report is received
  - Property clearance report is received
  - All interim or disallowed costs are settled
  - · Any price revision is completed
  - Subcontracts are settled by the prime contractor

- · Prior year indirect cost rates are settled
- · Termination docket is completed
- Contract audit is completed (for cost-type contracts & some kinds of fixed-price contracts)
- · Contractor's closing statement is completed
- Contractors final invoice has been submitted
- Contract funds review is completed and excess funds deobligated



https://www.acquisition.gov/far/4.804-5



# **Physical Completion**

- Closeout can only be performed on contracts that are physically complete. (FAR 4.804-4) A contract is deemed physically complete when:
  - Completion of required deliveries
  - All supplies have been inspected and accepted
  - All services have been performed and accepted
  - All option provisions, if any, have expired or
  - Government has given the contractor a notice of complete contract termination or the contract period has expired
- A contract file cannot be closed if: (FAR 4.804-1(c))
  - In litigation or under appeal
  - Termination all administrative actions to include required released and final payment are pending completion



### **Closeout Timelines**

- FAR 4.804-1 establishes the <u>standard times</u> for closing out a contract. These standards vary depending on the contract type by generally are as follows:
  - Contracts using the simplified acquisition procedures (FAR Part 13) are considered closed when the contracting officer receives evidence of receipt of property and final payment unless otherwise specified in agency regulations.
  - Fixed-price contracts using other than simplified acquisition procedures should be closed within 6 months after receipt of evidence of physical completion.
  - Cost reimbursement types of contracts that require settlement of indirect cost rates should be closed within 36 months of the month of receipt of evidence of physical completion (Quickcloseout procedures may be considered.)
  - All other contracts should be closed within 20 months of the month in which the contracting officer receives evidence of physical completion.



## **Accelerated Closeout**

Often settlement of final overhead rates is the only action preventing the closeout of a contract. FAR 42.708 provides an accelerated method of closing out contracts, task orders or delivery orders without waiting for settlement of direct & indirect costs.

- Quick-closeout procedures:
  - Can only be used on contracts, task orders and delivery orders
  - Deviates from the normal procedure in that a final settlement of direct & indirect costs under the contract is not obtained prior to closeout
  - Other contract closeout requirements remain the same. File review includes:
    - Contract clauses (e.g., negotiated overhead rates clause and advanced understandings on particular cost items identified in the contract
    - Vouchers to determine, if possible, whether some types of labor claims are necessary in the performance of the contract and the reasonableness of the material, travel and per diem
    - Overtime documentation and proof of approval
    - Previous available audit report to determine what adjustments, if any, were made & may be applicable
  - The contracting officer will decide if an audit of the contractor's books and records is needed

https://www.acquisition.gov/far/42.708



### **Accelerated Closeout**

- One advantage is that it permits contractors to invoice their indirect costs earlier, thus avoiding the administrative costs associated with tracking these contracts until final indirect cost rates are negotiated, a process that may take several years to complete.
- The CO should contact the contractor in writing regarding quick-closeout procedures. The letter should include:
  - A list of contract proposed for the quick-closeout procedures
  - The proposed/certified indirect cost rates for the 3 preceding years
  - · Settled indirect cost rates for the 3 preceding years
  - The proposed/certified indirect cost rates covering the periods of performance for the referenced contracts
- Upon receipt of contractor's response, the CO must analyze the information and determine an appropriate indirect cost rate for the contract. The CO may use one of the 2 DCMA approaches:
  - Decrement Factor Method
  - Percentage Method





### Who should be involved

Regardless of the organization structure, the individual responsible flor closing out the contract will be dealing with a variety of individuals performing the work, and for gathering data as needed from various internal and external sources.

#### **AGENCY**

- Contracting Officer (CO), ACO, or TCO
- Auditor audit information for: direct & indirect cost under cost reimbursement contracts, cost & pricing data, incentive contracts, etc.
- Property administrator issues regarding title, disposition & condition of contractor-acquired gov't property, gov't furnished property utilized under the contract
- COR / COTR or Project Officer
- Legal Counsel furnishes information regarding patents, copyrights, licenses, warranties & other legal concerns
- Finance/fiscal determines status of payments, availability of funds, authorizations to make final payment, etc.
- Receiving Agent receiving reports & documentation of acceptance and/or inspections

#### **CONTRACTOR**

- Contract Administrator / Business Owner Contract file, communication, compliance
- CFO or Accounting manager final cost vs. proposed costs, including costs incurred from changes in the contract
- Auditor or Financial Specialist (internal or external for determination of final rates)
- Property administrator property furnished by gov't or paid for under contract performance
- Security Clearance administrator
- Project Manager
- Cost Estimator (Proposed vs. Actual costs)
- Marketing Professional/Lead (past performance)
- Legal Counsel
- Subcontractors and/or other teaming partners



# **Completed Contract Files**

FAR 4.801 - ...requirement to establish files containing the records of all contractual actions

- Contract documentation is generally defined as written records of the individual activities that have taken place under the contract. It ranges from letters (emails/texts,) and invoices to records of telephone conversations and acceptance reports. The purpose is to constitute a complete history of the contract. In particular, file documentation must be sufficient to:
  - Provide complete background as a basis for informed decisions at each step in the acquisition process
  - Support actions taken
  - Provide information for reviews and investigations
  - Furnish essential facts in the event of litigation or congressional inquiries





# **Contents of Contract Files**

#### AGENCY

#### Pre-award

- Purchase request, acquisition planning
- Justifications & approvals, determinations & findings
- · Evidence of availability of funds
- · Set-aside decisions
- · Gov't estimate
- · Copy of the solicitation and all amendments
- Security requirements & evidence of required clearances
- Source section documentation
- Copy of each offer or quotation and related abstract
- Preaward survey reports or reference to previous preaward reports relied upon
- Determination of contractor's responsibility
- · Data related to fair and reasonable price



#### CONTRACTOR

· Go/No-Go decision

Pre-award

- · Copy of the solicitation and all amendments
- Proposal working papers:
  - Cost documents:
    - Quotes from potential subs, vendors
    - Material estimates
    - Wage & labor documentation
  - · Technical Narratives
  - Past Performance Narratives
  - · Key resumes
- Teaming Documentation
  - · Teaming agreements
  - Master subcontracting agreements
  - JV documents
  - · Mentor-Protégé documentation





## **Contents of Contract Files**

#### **AGENCY**

#### **Award & Performance**

- · Originals of signed contract and all modifications, if any
- · Documents support contract modifications
- Justifications & approvals, determinations & findings
- · Notice of Award
- Notice to unsuccessful quoters or offerors and record of any debriefing
- Bid, performance, payment or other bond documents, or reference thereto, and notices to sureties
- · Report of post award conference
- Notice to proceed, stop orders, any overtime premium approvals granted at the time of award
- · Purchasing system information
- · Consent to subcontract or purchase
- Royalty, invention, & copyright reports, including invention disclosures, or reference thereto
- · Orders issued under the contract

#### CONTRACTOR

- · Signed contract and any modifications
- · Post award cost certification:

**Award & Performance** 

- Certified cost or pricing data (TINA)
   The Truthful Cost or Pricing Data Act (commonly referred to by its historical name, the Truth in Negotiations Act or TINA)
- Bid, performance, payment or other bond documents, or reference thereto, and notices to sureties
- · Insurance documentation, where applicable
- · All required submittals
- · Proof of filed required reports
- · Sub Award information
  - Teaming & subcontractor agreements
  - Insurance certificate
  - Business License
  - Surety bond (if applicable)





### **Contents of Contract Files**

#### **AGENCY**

#### Award & Performance

- Any document modifying the normal assignment of contract administration functions and responsibility (COR assignment letter)
- Documents supporting advance or progress payments
- Progress, expediting, and production surveillance reports
- · Quality assurance records
- Property administration records
- Documentation regarding termination actions for which the contract administration office responsible
- Any additional documents on which action was taken or that reflect actions by the contract administration office pertinent to the contract
- Bills, invoices, vouchers and supporting documents

#### CONTRACTOR

### Award & Performance

- Daily performance data
  - Field notebooks, timeline progress notes, requests by CO or COR for potential contract changes
  - PM communication with COR
  - PM or Contract Admin communication with CO
  - Progress reports/status reports from subs
- Timesheets
- COR/COTR written communication
- Certified payroll (where applicable)
- · Invoices & subcontractor invoices
- Requests for Equitable Adjustments (REA)
  - Include all supporting documentation





### **Closeout Procedures**

- Basic closeout principals, concepts and rules
  - 1. Closeouts take time, which varies generally by contract type
  - 2. No two contracts are the same
  - 3. "Reading-is-Fundamental" principal. Prior to conducting any closeout activity, the specialist must read the contract file from cover to cover, including all correspondence, vouchers, and other material in the file. Failure to perform this function may result in missing many important items and loss of substantial amounts of money.
  - 4. "Inventory" principal It is imperative in reading and examining the contract file that the practitioner make a complete inventory of actions needing attention under the contract. This should identify the source of action required as well as the date for completion.
  - 5. "Follow-up" principal Once a contract has been physical completed, it is seen by many as having fulfilled its need. Consequently, some individuals who will be contacted will not put your requested action on their priority list, with the possible exception of a cost-plus-fixed fee (CPFF) contractor who is anxious to receive its withheld fee. The closeout specialist must, therefore, devise and follow a system to ensure that follow-up requests are responded to in a timely manner.



# Areas of Special Concern

- Additional funding a significant number of contracts cannot be closed because they require additional funds to unanticipated events such as material and labor cost increases, schedule slips, and other technical difficulties that create imbalances between requirements and funding. Agencies should make sure that additional funds are available, if otherwise appropriate, to expedite the closing of contracts.
- Release of Claims To protect the government, it is imperative, especially for cost-reimbursement, timeand-material, construction, and architect and engineering contracts, that the contractor sign a document stating that it has no additional claims against the government under the contract, foresees no such claims against the government, and releases the government from any such claims or liabilities that may arise from the contract whether foreseen or unforeseen.

Such documentation is desirable in other contracts as well, although the FAR does not require it. This is the most important document in a closeout because it requires contractors to release the government from all claims other than those identified.

#### Excerpt from a Release of Claims

Pursuant to the contract and the sum specified herein, which sum has been paid to the Contractor (or the Contractor's assignees, if any), the Contractor, upon payment of the said sum by the United States of America, hereinafter called the Government, does remise, release, and discharge the Government, its officers, agents, and employees, of and from all liabilities, obligations, claims, and demands whatsoever under or arising from the said contract...



# **Areas of Special Concern**

- Disposition of Classified Information There must be some indication in the file that all security and sensitive material issues have been addressed. This includes ensuring that sensitive personnel information, data involving agency politically sensitive information, and classified nuclear information or military data are properly safeguarded.
- Government-provided Identification Agencies must account for all forms of government-provided identification issued to contractor employees under the contract. The contracting officer may delay final payment under a contract if the contractor fails to comply with these requirements or the requirements of FAR 52.204-9, as applicable. (FAR 4.1301) Contractors must return such identification to the issuing agency:
  - When no longer needed for performance
  - Upon completion of the contractor employee's employment
  - Upon contract completion or termination





## Areas of Special Concern

- Invoice The invoice provided by the contractor must be marked, stamped, or otherwise indicated to be the final invoice. A copy of the paid invoice should be included in the contract closeout file. If that is not available, a certification that the final invoice was paid—with all the details of the payment—will suffice. The audit and/or cost analysis of the final invoice constitutes the review and acceptance of the invoice. Any differences will have to be resolved and the contract modified to account for the cost differential.
- Liquidated Damages Liquidated damages are sometimes assessed against a contractor for the failure to deliver or perform in a timely manner or to make a good faith effort to comply with a subcontracting plan, or for violations of the Contract Work Hours and Safety Standards statute. When a contract contains a liquidated damages clause, the closeout specialist must ensure that liquidated damages have been collected or otherwise not assessed.



Final Technical Report – If a final technical report is required, it must be completed, submitted, and accepted. When submitted under a data item requirement requiring government approval, contract completion is contingent on this approval.



## **Areas of Special Concern**

- Patents and Inventions The government encourages the commercial use of inventions made while performing government contracts. (FAR 27.102) However, when patent rights clauses are included in the contract, the contractor must provide interim disclosure reports and a final report disclosing whether any inventions were conceived, modeled, or reduced to practice during contract performance. Further, the contractor must state whether it intends to patent any or all of those inventions.
- Plant and Property Clearance Reports If government-furnished property was provided, the closeout specialist should ensure proper disposal or return to the government prior to closing the contract. The contract file should contain documentation concerning shipping instructions and a final letter from the plant/property clearance officer indicating that all residual property has been accounted for and shipped.
- Price Revision Completed Any revised prices will normally be reflected in a contract modification or by receipt of a revised invoice by the contractor. If there is a dispute in this area, the contract cannot be closed out until it is resolved.
- Release of Contract Funds If, after any cost adjustments, excess funds exist on a purchase request or authorization document, return or release these excess funds to the proper accounting or finance office. (Deobligation)



# Areas of Special Concern

- Royalty Payments The government recognizes that contractors may make use of certain copyrighted material or patented items during contract performance. This use, licensed or not, may result in the contractor paying royalties to the copyright or patent holder. These royalty costs may be passed on to the government. The government wants to know exactly what royalties were paid and to whom since the government normally caps royalty payments in the contract. It is possible that the patent holder acquired its patent through another government contract and should not get royalties under the present government contract. If royalties are overpaid, the government receives refunds. If the contract cap is not reached, the government receives money back from the contractor. (FAR 27.202-3)
- Subcontracts Settled by the Contractor There must be evidence that all subcontracts have been settled between the prime contractor and the subcontractors prior to closeout at the prime contract/government level. The same subjects that are addressed between the government and the prime contractor should be addressed between the prime contractor and its subcontractors.
- Subcontracting Plan/Subcontracting Provisions The closeout specialist may want to ensure that the contractor has met its subcontracting responsibilities and goals in awarding and administering small business subcontracts. Such plans are only required on high dollar value contracts not awarded to small businesses (\$700,000, or \$1.5 million for construction). (FAR 19.702) If the contract requires a subcontracting plan, the contractor must submit an Individual Subcontract Report within 30 days of contract completion via the Electronic Subcontracts Reporting System located at the website www.esrs.gov. (FAR 19.704)



## Areas of Special Concern

- Value Engineering Changes When the contractor devises a great new way to change a service or manufacturing process or configuration and gets equal or better quality at a lower cost, it can submit the idea to the contracting officer and, if accepted and implemented, will share in any savings that result from the idea. (FAR 48.101) Like any other proposed change to the contract, it must be resolved by rejection, acceptance, or returning it for change and resubmission. Since a value engineering cost proposal affects the cost, contractor's profits, the work to be done, and possibly the configuration of a product, you can't close out the contract until it is rejected (letter to the contractor), accepted and negotiated (contract modification), or withdrawn (letter of withdrawal by the contractor).
- Warranties A warranty is a promise or affirmation given by a contractor to the government regarding the nature, usefulness, or condition of the supplies or performance of services under the contract. (FAR 2.101) If an item is still under warranty but the contract is otherwise physically complete, the contracting activity should proceed with closeout but retain the contract file.
  The government may exercise its warranty rights even after closeout.



## Areas of Special Concern

#### Duplicate Payments

- All contract payments must be verified and reconciled with the payment information in the financial system before contract closeout. This step is necessary to ensure that (a) all approved invoices have been paid, and, (b) there have been no duplicate payments.
- If a duplicate payment is identified, it is considered a form of debt owed to the government per FAR 32.601. The contracting officer has primary responsibility for identifying and demanding payment of contract debts except those resulting from errors made by the payment office. The contracting officer shall not collect contract debts or otherwise agree to liquidate contract debts. [FAR 32.602] The contracting officer shall issue the demand for payment as soon as the contracting officer has determined that an actual debt is due the Government and the amount. The demand for payment shall include a description of the debt, including the debt amount.





### **Problem Contract Closeouts**

A problem closure is a contract that has unusual circumstances barring the use of traditional closeout methods

- Contractor no longer in business
- Contractor in Bankruptcy
- Contractor is unable to submit supporting indirect cost data for submission of final vouchers
- Firm Fixed-Price contractor fail to submit final invoice On occasion, contractors complete performance but fail to submit a final invoice on firm-fixed price contracts. After making a reasonable number of requests to the contractor, the CO should verify that all shipments/performance have been accepted by the government and send the contractor a certified letter asking if payment is complete or when a final invoice will be submitted. If the contractor fails to respond, the CO should notify the contractor of the government's intent to administratively close the contract.
- Cost reimbursable contractor fail to submit final voucher
  - Unilateral Determination of Contract Price
  - Accelerated Final Voucher Preparation and Review Process





## **Problem Contract Closeouts**

A problem closure is a contract that has unusual circumstances barring the use of traditional closeout methods

#### Unreconcilable Contracts

- There are instances where the government and contractor agree that contract performance is complete and all items have been shipped and accepted, but the contractor has not received final payment because the contract has been determined to be <u>unreconcilable based on payment discrepancies</u>. A contract is also considered to be unreconcilable when adequate documentation required to support contract disbursement is not available or the normal reconciliation process would result in an unreasonable effort and expenditure of resources to close the contract under traditional methods. There are several factors that lead to issues involving reconciliation, including multiple payment offices during the life of the contract, contractor mergers or reorganizations, loss of key players, and old contracts with many modifications.
- The ACO should review the obligated and unobligated balances at both the total contract level and lower levels to determine if the contract is unreconcilable. If there is a positive or zero balance at the total contract level but a negative balance at the lower levels, the paying office may be able to perform disbursement adjustments to avoid an unreconcilable contract. If a negative or positive unliquidated obligation exists at the total contract level, an unreconcilable contract may result if there is insufficient documentation to support reconciliation.
- In these instances, a negotiated settlement may be the best solution. A negotiated solution will support an orderly and economical process for closing contracts with little financial risk to the government and will ensure that the government is made whole at the total contract level. The end result is closure on the best available data.

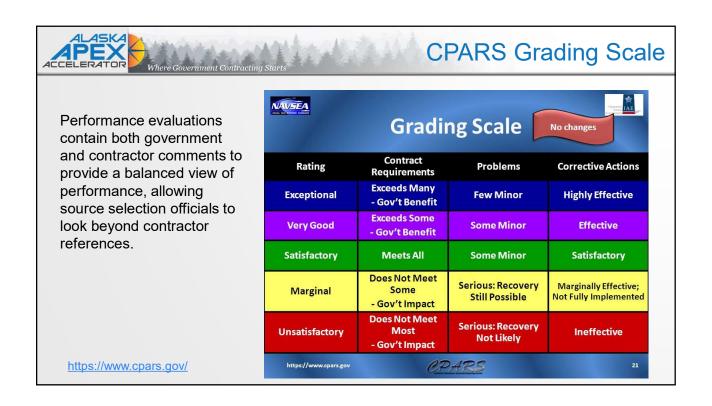


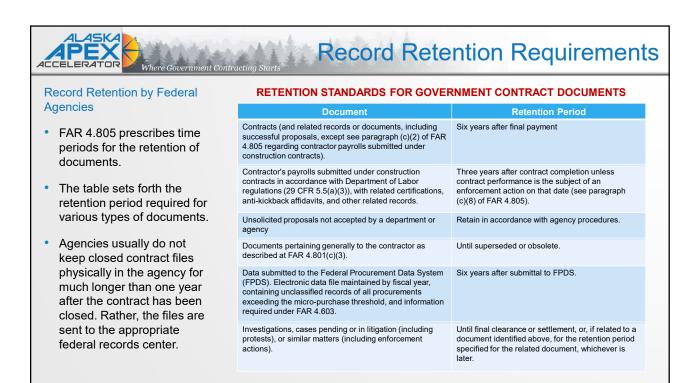
### **Contractor Performance**

Past performance information (including the ratings and supporting narratives) regarding a contractor's actions under previously awarded contracts or orders is relevant for future source selection purposes. It includes, for example, the contractor's record of:

- Conforming to contract requirements and standards of good workmanship
- Forecasting and controlling costs
- Adherence to contract schedules, including the administrative aspects of performance
- Reasonable and cooperative behavior and commitment to customer satisfaction
- Reporting into databases
- Integrity and business ethics
- Business-like concern for the interest of the customer (FAR 42.1501)









# **Record Retention Requirements**

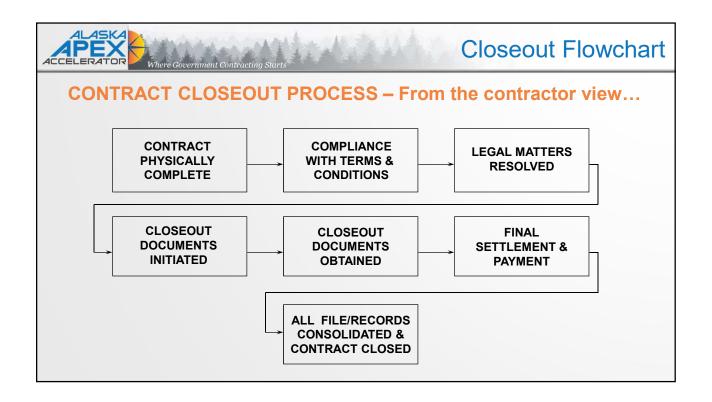
#### Record Retention by Contractors

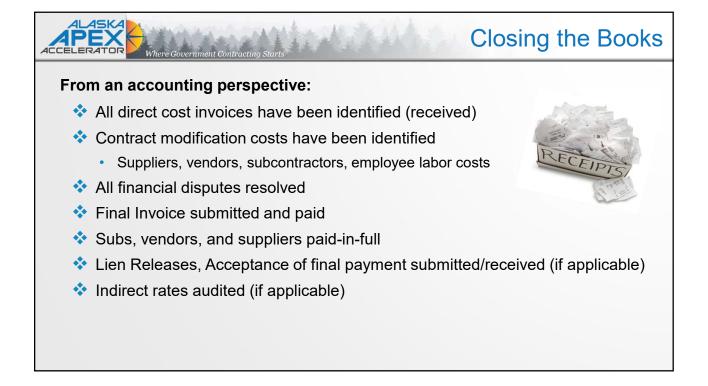
- Although the primary focus is on the government concerning the retention of records, FAR 4.7
  places some responsibility on the contractor in relation to certain records if the contract
  contains one of the following clauses:
  - Audit and Records—Sealed Bidding, FAR 52.214-26
  - Audit and Records—Negotiation, FAR 52.215-2
- In contracts containing one of the clauses listed above, FAR 4.703 requires contractors to retain contract records and documents for three years after final payment, or as indicated in the table for specific records, whichever period expires first.



Retention Periods for Contractor Held Records (FAR 4.705 Through FAR 4.705-3)		
Document	Retention Period	
Accounts receivable invoices, adjustments to the accounts, invoice registers, carrier freight bills, shipping orders, and other documents which detail the material or services billed on the related invoices.	Four years	
Material, work order, or service order files, consisting of purchase requisitions or purchase orders for material or services, or orders for transfer of material or supplies.	Four years	
Cash advance recapitulations, prepared as posting entries to accounts receivable ledgers for amounts of expense vouchers prepared for employees' travel and related expenses.	Four years	
Paid, canceled, and voided checks, other than those issued for the payment of salary and wages.	Four years	
Accounts payable records to support disbursements of funds for materials, equipment, supplies, and services, containing originals or copies of the following and related documents: remittance advices and statements, vendors' invoices, invoice audits and distribution slips, receiving and inspection reports or comparable certifications of receipt and inspection of materia or services, and debit and credit memoranda.	Four years	
_abor cost distribution cards or equivalent documents.	Two years	
Petty cash records showing description of expenditures, to whom paid, name of person authorizing payment, and date, ncluding copies of vouchers and other supporting documents.	Two years	

Retention Periods for Contractor Held Records (FAR 4.705 Through FAR 4.705-3)		
Document Company of the Company of t	Retention Period	
Payroll sheets, registers, or their equivalent, of salaries and wages paid to individual employees for each payroll period; change slips; and tax withholding statements.	Four years	
Clock cards or other time and attendance cards.	Two years	
Paid checks, receipts for wages paid in cash, or other evidence of payments for services rendered by employees.	Two years	
Store requisitions for materials, supplies, equipment, and services.	Two years	
Nork orders for maintenance and other services.	Four years	
Equipment records, consisting of equipment usage and status reports and equipment repair orders.	Four years	
Expendable property records, reflecting accountability for the receipt and use of material in the performance of the contract.	Four years	
Receiving and inspection report records, consisting of reports reflecting receipt and inspection of supplies, equipment, and materials.	Four years	
Purchase order files for supplies, equipment, materials, or services used in the performance of a contract; supporting documentation and backup files including, but not limited to, invoices, and memoranda: e.g., memoranda of negotiations showing the principal elements of subcontract price negotiations.	Four years	
Production records of quality control, reliability, and inspection.	Four years	







## Internal Performance Review

### Was the company within an allowable variance?

- Proposed Cost vs. Actual Cost for:
  - Self performance
  - Subcontractor performance
- Proposed Timeline vs. Actual Time to Complete
- Safety Performance
- Employee Performance
  - Key Personal performance to be captured for future proposals
- Contractual performance throughout the tiers
- Lessons Learned?



## APEX ACCELERATOR Where

# **Archiving Narratives**

- Why reinvent the wheel for each new proposal, instead develop a proposal archiving system to capture:
  - Technical proposal narratives
  - Key personnel resumes
  - Past performance packages
- Compare proposed vs actual performed out and adjust the narrative for future use.
- If the proposal wasn't award, request a debrief. Again, compare feedback against the narratives and adjust, add comment, improve for future use.
- Track the narratives that worked well, had positive feedback and mirrored actual performance.
- Develop a keyword system for "tagging" portions of narrative in order to find for future use.



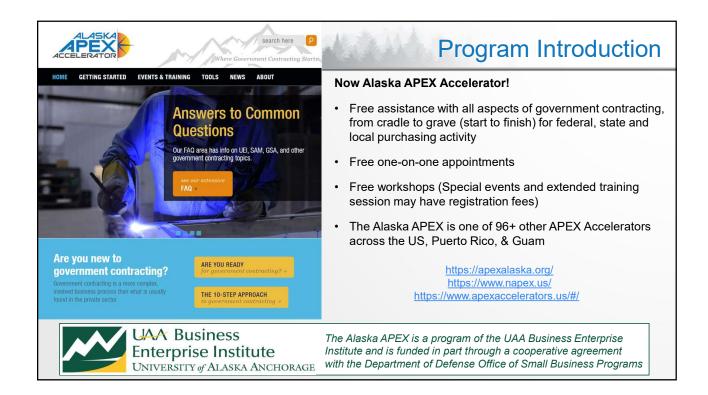


## Relationship Maintenance

#### How did your project relationship end?

- Performance evaluations from owner, prime, & subs
- Teaming Partner(s) Performance Evaluations
- Discussions of future projects how will you continue this relationship?
- Satisfaction Survey a year after completion
- Status check with:
  - Lenders/Financial Institutions
  - Surety & Insurance Provider
  - Suppliers & Vendors







# **Questions?**

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How can the Alaska APEX help you?