



Monitoring Subcontracts

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Subcontracts

What should a contractor know about subcontracting:

- Subcontract Selection;
- Subcontracting Requirements; and
- Your responsibilities as a prime contractor

See FAR 9-104.4

Subcontract Information

- The prime contractor (or higher-tier subcontractor) is responsible for managing its subcontracts.
- Approval to subcontract out part of a Government contract is not automatic.
- Higher-tier subcontractors must also manage their subcontracts, even if they are not the prime contractor on a Government contract.

Consent to Subcontract

FAR 44.204 (a) -- The contracting officer shall insert the clause at 52.244-2, Subcontracts in solicitations and contracts when contemplating—

- A cost-reimbursement contract
- A letter contract that exceeds the simplified acquisition threshold
- A fixed-price contract that exceeds the simplified acquisition threshold under which unpriced contract actions (including unpriced modifications or unpriced delivery orders) are anticipated;
- A time -and-materials contract that exceeds the simplified acquisition threshold
- A labor-hour contract that exceeds the simplified acquisition threshold.

Consent to Subcontract

FAR 52.244-2, Subcontracts

- The Government reserves the right to review the Contractor's purchasing system as set forth in FAR Subpart 44.3
- If the Contractor does not have an approved purchasing system, consent to subcontract is required for certain subcontracts (cost reimbursement, time and materials, etc.)
- If the contractor has an approved purchasing system, the contracting officer may still require consent for certain subcontracts

Consent to Subcontract

FAR 52.244-2 Subcontracts

- Requires the Contractor to notify the Contracting Officer reasonably in advance of placing any subcontract or modification thereof for which consent is required including the following information:
 - A description of the supplies or services to be subcontracted.
 - Identification of the type of subcontract to be used.
 - Identification of the proposed subcontractor.
 - the proposed subcontract price.
 - A negotiation memorandum

Consent to Subcontract

FAR 52.244-2

- (f) Unless the consent or approval specifically provides otherwise, neither consent by the Contracting Officer to any subcontract nor approval of the Contractor's purchasing system shall constitute a determination –
- (1) Of the acceptability of any subcontract terms or conditions;
 - (2) Of the allowability of any cost under this contract; or
 - (3) To relieve the Contractor of any responsibility for performing this contract.

Responsibilities

- The prime contractor **is responsible** for managing its subcontracts, per FAR 42.202(e)(2).
- The prime contractor is primarily responsible for subcontract award, technical and financial performance, monitoring, and payment to the subcontractor for the work accomplished under subcontract terms.

Subcontractor Selection

- FAR 52.244-5 Competition in Subcontracting
If possible, the selection of a subcontractor (including suppliers) should be on a competitive basis.
- Notify the Government upon award of the subcontract and report subcontract costs as part of the **prime contractor's annual incurred cost proposal.**

Monitoring Subcontracts

- The contractor's internal control system over subcontracts and intercompany orders should provide for the inclusion of the contract appropriate **flow-down** clauses into the subcontract/intercompany order including those that require:
 - Government or contractor access to the subcontractor's books and records;
 - Billings only include allowable costs; and
 - The subcontractor/intercompany entity to submit annual incurred cost proposal.

Monitoring Subcontracts

- FAR 52.244-2(i) gives the Government the right to review a contractor's purchasing system as set forth in FAR 44.3
- FAR 44.3 considers the following:
 - Pricing policies and techniques
 - Methods of evaluating subcontractor responsibility
 - Planning, award, and postaward management of major subcontract programs

Subcontracting Continued

- Know contract requirements regarding subcontracting clauses.
- Do not assume that you can subcontract.
- If you are a subcontractor know what is required of the prime.

Consent to Subcontract

- As a Government Contractor subcontracting out part of the award may require consent from the contracting officer.
- Designation of specific subcontractors during contract negotiations does not in itself satisfy the requirements for advance notification or consent pursuant to the clauses at FAR 52.244-2.

Consent to Subcontract

- If you are considering subcontracting out part of your Government contract notify the Contracting Officer in advance, and know the responsibilities of your contract.

Subcontract Information Annual Incurred Cost Submission

FAR 52.216-7 (d)(2)(iii) Requires Contractor to complete Schedule J as part of final indirect cost rate proposal

Schedule J Contains:

- Listing of subcontracts awarded to companies for which the contractor is the prime or upper-tier contractor
- Prime and subcontract numbers
- Subcontract value and award type
- Amount claimed during the fiscal year
- Subcontractor name, address, and point of contract information

Common Prime or Higher Tier Subcontract Deficiencies

- Failure to verify the subcontractor has an adequate accounting system.
- Failure to appropriately monitor subcontract effort.
- Failure to request a denial of access and notify the ACO when the subcontractor refuses access.
- Failure to notify the ACO, and obtain approval, to subcontract.

Common Prime or Higher Tier Subcontract Deficiencies

- Failure to include the appropriate contract clauses in the agreement with the subcontractor.
- Failure to ensure subcontract billings are accurate and compliant with subcontract terms.
- Failure to obtain an adequate incurred cost submission from subcontractor.

Frequently Asked Questions

- Can I assume that I can subcontract part of a Government contract?
NO. Review the prime contract and notify the ACO on your intent to subcontract.
- Am I responsible for the subcontractor's pricing and performance on a contract?
YES. The prime contractor (or higher tier subcontractor) is responsible managing and monitoring all aspects of the subcontract effort.

Questions/Comments

