



# 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.

# 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

- If possible, the selection of a subcontractor (including suppliers) should be on a competitive basis.

## FAR 52.244-5

- 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 appropriate **flow-down** clauses into the subcontract/intercompany 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 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.