

## **CHAPTER 5**

### **RESPONSIBILITIES**

#### **COR/QAE Working File**

The COR/QAE must set up and maintain a file for each contract or order being administered. The file's purpose is twofold: To provide easy access to technical contract information and work progress and, to ease the transition to a new COR/QAE, if necessary. Each file should be clearly indexed and should contain copies of the following materials:

- Designation Letter
- Copy of the contract, orders and all modifications to them;
- COR/QAE needs to list Regulations;
- Copy of the contractor's approved workplan, if required;
- Copies of all progress reports submitted by the contractor;
- Copies of all correspondence and synopses of telephone calls to and from the Contractor;
- Interim and final technical reports or other products;
- Documentation of acceptability/unacceptability of deliverables;
- Documentation of on-site visit results;
- Copies of any memoranda regarding periodic performance affecting payment;
- Copies of all invoices/vouchers and a payment register indicating the balance of funds remaining;
- COR/QAEs final assessment of contract or order performance; and
- Any other pertinent materials or information relating to actions taken in accordance with the designation letter.

If the COR/QAE generates any document, a copy shall be provided to the KO. Upon change of COR/QAE, the official file shall be transferred in total to the newly designated COR/QAE.

Upon completion of all efforts and when all deliverables have been received, COR/QAEs records are forwarded to the KO for retirement with the official contract file.

---

#### **Monitoring Technical Progress**

##### **Inspecting the Work**

The best method for monitoring the contractor's work is through actual inspection. The "Inspection" clause in Government contracts gives the Government's authorized representative, who may be the COR/QAE, the right to inspect and test what is being

generated under the contract or order at all stages of performance and wherever the work is being conducted (i.e., both contractor and subcontractor work sites).

---

### **Labor Statutes**

The COR or QAE may be required to perform labor interviews. The Davis-Bacon Act is one of the labor statutes requiring surveillance. The Davis-Bacon Act applies to contractors and subcontractors on construction contracts of public buildings and public works in excess of \$2,000. The statute requires:

- Mechanics and laborers employed on the work site to be paid at least the wages established by the Secretary of Labor in a wage determination.
- Employees to be paid no less than once a week.
- The posting of wage rates in a conspicuous and accessible place at the work site.

Enforcement is supported by compliance checks such as labor interviews and payroll reviews. Contractors and subcontractors are required to submit weekly payrolls for all employees working on the job site.

---

### **Technical Progress Report**

The Technical Progress Reports compare actual to planned performance and indicates the progress made in accomplishing each contract or order task. The report should include relevant details for assessing the status of performance, i.e., a brief, factual summary description of the technical progress made. The format, delivery, and content of this and other deliverable reports are usually detailed in the Contract Data Requirements Lists (CDRLs).

The necessity for writing and analyzing progress reports provides both the contractor and the COR/QAE with an opportunity to periodically evaluate the work in relation to contractual requirements.

As the contract or order progresses, unforeseen technical difficulties may threaten on-time completion of the contract or order. The progress report should indicate the specific task that is not progressing according to plan; the reasons for the difficulty; specific recommendations for remedial action; and the resources that will be required.

---

### **Visits to Contractor's Sites**

If a contract or order is large, complex, or involves on-site performance, a site visit may be indispensable to check contractor performance. Site visits should be conducted jointly by the KO and the COR/QAE; however as a practical matter, site visits are often delegated to the COR/QAE. A site visit may be necessary to check actual against

reported performance; inspect facilities and working conditions; and verify that personnel charged to a cost reimbursable contract are actually performing work under that contract.

A site visit is usually arranged in advance with the contractor. COR/QAE shall use discretion in conducting site visits to ensure that no Government personnel are perceived as interfering in the contractor's operation. The COR/QAE must take care not to delay contractor performance in any manner.

---

## **Technical Direction and Constructive Change**

*Technical* direction is a means of directing contractor performance. It is a concept used in cost-reimbursement contracts (i.e. CPFF, CPAF, Labor Hour, Time and Materials – T&M). Because work statements in cost-reimbursement contracts are typically not specific enough to let the contractor complete the project without communication, the Government needs to have the ability to work closely with and guide the contractor along the most beneficial lines of effort. Technical direction by the COR/QAE constitutes direction by the Government to the contractor as to which areas, without changing the scope of the work, the contractor is to emphasize or pursue.

Technical direction must not require the contractor to perform work different from that which has been agreed upon, nor may it change other provisions of the contract or order such as: deliverable due dates, total price or estimated cost, total period of performance, or any administrative provisions.

Whenever the COR/QAE provides technical direction, it is good practice to coordinate such direction in advance with the KO prior to implementation with the contractor.

Technical direction is not done in a firm fixed-price contract because the contract should be set up where the contractor will not get paid till all of the services and/or deliverables (as originally specified in the contract) are complete.

---

The term "*constructive change*" derives from the verb "to construe" and not from "to construct." A "constructive change" is a situation that can be construed as having the effect of a change order. A change order is authorized within the terms and conditions of a contract administration. A "constructive change" arises when, by informal action or inaction by an apparent government official, the contractor's situation is so altered that the effect is as though a change order had been issued.

The following are the most common reasons for the occurrence of constructive changes:

- (1) **Defective specifications.** If a specification is defective and a reasonable review prior to preparation of the bid or proposal would not disclose the defect (i.e., the defect is latent), the work is made more difficult for the contractor than would be expected. The contractor is placed at a disadvantage by possibly doing work not

planned for in the contract. Adding a work requirement in this accidental manner is tantamount to making a change to the specifications and results in an obligation by the Government to make the same equitable adjustment that would be made under the Changes clause. The same holds true when defective specifications make performance impossible. Again, designating work for the contractor that is physically impossible and unrealistic.

- (2) **Improperly interpreted specifications.** If, during the course of contract performance, questions arise concerning the meaning of the specifications or other contract terms, the contractor is required to seek guidance from of the Government as to the meaning. The Government's authorized representative, COR or QAE, interpretation may differ from that of the contractor. The contractor in good faith will continue performance accepting the defined interpretation of the meaning in the question. Under the Disputes clause, the contractor must comply with any "final decision" of the KO. Later, this disagreement may be subject to review by an Agency Board of Contract Appeals or a Claims Court. If it is determined that the Government has required more than a reasonable reading of the specifications would require, then the contractor is entitled to an adjustment.
  
- (3) **Overly strict inspection.** An inspection can become a constructive change when the COR/QAE, in the role of inspector, rejects and requests corrections that are outside of the scope of the contract. If the contractor then makes those corrections in good faith, the contractor may later make a claim for the additional work. If it is determined that the initial delivery was not defective, the adjustment will be under the principles of constructive change.
  
- (4) **Improper technical direction.** COR/QAEs by either exceeding or ignoring the limits of their authority can create a constructive change. Contractors will often comply with improper orders for "free" services to maintain the goodwill of the COR/QAE.

Avoiding Constructive Changes. In order to avoid constructive changes, the COR/QAE should:

- Ensure the SOW/PWS has no ambiguities.
- Know the requirements of the contract and order.
- Keep proper records. Be especially careful to document interim and final inspections, and identify specific problems in writing.

The following chart compares technical direction (providing guidance) to constructive change orders:

Technical Direction	Constructive Change
A technical direction is technical guidance within the performance of work statement.	A constructive change occurs when the KO, or their duly authorized

<p>Some more technically complex contracts require direction from Government officials – usually the COR or QAE.</p> <p>The need and ramifications of technical direction are different depending on whether the contract is fixed-price or cost-reimbursement. Work statements are normally more precise under cost-reimbursement contracts. When a work statement is precise, there is little or no need for technical direction.</p>	<p>representative, changes the contract without going through the required legal or regulatory formalities. A constructive change can result from either a specific action or a failure to act. Examples are:</p> <ul style="list-style-type: none"> <li>• Errors of interpretation</li> <li>• Issuance of changes outside the scope of the contract</li> <li>• Failure to issue a change to correct a defective specification</li> <li>• Acceleration of performance.</li> </ul>
---	---

---

### **Handling Unsatisfactory Performance**

In a situation when the contractor’s performance is delayed, inadequate, or both, COR/QAEs must understand the rights and responsibilities of both the Government and the contractor and should not take any actions that might be considered detrimental to either party.

Two principles govern conduct in these situations. First, when a delinquency appears imminent, prompt action must be taken to protect the Government's rights; and second, in administering a delinquent contract, don’t do anything that might waive the Government's rights.

The COR/QAE should notify the KO at the earliest moment when, as a result of monitoring the contractor's progress, it appears that the contractor may become, or is in fact, delinquent. It is the KOs responsibility to prepare formal action dependent upon the facts presented by the COR or QAE.

Silence on the part of the COR/QAE, when action is otherwise required to prevent the contractor from performing work (and the associated costs) which deviates from the stated requirements of the contract or order, can constitute an unauthorized commitment.

---

### **Initiating Corrective Action**

The COR/QAE must take appropriate action to enforce any contract or order requirements that are not being met. The following are steps the COR/QAE should take if the contractor is not complying with a specific requirement called for in the contract called for in the terms and conditions of the contract:

- Call the contractor's attention to the discrepancy and seek the contractor's voluntary commitment to remedy the failure. Then follow-up later to see if remedial action was taken.
  - If the contractor disagrees that contract requirements are not being met, discuss the matter with the contractor to determine the basis for the contractor's position. Also, discuss the matter with the KO to see what course of action should be taken to resolve whether or not the contractor is complying with the contract. If it does not appear that the contractor's position has a reasonable basis, apprise the KO of the situation. It may be necessary to start formulating a Contractor Discrepancy Report (CDR).
  - As a last resort, if the departure from contract requirements continues, and if it appears that the contractor will not remedy the failure to do what the contract requires, then the COR/QAE should recommend that the KO terminate the contract for default.
- 

### **Dealing with Delinquency**

A delinquency occurs when a contractor fails to deliver products or make progress in accordance with the schedule set forth in the contract or order. When an actual or threatened delinquency occurs, the COR/QAE must:

- Document the file on the contractor's failure.
  - Promptly notify the KO.
  - Determine the reason for the delay, and discuss it with the KO. Based on the facts, the KO will decide if the delay is excusable or non-excusable, and will determine an appropriate course of action.
  - If it is decided that the delay is excusable, the COR/QAE should request that the KO issue a modification to change the contract period of performance/delivery schedule as appropriate.
  - If the delay is not excusable and is attributable to the contractor, and there is no other recourse, the COR/QAE may recommend to the KO terminate the contract for default.
- 

### **Limitations on COR/QAE authority**

The limitations of a COR/QAEs authority are reflected in the Letter of Delegation. A COR/QAE shall not in any situation direct the contractor to undertake any activity that will change the contract. Such as:

- Total price or estimated cost
- Product deliverables

- SOW/PWS
- Delivery dates
- Total period of performance
- Administrative provisions

If a COR/QAE exceed their delegated authority, this may constitute an unauthorized commitment or cause a claim against the Government. An unauthorized commitment is an agreement that is not binding on the Government solely because the representative who made it lacked the authority to enter into that agreement. A COR/QAE by virtue of their designation letter are appointed as special agents of the Government with expressed (written) authority.

For instance if a maintenance contract lapses without a renewal and the Government conducts business as usual with the vendor, then the COR/QAEs failure to cease or to insure the maintenance contract is renewed is by default, an unauthorized commitment has been created. An unauthorized commitment is a personal liability of the person who made it and the Government will have to decide if ratification actions are necessary. Ratification is the approval of an unauthorized commitment by an official who has the designated authority.

---

### **Financial Status Report**

Financial status reports (often used in cost-reimbursement type contracts) provide a means of monitoring the contractor's expenditures and comparing costs incurred with technical progress. Significant differences between technical progress and the expenditure of resources (burn rates) often indicate problems in contract or order performance. The responsibility to monitor cost is vested in both the COR/QAE and KO. The COR/QAE will advise the KO of the burn rate attributed to contract performance.

The amount of detailed financial information needed depends on the type of contract, the nature of the work, and the method of payment. Financial reports are especially important on cost-reimbursement contracts for determining contractor progress. If the contract is a CPAF, monitor cost is even more important because the contractor's expecting a set or projected fee on performance results.

COR/QAEs should know the expected burn rate. Burn rate information may be found in the contract, proposal, the Government's Independent Government Cost Estimate (IGCE), contractor deliverables, among other places. Any significant variation in burn rates should be brought to the attention of the COR/QAE by the KO and evaluated promptly.

---

## **Reviewing Vouchers and Invoices**

Contractors are required to periodically submit vouchers or invoices, i.e., requests for payment. If the contract requires COR/QAE review, the COR/QAE should review the vouchers/invoices to determine the validity of the costs claimed and relating total expenditures to the progress of the contract. This is particularly important under cost-reimbursement contracts, where a COR/QAE can sometimes gain evidence of performance problems through examining the contractor's vouchers or invoices. If the rate of expenditure during the billing period is unusually high, this may disclose effort to overcome significant obstacles to progress. Information submitted to substantiate or explain costs may throw further light on performance problems. Remember, however, that vouchers or invoices alone do not provide sufficient information for tracking financial progress. Vouchers or invoices should be reviewed in conjunction with the financial status reports.

(1) Questioning costs. Under cost-reimbursement type contracts, the Government is entitled to ask the contractor for information that is necessary to understand whether the charges billed are "reasonable", "allocable", and "allowable" -- the basic tests that the contractor's costs must pass to be reimbursed. If it appears from charges billed that the contractor may be spending more than is reasonably necessary for certain parts of the work, the COR/QAE should call the contractor for additional explanation or substantiation for those costs. If the additional information fails to establish that the contractor is proceeding in a reasonably efficient way, the COR/QAE should discuss the matter with the contractor to make sure that there is not an equally effective alternative way to get the work done. If agreement cannot be reached, the COR/QAE should consult with the KO.

(2) The right to disallow costs. While the contractor is entitled to latitude and exercise of judgment in managing the contract work, the Government has the right to "disallow" and not reimburse the contractor for costs that are unreasonable in nature or amount. This right constitutes a powerful lever for persuading a contractor to manage efficiently. The more the contractor realizes that the Government is keeping a close watch on costs and is ready to raise questions where warranted, the more effective the power to disallow costs will be as an incentive for economical management by the contractor. It should be stressed, however, that only the KO might disallow costs. The COR nor QAE have this authority. Any questions or problems with a contractor's vouchers or invoice should be brought to the KO's attention.

---

## **Processing Vouchers/Invoices**

Government contracts contain a Prompt Payment clause which requires that payment be made within 30 days of acceptance of goods or services or the date of the designated billing office's receipt of a proper voucher, whichever is later. The Government pays interest if the 30-day deadline is not met.

Because of the Prompt Payment Act implications, the COR/QAE must review vouchers/invoices promptly and either approve them or, if the invoice is to be disputed, return the invoice to the contractor within seven (7) days. If an interest penalty is owed to the contractor, the penalty is absorbed within the Comptroller's funds. Non-availability of funds does not relieve the Government of the obligation to pay interest penalties.

The COR/QAE is responsible for reviewing the vouchers/invoices to determine the validity of the costs claimed and relating total expenditures to the physical progress of the contract. If a problem is identified the payment office and the KO need to be notified and take corrective action.

---

## **Limitation of Cost Clause**

All cost-reimbursement type contracts (including T&M) should contain a clause entitled "Limitation of Cost or Limitation of Funds." The Government must reimburse the contractor for "best efforts" in completing the work within the total estimated amount.

The "Limitation of Cost" clause requires the contractor to notify the KO, and provide a revised estimate of the total cost of the contract, whenever a contractor has reason to believe:

- The costs the Contractor expects to incur under the contract in the next 60 days, when added to all costs previously incurred, will exceed 75 percent of the estimated cost specified in the contract; or
- The total cost for the performance of the contract, exclusive of any fee, will be either greater or substantially less than had been previously estimated.

The contract should require that a copy of the notification should be provided to the COR/QAE. This notification is a useful tool for identifying and dealing with potential problems.

---

## **Dealing with a Cost Overrun**

A cost overrun occurs when a contractor exceeds, without proper authorization from the KO, the estimated costs or the fund limitation of a cost-reimbursement contract. Cost overruns occur only in cost-reimbursement type contracts, since in fixed-price type

contracts, the contractor is responsible for completion of the contract regardless of costs incurred.

When the COR/QAE becomes aware of an overrun situation, this action should be to:

- (1) **Not request** or **encourage** the contractor to continue work. Boards of Contract Appeals have held that such action will legally obligate the Government to reimburse the contractor for keeping on with the work, notwithstanding the "Limitation of Cost" clause limiting the Government's obligation to the stated estimated amount. This constitutes an improper obligation of appropriated funds, an unauthorized commitment.
- (2) Promptly **notify** the KO, the Program Manager/Acquisition Manager and the Resource Manager in the requirement office.
- (3) **Decide** with the KO, Program Manager/Acquisition Manager and the Resource Manager in the requirement office on one of the following actions:
  - (a) Terminate the contract or order for the convenience of the Government before the overrun occurs;
  - (b) Modify the contract or order to decrease the technical effort in order to eliminate the need for additional funding; or,
  - (c) Increase the contract or order funding to permit completion of the work.
- (4) If it is determined to complete the work and if additional funding is available, the COR/QAE must meet with the KO for proper action.

---

### **Government Furnished Property (GFP)**

Once the Government identifies property in the contract that it must furnish to the contractor, the Government may become subject to a claim by the contractor for adjustment if the contractor is impacted by any delay in furnishing this GFP required for performance of the contract.

The "Government Property" clause imposes a number of obligations on the contractor with respect to Government-owned property that has been placed in the contractor's possession for performing a contract. The COR/QAE shall become familiar with all of the provisions of the clause to assure that the contractor is meeting these custodial obligations, including the duty, upon completion of the contract or order, to return or otherwise dispose of the property in accordance with the contract. It is imperative that all listed GFP be dispositioned immediately upon completion of a contract so that the closeout process is not delayed.

Steps the COR/QAE should take upon examining the contract at the outset to see what, if any, data, equipment, or other property the Government has agreed to furnish the contractor. If property is to be furnished:

- (1) Find out what date, if any is specified in the contract or order for delivering the property to the contractor. If no date is specified, find out when the contractor will need it in order not to impair his or her ability to meet the contract or order completion date.
- (2) Find out where the property is and see that arrangements are made to get it to the contractor on time.
- (3) Find out whether the property is in proper condition for use as intended. The sooner this is ascertained, the sooner repair, correction, or other action can be initiated on an informed basis rather than discovering the problem later when it is too late to avoid delaying contract completion.
- (4) Find out whether there are any special instructions or limitations regarding use of the property. If such instructions exist, see that they are furnished to the contractor along with the property.

---

### **Use of Government Property**

The COR/QAE should monitor the contractor's use of Government Property by both:

- Conducting physical inventories at the contractor's site, and
- Reviewing the contractor's preventive maintenance program.

To ensure the property complies with the Government Property clause in the contract, and is in accordance with sound industrial practices, the COR/QAE may be required by the KO to investigate and resolve:

- Reported Loss, Damage, or Destruction (LDD) of Government Property
- Reported Unauthorized Use of Government Property.

Normally, Government Property is to be kept physically separate from contractor-owned property. However, when advantageous to the Government and agreeable to contractor's management, use of Government Property may be commingled with the contractor's property. The COR/QAE should check with the KO, agency policy, or Property Book Administrator to determine when commingling is permitted.

---

## **Contractor Visits to Government Sites**

Contractor visits to a Government site may be required during contract or order performance. Site visits may be required for reasons such as installation of equipment, training of Government personnel on systems and equipment being provided by the contractor as a part of the contract or order, for attendance at meetings, or for other types of services.

Should such a visit be required, the contractor's security manager shall notify the COR/QAE for concurrence with the proposed visit. After concurrence by the COR/QAE the contractor's security manager shall contact the security office of the Government site being visited and transmit required security clearance information prior to the date of the visit.

---

## **Award Fee**

An award fee is a contract incentive customarily used under cost-reimbursement contracts (i.e. Cost Plus Award Fee (CPAF)) and sometimes under Fixed Price Award Fee (FPAF) contracts. Award Fee Plans are generally an appendix to the contract but may be included as a clause under sections G or H of the contract. Generally, award fee type contracts should only be instituted when the value of the contract is high enough to justify the administrative burden to conduct evaluations. These Plans are the responsibility of the KO to prepare during the solicitation phase of the contract formation.

The Award Fee Review Board (AFRB) should consist of mid-level personnel of the requirement office, as voting members, with the KO serving as a non-voting member. Award Fee Determining Official (FDO) may be the KO or a senior level official, Garrison Commander. The COR/QAE may be a panel member or an advisor.

---

## **Past Performance Information (PPI) Collection**

The COR/QAE are typically the assessor of the contractor's performance. This means they collect past performance information (PPI) and assess the contractor according to the method/frequency of collection set up by the KO under the basic contract.

---

## **Security**

A COR/QAE may have to complete a DD Form 254, Security Classification Specification. It is used when an upcoming acquisition contains handling or access to classified information.

---

## **Contract Modifications General**

During the life of a contract or order, it may become necessary to alter the terms of the contract to incorporate new requirements or resolve problems that develop after contract award. When that is the case, the CO must issue a formal contract or order modification.

Contract modifications are any written alteration in the specifications, delivery point, date of delivery, contract period, price, quantity, or other provisions of an existing contract.

---

## **Supplemental Agreement**

This is a bilateral modification signed by both the contractor and the contracting officer. Supplemental agreements are used to make negotiated equitable adjustments resulting from the issuance of a change order, reflect other agreements or the parties modifying the terms of a contract, and to definitize letter contracts.

---

## **Administrative Changes**

An administrative change is a unilateral contract change, in writing, that does not affect the substantive rights of the parties, such as, a change in the paying office or the appropriation data. A unilateral modification that is signed only by the contracting officer and is used for such things as making administrative changes, issuing change orders, making changes authorized by other clauses (e.g., Property clause, Options clause, Suspension of Work clause) of the contract, and issuing termination notices.

---

## **Options**

An option is a unilateral right contained in a contract by which, for a specified period of time, the Government may elect to purchase additional supplies or services called for by the contract, or may elect to extend the term (period of performance) of the contract. The contract shall specify limits on the purchase of additional supplies or services, or the overall duration of the term of the contract, including any extension. The contract shall state the period within which the option may be exercised. The option exercise period shall be set to provide the contractor with adequate lead-time to ensure continuous performance.

---

## **Remedies Available to the Government**

- **Withholding Payments**

All Government contracts contain a clause allowing the Government to withhold payments. A contractor's failure to submit a report, perform or deliver services, or work

when required by the contract is a deficiency in performance. The COR/QAE must notify the KO of any deficiencies. The KO will generally issue a formal cure notice, which includes a statement that contract payments will be withheld if the deficiency is not "cured" or is not determined to be excusable.

When determination is made to withhold contract payments, the KO will notify the contractor in writing that payments have been suspended until the deficiency or failure is cured.

- **Terminations**

Situations may arise when the work contracted for does not run to completion. The COR/QAE must keep the KO abreast of all situations affecting contract or order performance. Two standard contract clauses are designed to cover this eventuality: the "Termination for Convenience of the Government" clause and the "Default" clause. No matter which type of termination is issued, or the extent of the terminated portion of the work, the decision to terminate is a unilateral right of the Government (only through the KO).

Both types of terminations can be either partial or complete; that is, all or any part of the work can be subject to the termination. The contractor must complete the portion that is not terminated. The contractor has no contractual right not to continue with the remaining work.

---

## **Closeout**

At the completion of a contract or order the COR/QAE will supply the KO with closeout documentation. For service contracts, this should be a final contract Deliverable Evaluation Report.

After the KO receives the COR/QAEs closeout documentation, he or she will initiate administrative closeout actions, such as, requesting final audits, negotiating final settlements. The COR/QAE must assist the KO with respect to providing information and/or recommendations, as required.

---

## **Summary**

The responsibilities of the COR/QAE will vary according to the assigned designation letter. It is important that the COR/QAE maintain accurate and complete records to support any discrepancies encountered throughout the contract. Specific areas of concern must be annotated for possible corrective action (i.e. Inspection of Work, Technical Progress Reports, Technical Direction, Constructive Changes, etc.)

The COR/QAEs actions and documentation may have a lasting impact on the contractor performance. This would have a direct relationship between the contracting office and legal support in any corrective action taken by the KO.