



Critical Flowdown Checklist

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TODAY'S CHECKLIST:

- **DRINK YOUR COFFEE**
- **STAY FOCUSED
and POSITIVE**
- **DON'T FREAK OUT**
- **REMEMBER, STABBING
PEOPLE IS WRONG**
- **ARE YOU WEARING
PANTS ?**

Developing A Flowdown Checklist

Identify the Applicable Clauses and Guidance

FAR:

- FAR Part 52 [Part 52 - Solicitation Provisions and Contract Clauses | Acquisition.GOV](#)
- **Other Guidance:**
 - Various Agency Regulations [Regulations | Acquisition.GOV](#)



Developing Flowdown Checklist

STEP 2

Determine the Need for and Purpose of the Checklist

Review Internal and External Audit Programs and the Results of Previous Audit Reports

Developing A Flowdown Checklist

Identify the Need for Documentation to Support Compliance:

- Forms
- Templates/Model Subcontracts
- Workflows
- Reports
- Audits



Identify Specific Actionable, Compliance-Related Items and Audit Elements to Include within the Checklist

Identify and Review Existing Checklists Created by the Government

Create the Checklist

Checklist Elements



- Let's Get Started!!

What is a Flowdown Clause?

A *flowdown* can be described as the transfer and translation of requirements from a prime contract (or upper tier subcontract) into a subcontract (or lower tier subcontract) in support of the prime contract.



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Why Do We Have Flowdowns?

The Government is *not* a party to the prime and subcontractor agreement/relationship.

The Government requires the prime (and sometime subcontractors) to the flow down of certain clauses to:

- Comply with Public Laws
- Protect the rights of the Government

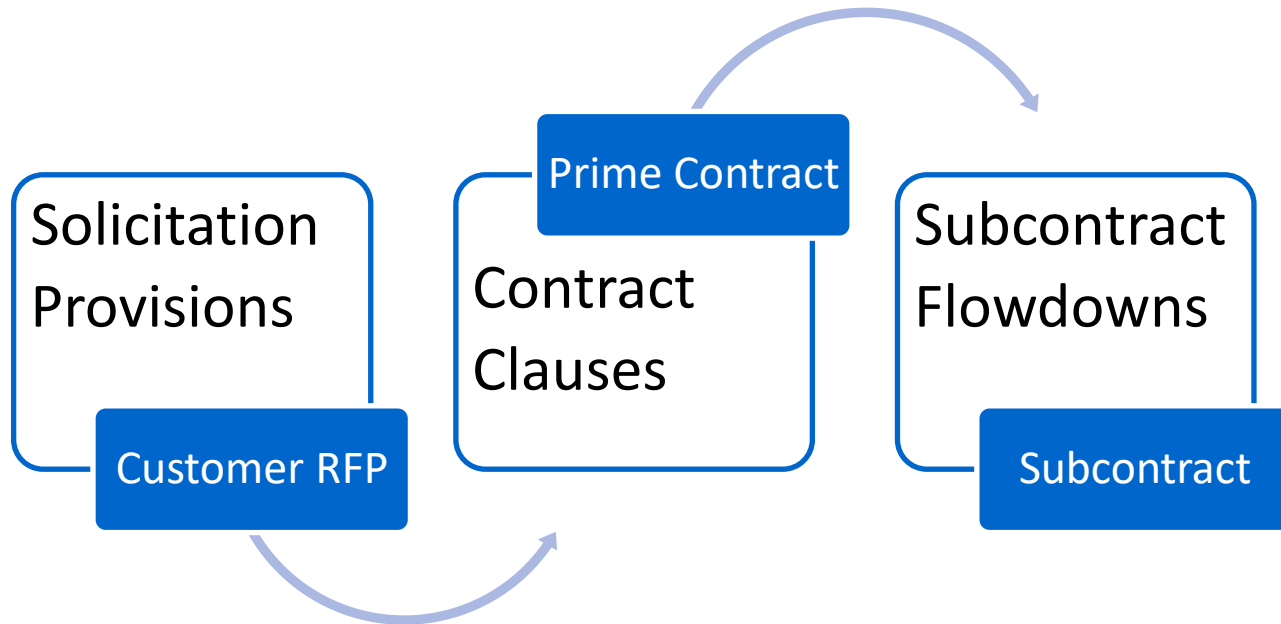


Why Do We Have Flowdowns?

- A Subcontract (Task Order/Purchase Order/Modification/etc.) establishes the relationship between the Contractor (prime) and subcontractor.
- Prime contractors flow down clauses to:
 - Comply with its obligations under the prime contract
 - Protect their interests and the interests of the Government
- Flowing down prime contract requirements is a critical part of the subcontracting process.



The Flowdown Concept



Policies and Procedures for Mandatory Flowdowns

Develop Policies and Procedures that address how mandatory flowdowns are managed within your company.

- Policies and Procedures should:
 - Identify individuals, positions, or departments within the company responsible for determining how mandatory clauses are flowed down.
 - Address processes that ensure all purchase orders and subcontracts contain mandatory FAR/DFARS flow down clauses, including terms and conditions and any other clauses needed to carry out the requirements of the prime contract.
 - Include processes to ensure all clauses that are addressed by the prime contract are actually flowed down to each individual purchase order or subcontract.
 - Include a system of checks and balances are in place prior to purchase order and subcontract execution that ensures compliance with the mandatory FAR flow down clause requirement.

Flowdowns Methodologies

Clauses can be:

- Included either by reference, or
- In full text (Typically used when the clauses require “fill-in” text.)

How are they flowed down? (Ref. FAR 52.102)

- Some clauses require verbatim incorporation into an agreement.
- Other clauses the substance of the clause to be incorporated in an agreement (“substantially as follows” or “substantially the same as”).
- While other clauses are silent on incorporation



Flowdowns Methodologies

Flowdown Levels

- Some clauses require that they only be flowed down to the first tier.
- Some clauses include “indefinite” flowdown guidance. They indicate that the contractor is to include the clause in resulting subcontracts as it applies, and it will state that the contractor is required to include requirement to flowdown the clause in resulting subcontracts as well.



Flowdowns Methodologies

Example: Indefinite Flowdown

“The Contractor shall insert the substance of this clause, *including this paragraph (d)*, in each subcontract that, when entered into, exceeds the threshold for submission of certified cost or pricing data in FAR 15.403-4(a)(1).”



Flowdowns Methodologies

Key Tips to Remember:

Provisions – are “terms and conditions” that are intended to be included in a Government solicitation. Some provisions are included in solicitations only and do not convert to Contract Clauses when prime contract awards are made.

Contract Clauses - are included in solicitations either as provisions that converted to contractually binding clauses or when prime contract awards are made or as “stand-alone” clauses.

Representations and Certifications – are examples of numerous solicitation provisions that do not convert to contract clauses.

Contractors are only required to flowdown Contract Clauses.
Consider not flowing down:

Representations and Certifications

Solicitation Provisions that do not convert to Contract Clauses

AGREEMENT
CONTRACT



Flowdowns Methodologies

Clauses can be flowed down based on:

Specific Public Laws and Executive Orders

Dollar Value

Type of Contract/Subcontract

Commercial Product/Commercial Service

Business Size Standard

International vs Domestic

Supplies/Services/Construction

Solicitation Method (Request for Quote vs Invitation for Bids)



Christian Doctrine: A Key Concept

A mandatory contract clause that expresses a significant tenant of public procurement policy is considered to be included in the contract by operation of law. *G.L. Christian & Assoc. v. United States*, 312 F.2d 418 (Ct. Cl. 1963).

Only clauses that are both mandatory and speak to public procurement policy are covered by the doctrine.



Christian Doctrine: A Key Concept

Can the *Christian* Doctrine be used to incorporate such clauses into subcontracts?

- The fact that the Government is not a party to the subcontract would suggest the answer is “no”, however, this can sometimes be a gray area.
- Contractors should not rely on the Christian Doctrine. The “four corners” of the subcontract should contain all the clauses.
- Legal advice should be sought.



Flowdown Tools

- Mandatory Flowdown Matrix/Chart/Table –
Designed to identify all mandatory flowdown clauses regardless to what is or is not included in the prime contract or customer subcontract.

FAR Clause	Dollar Threshold	Applicability
52.215-10	\$2,000,000	Applies when there are no exceptions to the Truthful Cost or Pricing Data rules (See FAR 15.403-1)
52.230-6	\$2,000,000	Applies to Cost Accounting Standards covered subcontracts

Flowdown Tools

- Non-Mandatory Flowdown Matrix/Chart/Table – Designed to identify non-mandatory flowdown clauses.

FAR Clause	Dollar Threshold	Applicability
Stop Work Order	All	Buyers are to flowdown the internally tailored version of this clause to all subcontractors.
Changes Clauses	All	Buyers are to flowdown the internally tailored version of this clause to all subcontractors.

Establishing a Flowdown Matrix

Consider using FAR Smart Matrix Tool as a starting point, however:

- It was written by the Government, for the Government
- It does not address all supplements
- It does not specifically address contractor's flowdown requirements

Check to see if your Government client has developed flowdown tools for use by the Government and industry

Many companies develop their own based on:

Type of subcontract	Domestic vs International
Type of project	Product vs. Services
Business Size	Commercial vs. Non-Commercial
Industry	



Note: Seek legal/consulting advice when developing your own!

Flowdown Tools

The Process of Managing Flowdowns is as Team Sport and must Involve:

Contracts

Subcontracts

Legal

Other Functions as required

Training on Managing Flowdowns should be:

- On-going and current
- Part of an annual training plan
- Made available to stakeholders outside of the contracts and subcontracts



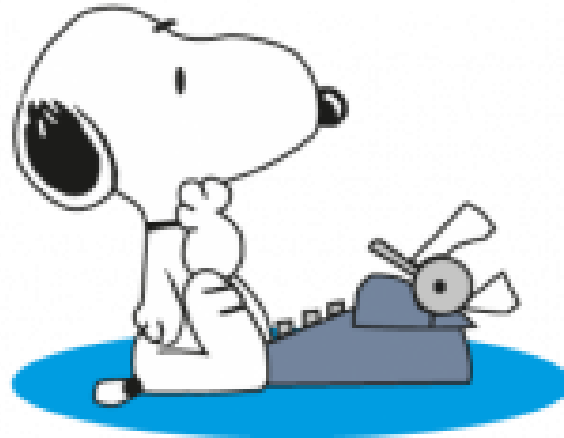
Flowdown Tools

Consider the implementation of tools:

- Government Tools
 - DAU Provision and Clause Matrix
 - Smart Matrix | Acquisition.GOV
 - NDIA FAR Flowdown Book
- 3rd Party Apps and Consulting
- In-House Developed Tools
- Industry Benchmarking



Questions



About Us



As a leading Government Contracting, Compliance and Supply Chain Consulting firm for the last 27 years, J.A. White & Associates, Inc. combine deep functional industry experience with flexible engagement models. Our Subject Matter Experts seek to understand our client's requirements against the current legal and regulatory environment, marketplace best practices and business trends.

With countless successful Business System Reviews and implementations and an unprecedented track record, our tailored advisory services assist the GovCon Community in terms of Supply Chain compliance and risk mitigation, managing financial risks, leveraging technology, and optimize policy and procedures for effective expenditures of Government funds.

Through corporate offices in Columbia, SC, we support domestic and international clients, as well as Federal, State, and local Governments.

Procurement Automation created by JA White!

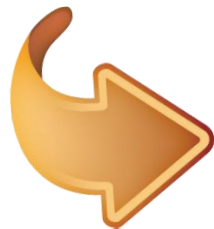


Company Benefits may include:

- Company Savings
- Improved Accuracy
- Process Time Reduction
- Compliant File Documentation

For inquiries

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