SESSION GUIDE
SEASON 2023, EPISODE 22
FAR PARTS 42 & 43:
CONTRACT ADMINISTRATION, AUDIT SERVICES, AND MODIFICATIONS

I. Introduction

We have already touched on contract administration, back in our discussion of **Part 4**. **FAR Parts 42 and 43** discuss specific contract administration matters in greater depth. Much of **Part 42** addresses who is responsible for the day-to-day administration and review of contractor performance and incurred costs as well as what the Government should do when facing special circumstances – such as bankruptcy, mergers & acquisitions, legal name changes, and requirements to stop or suspend work. Part 42 also contains important information about how the government evaluates and utilizes contractor past performance information. **Part 43** deals with aspects of contract administration, when the contract needs to be modified; including the specific rules involving "change" orders.

II. Contract Administration and Audit Services

The first thing **Part 42** addresses is how to make contract audits more efficient, in line with the Guiding Principles of the FAR. We don't want multiple agencies auditing the same contract; that would create a lot of unnecessary work and expense, as well as potential for miscommunication and inconsistent results. **42.002** tells us that agencies should use interagency agreements to avoid these problems. The agency that actually performs the audit doesn't do so for free; the agency requesting the audit must reimburse the auditing agency. **42.002(b)**. But how do we determine who is responsible for establishing the principles for an audit in the first place? Luckily, **42.003** has us covered. It tells us that the "cognizant federal agency" should determine these principles. So what does that mean? **2.101** defines the "cognizant federal agency" as "the Federal agency that, on behalf of all Federal agencies, is responsible for establishing final indirect cost rates and forward pricing rates, if applicable, and administering cost accounting standards for all contracts in a business unit."

Okay, that tells what the "cognizant federal agency" does. But how do we know which agency is considered the "cognizant" one? Is one agency "cognizant" for every Federal contract out there? No. There is one cognizant agency *per contractor*. How do we know this? Because **42.003(a)** tells us that, for contractors other than educational institutions and nonprofits, the cognizant federal agency is normally the agency with the largest *dollar amount* of negotiated contracts. When we read the definition in **2.101** in tandem with the direction in **42.003(a)**, then, we can see that each contractor has one cognizant federal agency – i.e., the one with which the contractor does the greatest amount of business (by revenue)—which is responsible for many of the cost-related issues discussed in the rest of **Part 42**.

There is one major issue for which the cognizant federal agency is not always responsible, though. That issue is contract audit. Only specific agencies are generally responsible for contract audits. This makes sense, because of the technical expertise required of the auditors. For most contractors (other than educational institutions and nonprofits), the agency that performs their audit is the Defense Contract Audit Agency (DCAA). **42.101(b)**. Sometimes another agency will want or need to be the cognizant agency for an audit; in that case, that agency must come to an agreement with DCAA. For these other cognizant agencies, we can go to the Directory of Federal Contract Audit Offices, which DCAA maintains and distributes. **42.103(a)**.

A. Contract Administration Services

What are contract administration services? **42.201** does not actually tell us what a contract administration office (CAO) is; it only tells us that CAOs perform contract administration services. **42.201(a)**. It does, however, direct us to **2.101** to find the definition of a CAO. In **2.101**, we find that a CAO is just an office that performs assigned functions related to the administration of contracts. Not terribly illuminating, is it? That's why we have to read this definition in tandem with **42.201**, like we did with the concept of a cognizant federal agency in **42.003**. The gist of CAOs is that they are assigned specific tasks within agencies. Some agencies have their own CAO, but not every agency does. Thus, some agencies' CAOs provide contract administration and support services to agencies that don't have their own CAO. We can find a list of CAOs in the Federal Directory of Contract Administration Services Components. **42.202(a)**.

> *Question 1* – What independent agency is devoted entirely to offering contract administration and support services? [Hint: check out **42.201**]
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Agencies have their own procedures for delegating administrative services to CAOs. **42.202(a)**. However, the FAR contains a general overview of what those procedures must entail in **42.202**. COs can delegate services by either interagency agreement or by directly requesting the services from the cognizant CAO. **42.202(a)**. Any delegation of services must include specific information, as well as any applicable special instructions. COs can rescind a delegation at any time, *unless* the delegation pertained to cost accounting standards, negotiation of forward pricing rates, or indirect cost rates. **42.202(d)**. CAOs can also refuse delegation if they do not have the resources to perform the tasks associated with it. Such refusal must be in writing. **42.202(g)**.

So what are the functions COs can delegate to CAOs? **42.302(a)** has a list of administrative functions normally delegated to CAOs. We won't go into all of them here, because there are 71 separate functions in the list! Suffice to say that overall, they deal with the everyday nitty-gritty aspects of contract administration, like reviews, evaluations, and enforcement of timeliness requirements. Keep in mind that these are the *normal* functions of a CAO; in other words, when a CO delegates administrative functions to a CAO, these 71 tasks are expected. That doesn't mean the CAO can't perform additional tasks, though. In fact, **42.302(b)** contains eleven extra functions the CAO may also perform, but only

when specifically authorized to do so. These extra functions are primarily concerned with negotiating and executing supplemental agreements.

COs and CAOs need to communicate effectively to remain efficient. That's where **42.4** comes in. In **42.401**, it tells COs to forward any contract administration-related correspondence to the cognizant CAO. This is probably common sense to a lot of you, but it's still worth noting because we don't want things to fall through the cracks. COs must also coordinate with the cognizant CAO when planning a visit to a contractor's facility. Since the normal CAO functions often include surveillance and other facility-related tasks, the CO needs to make sure that she isn't doubling work by accident, and also isn't getting in the way of the functions delegated to the CAO. **42.402**.

Subpart 42.5 brings us to postaward orientations. These orientations can be accomplished by either a conference or written communication, and may be held between the Government and just the prime contractor or the Government, prime, and subcontractor. **42.500**. (Postaward subcontractor conferences come with their own procedures and pitfalls, and we can find guidance for these conferences in **42.505**.) The goal of postaward orientations of any stripe is to make sure everybody is on the same page, and it's specifically encouraged to aid in various small business issues, per **Part 19**. **42.501**. Not every contract is a good candidate for a postaward orientation, of course; in fact, the CO should consider quite a few different issues when deciding whether to hold a postaward orientation. **42.502**. The process for postaward letters is significantly simpler than the process for holding an orientation, and we can find that process in **42.504**.

In **42.6**, we move into a different administrative officer: the corporate administrative contracting officer, or CACO. CACOs are appropriate when a contractor has corporate policies that affect its entire operation. When contractors have multiple operational locations, they generally have multiple resident ACOs. As you can imagine, this situation is ripe for miscommunication and inefficiency. CACOs can deal with corporate-wide issues and perform contract administration issues on that corporate-wide level. **42.601**. A list of the CACO's functions is found in **42.603**. Of course, not every large contractor needs a CACO. In fact, CACOs may only be assigned when either of two elements are present: 1) the contractor has at least two locations with resident ACOs *or* 2) the agency head (or designee) approves the need for a CACO, which generally happens when there are multiple ACOs but only one is a resident ACO. **42.602(a)**.

> *Question 2* – Where can we find a listing of CACOs and the contractors to whom they are assigned? [Hint: check out **FAR 42.602**]
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Surveillance is also a function of CAOs. We already discussed surveillance a little during our discussion of **Part 37** and services contracts. Here, though, we discuss production surveillance, which is a pretty broad category of surveillance that is generally undertaken by the CAO. **42.1101** defines production surveillance as a function of contract administration that is used to determine contractor progress and identify anything that might delay performance. Production surveillance includes Government review

and analysis of 1) contractor performance plans, schedules, controls, and industrial processes, and 2) the contractor's actual performance. Not all contracts require the same level of surveillance. It is up to the CAO to determine the extent of surveillance using the guidelines in **42.1104**, although if the requiring agency has retained contract administration authority, it will ultimately be the CO who performs the surveillance instead of CAO personnel. **42.1103**. One of the major criteria for surveillance is the criticality of the contract. All contracts receive a criticality designator; if the contract is of great importance to the Government, then it receives a higher criticality designator, which means it will be placed under greater surveillance. **42.1104(a)(1) and 42.1105**.

How do COs determine whether a contractor is performing on time? COs can require contractors to submit production progress reports to aid in surveillance. **42.1106(a)**. The CO inserts the clause at **52.242-2**, Production Progress Reports, in any solicitation or contract that requires production progress reports (with a few exceptions). **42.1107(a)**. Though the CO is the one who requires the reports and inserts the clause, it is usually the CAO that reviews and verifies the reports to ensure accuracy. CAOs can do this either by continuous surveillance of a contractor's report preparation system, or by individually reviewing each report. **42.1106(b)**. Should the CAO come across something that might cause a delay, it may advise the CO (and inventory manager, if applicable) using a report. This report must be in writing, delivered to the CO in enough time for him to take any necessary action, and make a definite recommendation, if an action is appropriate. **42.1106(c)**.

Question 3 – Identify the two types of contracts that are not subject to the guidance in **FAR 42.11**.

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So how does the Government actually obtain information for surveillance, and what type of information does it need? **Subpart 42.15** has us covered there. It establishes policies and responsibilities for recording and maintaining contractor performance information. **42.1500**. The Government can use past performance information to help figure out how surveillance will work under a new contract. **42.1501**. While the procedures in **42.15** are mostly for compiling past performance information, they are also helpful in surveillance generally. There are long lists of policy and procedure in **42.1502** and **42.1503**, respectively. For the sake of space, we will not dive deeply into them here. The gist of them is that agencies are responsible for keeping contractor performance information in a clear and concise manner. Additionally, **42.1503** provides helpful tables for determining a contractor's performance rating.

Question 4 – What is the name of the metric tool agencies should use to measure the quality and timely reporting of past performance information? Identity the government system that contains past performance as well as other "adverse action" related information that contracting officer should use during the source selection process. [Hint: check out **42.1501(b) and FAR 42.1503**]

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B. Contract Administration Interruptions

Many problems can complicate contract administration. These issues include contractor bankruptcy, contractor novation or change-of-name agreements, and Government suspension or delay of work.

We'll start with the Big Bad first: bankruptcy. Of course, most people don't go into business hoping to file for bankruptcy. Unfortunately, it sometimes happens, occasionally during performance of a Government contract. The procedures surrounding bankruptcy in government contracting are fairly simple. First, the contractor must notify the CO when the contractor files a petition for bankruptcy. **42.900**. Upon receiving that notification, the CO (or agency) must, at minimum, take four basic steps, per **42.902(a)**: 1) furnish the notice of bankruptcy to legal counsel and other appropriate agency offices (e.g., contracting, financial, property) and affected buying activities; 2) determine the amount of the Government's potential claim against the contractor (including identifying and reviewing any contracts that have not been closed out, even if those contracts have been physically completed or terminated); 3) take actions necessary to protect the Government's financial interests and safeguard Government property; and 4) furnish pertinent contract information to the legal counsel representing the Government. Before taking any action regarding a contractor's bankruptcy proceedings, though, the CO should consult with legal counsel whenever possible. **42.902(b)**. The four steps we noted above fit nicely into this consultation, since one of them is furnishing the notice to legal counsel!

> *Question 5* – Within what period of time must a contractor notify its cognizant contract administrative officer of bankruptcy? Identify the FAR citation that contains this guidance. [Hint: check out **42.9**]
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The second, less-frightening issue is novation and change-of-name agreements. First of all, what's the difference between novation and change of name? Novation happens when one contractor transfers assets required to perform a federal government contract to another contractor under a Merger & Acquisition transaction or Sale of Assets Agreement. The fact that a contractor has sold its assets doesn't mean that the Government will automatically recognize this successor in interest and transfer the contract, though. In fact, getting contracting officer approval can be difficult and take many months. Moreover, even if the Government approves the novation, the original contractor will remain on the hook for the transferee's performance (which can be satisfied with a performance bond).

A change of name is exactly what it sounds like. The contractor has simply decided to change its legal name. **42.1200(b)**. No other changes to the existing contract is requested in a request for a name change.

To obtain approval of a novation or name change, and thus either transfer its interest to the successor in interest or place the new name on the contract, the contractor must submit a request to the responsible CO in writing. **42.1203(a)**. (We can figure out who the responsible CO is using the guidelines in **42.1202**.) The responsible CO performs a whole litany of tasks once she receives the contractor's request. The

essence of the tasks lies in communication, as it so often does. The CO must obtain any necessary information regarding the change from the contractor, and must ensure that any affected agencies and offices have notice of the change, as well as a chance to comment on or object to it. **42.1203(b)**. Once the CO receives this necessary information from the contractor, she determines whether it's in the Government's best interest to recognize the proposed successor in interest. **42.1203(c)**. After she makes her determination, there are a number of other tasks she must perform. The specifics of those tasks for novation, including the text of the novation agreement and when such agreements are necessary, are found in **42.1204**. For a name change, the specifics are in **42.1205**.

> *Question 6* – **TWO-PART QUESTION**: At what point in time during a merger and acquisition should a contractor "formally" submit a novation agreement to the Federal Government for approval? What happens if the contractor presents a "novation agreement" to the Government and the Government refuses to sign it? [Hint: check out **FAR 42.1204**]
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In section II.A, we discussed production surveillance and how it's used to determine if a contractor is adhering to its schedule. But what happens if it's the *Government* that stops or delays the work? In that case, we turn to **Subpart 42.13**. The FAR draws a distinction between suspension of work and stop-work orders. Suspension of work applies only to construction or architect-engineer contracts. The CO can order a suspension of work for a "reasonable period of time," but if the contractor feels the suspension is unreasonable, it may submit a written claim for any increase in the cost of performance (excluding profit). **42.1302**. The clause at **52.242-14**, Suspension of Work, goes in these contracts to facilitate such claims. **42.1305(a)**.

Stop-work orders, on the other hand, are used in any other category of negotiated contract. **42.1303(a)**. The CO is not the one who issues stop-work orders; instead, an officer at a level higher than the CO must issue the order, and then only when no other options are feasible under the circumstances. **42.1303(b)**. When a stop-work order is necessary, the CO should discuss it with the contractor as soon as possible after issuance of the order, and modify it in light of that discussion, if appropriate. **42.1303(d)**. The CO should then take steps to either terminate the contract, cancel the stop work order, or extend the period of the order (when necessary, and with contractor agreement) as soon as possible after the order is issued. **42.1303(e)**. Note, however, that cancellation of a stop-work order is subject to the same approvals required for its issuance. In other words, the CO can't cancel a stop-work order on his own. He needs someone at the same level as the issuer of the original order to cancel it. Depending on the circumstance, the clause at **52.242-15**, Stop-Work Order, or the clause at **52.242-17**, Government Delay of Work, should be included in any contract that might be affected by any Government delays. **42.1305(b) and (c)**.

Question 7 – What four pieces of information should a stop-work order include? [Hint: check out **FAR 42.1303**]

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C. Cost and Pricing Issues

Our first foray into cost and pricing issues in **Part 42** is in **42.7**, which deals with indirect cost rates. (Now would be a good time to head back to our discussion of **Part 31** in Chapter 18 if you need a refresher.) This Subpart tells us how to establish both billing rates and final indirect cost rates. So what's the difference between these two rates? **42.701** defines a billing rate as an indirect cost rate which is 1) established temporarily for interim reimbursement of incurred indirect costs, and 2) adjusted as necessary pending establishment of final indirect cost rates. A final indirect cost rate is basically what it sounds like. It's a uniform, conclusive indirect cost rate that applies to all agencies and contracts that involve a specific contractor. **42.702(a)**.

These rates are critically important for contractors working under cost-reimbursement contracts. These contractors will generally bill monthly for the costs they have incurred during the prior month. Seems simple, huh? The problem is that not all of those costs can be precisely calculated. Some can—e.g., salaries of employees dedicated to a contract, or subcontractor costs. These generally fall into the category of direct costs. (Remember, we suggested you review **Part 31**!) But indirect costs like overhead and G&A are calculated on an annual basis, and require the contractor to collect various categories of costs, incurred by multiple company departments, and divide them by unknown denominators (typically future annual revenue or direct costs). So how can cost-plus contractors know how much to bill for indirect costs whose rates cannot be determined for a year or more in the future? They answer is, they can't. What they can do, however, is negotiate a preliminary billing rate that allows them to include estimated indirect costs in their monthly invoices. Then, when final rates are established (perhaps years in the future), the amounts paid can be reconciled with the amounts that are due. **42.702(b)**. (As an aside, contracts cannot be closed out until final indirect rates are established, and the process for auditing and negotiating final rates can take years. As an alternative, some contracts are eligible for the "quick closeout" procedure, under which the contractor and Government agree on rates for a particular contract without waiting for final rate resolution, but that agreement is not a precedent for other contract closeouts.)

Who's responsible for determining these rates? Since the final indirect cost rate applies across the board for a contractor, only one agency is responsible for establishing it. **42.703-1(a)**. The CO, auditor, or other cognizant federal agency official within that one agency that is responsible for establishing the final rate is also responsible for establishing the billing rate. **42.704(a)**. This makes sense, because we want to keep the process as smooth as possible and minimize extra costs. The cost of getting a new CO up to speed can get pretty high and it's not necessary under normal circumstances, so it's better to have the same CO perform the whole process.

But the CO or other official isn't the only one who is involved in this process. The contractor is also involved, which doesn't come as a surprise. In fact, unless a specific waiver exists, the contractor must certify its indirect costs before the Government official can determine the final indirect cost rate. **42.703-2(a) and (b)**. Otherwise, the Government official can unilaterally establish those final rates (within bounds of reasonableness), which certainly isn't an ideal outcome for a contractor! **42.703-2(c)**. The actual procedures for establishing billing rates and final indirect cost rates are in **42.704** and **42.705**, respectively. The Government official who establishes these rates must be sure to distribute executed copies of the agreement regarding those rates promptly, since the agreement is part of the contract and all parties to the contract must therefore have it in their possession. **42.706(a)**. Further guidance for special situations such as cost-sharing rates is in **42.707**, and guidance regarding treatment of all costs—both direct and indirect—during quick-closeout procedures is in **42.708**.

> *Question 8* – We've already talked about cost allowability in previous chapters (Chapter 18, to be precise). Cost allowability certainly applies in **Subpart 42.7** since we're dealing with costs. What penalties might a contractor incur if it includes unallowable indirect costs in its final indirect cost rate proposal (or in a final statement of costs for a fixed-price incentive contract)? To what contracts do these penalties apply? [Hint: check out **FAR 42.709**]
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That question you just answered brings us to **Subpart 42.8**, which tells us how the mechanics of disallowance of costs work. Disallowance of costs can happen in two ways: either by issuance of a notice of intent to disallow costs, or by disallowance of costs already incurred during contract performance. **42.800**. Whoever is administering the contract is responsible for these functions. **42.801(a) and 42.803(a) and (b)**. To greatly oversimplify, the primary difference between these two routes lies in whether the costs have or have not already been incurred. A notice of intent to disallow costs is forward-looking and applies to potential future costs that have not yet been incurred. A disallowance of costs after incurrence is backward-looking and, naturally, applies to costs already incurred. However, both methods come from some variety of monitoring of a contractor's costs. **42.801(b) and 42.803(a)**.

Before issuing a notice, the CO "shall make every reasonable effort" to come to some agreement with the contractor regarding the costs the CO intends to disallow. **42.801(a)**. If the CO and contractor can't come to an agreement, then the CO issues the notice. The goal of the notice is to let the contractor

know that a specific cost will be disallowed as early on in the contract performance as possible. **42.801(b)**. The CO must include specific information in the notice (**42.801(c)**) and must distribute it to any other COs who are cognizant of *any segment* of the contractor's organization (**42.801(d)**). If the CO who issues the notice isn't the one who will be responsible for establishing the contractor's final indirect cost rate, and the notice involves indirect costs, she should coordinate with the CO who will be responsible for that before issuing the notice. **42.801(e)**).

Question 9 – What should be included in the notice of intent to disallow costs? [Hint: check out FAR **42.801**]

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So how does the CO disallow costs after they have already been incurred? Usually, this happens when the CO or auditor receives reimbursement vouchers (i.e., invoices) from the contractor. If the CO receives vouchers, then she simply abides by her agency's procedures for allowing or disallowing costs. **42.803(a)**. If an auditor receives vouchers, though, things are different. Sometimes agency regulations allow auditors to receive and examine vouchers. **42.803(b)(1)**. If, upon examining a voucher, the auditor determines that there's a question of allowability (or that the costs in the voucher are outright unallowable), the auditor can issue a notice of contract costs suspended or disapproved to both the contractor and the disbursing officer (who then issues the notice to the CO in charge of the contract). He can issue this notice after he has conducted informal discussion with the contractor, as appropriate. **42.803(b)(2)**.

Question 10 – What can a contractor do if it disagrees with an auditor's deduction from its current payments? [Hint: check out **FAR 42.803(b)(3)**]

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Our final topic in the cost and pricing issues category is forward pricing rate agreements (FPRAs) in **Subpart 42.17**. What's that mean? **2.101** defines an FPRA as a "written agreement negotiated between the contractor and the Government to make certain rates available during a specified period for use in

pricing contracts or modifications." In other words, the Government and contractor agree to certain constant rates during a certain time period. Either the contractor or the CO can request negotiation of an FPRA from the ACO; the ACO may also initiate such negotiation. **42.1701(a)**. The ACO has a number of duties during negotiation of an FPRA, which we find in **42.1701(b)**; once the FPRA is negotiated, she also may negotiate continuous updates to it. **42.1701(e)**. FPRAs must be specific regarding expiration, application, and data requirements (which data will be used to systematically monitor and ensure the validity of the rates). Additionally, FPRAs must allow for either party to cancel them, and must require the contractor to submit significant cost or pricing data changes to the ACO and cognizant contract auditor. **42.1701(c)**.

Question 11 – What happens if an FPRA is invalid due to changed cost or pricing data? [Hint: check out **42.1701(d)**]

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III. Contract Modifications

We've danced around contract modifications for most of this chapter, but we haven't actually discussed them yet. That's because the FAR devotes an entire Part to those issues—**Part 43**. This Part applies to contract modifications for all varieties of contracts, including construction contracts and architect-engineer contracts. However, it only applies to routine modifications of actual negotiated agreements. It does not apply to orders for supplies or services that don't change the terms of the contract, such as orders under an ID/IQ contract. It also does not apply to contract modifications for extraordinary contractual relief (that's covered in **Part 50**, which we'll learn about in later chapters). In all other situations, though, it will apply. **43.000**.

A. Contract Changes in General

First, let's review the principles of contract changes. The starting point is to remember that, except for Commercial Items contracts, the contracting officer has a *unilateral* right to make changes within the scope of the contract. This is very different from normal commercial business agreements, where both sides must agree to any contract changes. In the government contract environment, the contractor may not say no. The contractor has some protection, however, because the contractor is entitled to an "equitable adjustment" if the cost or time required to perform the contract are higher because of the directed change.

"Contract change" is a broad term that encompasses any material change to the terms of the contract, and actually includes change orders. These changes may be either bilateral or unilateral, and only COs have the authority to execute such changes. **43.102(a)**. Bilateral changes are also known as supplemental agreements. Both the contractor and CO sign these changes, which are used for a variety

of negotiated changes. **43.103(a)**. Unilateral changes are signed only by the CO, and used for non-negotiated changes like change orders and termination notices. **43.103(b)**. (We'll talk about change orders more specifically in the next section.)

There is a second type of change, called a "constructive change." This can occur, even though the CO has not issued a "change order," if the Government does something, or fails to do something, that affects the requirements of the contract or the contractor's ability to perform it. If the contractor believes the Government has made or may make a constructive change to the contract without putting the change in writing, the contractor should notify the Government in writing as soon as possible. That way, the Government can evaluate the alleged change and either confirm the change (and direct further performance and plan for funding for the change), countermand the action that gave rise to the change, or tell the contractor that the Government does not consider a change to have occurred. (If the contractor does not agree with this decision, it can file a claim under the Disputes clause.) **43.104(a)**.

Note that the CO can't usually execute a contract modification that causes (or will cause) an increase in the contract price unless she first obtains certification that those funds are available. The only exceptions to this rule are when the contract is conditioned on availability of funds or contains a limitation of cost or funds clause. **43.105(a)**. (We talked about these conditions during our discussion of **Part 32**.) The certification of available funds is based on the negotiated price, though modifications executed before an agreement on price can be based on the best cost estimate available. **43.105(b)**.

Question 12 – What specified terms of a contract may a contracting officer change under a "Research and Development" supply contract? [Hint: Check out **FAR 52.243-1**?

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B. Change Orders

Change orders are important enough that they warrant their own discussion—or, at any rate, their own Subpart in the FAR. They don't work in quite the same way as other contract modifications. As we know, they're unilateral, so the CO can issue them without further negotiation with the contractor. Typically, the CO is the one who issues change orders, although this authority may also be delegated to an ACO. **43.202**. Most Government contracts actually contain a special changes clause that allows the CO to make unilateral changes like change orders, as long as those changes fall within the scope of the contract. **43.201(a)**. (And remember, only a warranted contracting officer may make changes that bind the Government.)

So what happens after the CO has issued the change order? Unless the change has been discussed with and agreed to by the contractor, the contractor may be in a mild state of upheaval. **42.203** recognizes that change orders throw a bit of a monkey wrench into contractors' procedures, particularly their accounting procedures, so it provides special procedures and direct cost categories to help contractors'

accounting systems deal with change orders more easily. Additionally, if the change order isn't forward priced, the CO must negotiate a supplemental agreement with the contractor in the wake of the change order. **43.204(a)**. Even if the change order is forward priced, the CO still needs to negotiate with the contractor to definitize the changes. This negotiation requires a lot of documentation, especially when the change order is unpriced (which then requires the CO to negotiate new prices again!). **43.204(b)**. The adjustment to contract price as a result of a change order is supposed to be an "equitable adjustment." Equitable adjustments are located in the supplemental agreement which the CO negotiates with the contractor. **43.204(a)**. COs should make sure the equitable adjustment in the supplemental agreement is complete and final. If the contractor is not satisfied with the proposed amount of an equitable adjustment, it may file a claim under the Disputes clause.

Question 13 – What Standard Form should a CO generally use to issue a change order? Is there another form the CO can use if the change order is too lengthy for the usual Standard Form? [Hint: check out **43.301**]

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Discussion Questions

1. Steve A. Funguy, a contracting officer for the Generic Government Services Agency, wants to delegate several contract administration functions to the CAO. Specifically, Steve wants the CAO to review contractor compensation structures, conduct post-award orientation conferences, and issue notices of intent to disallow or not recognize costs. Can Steve do this? How do you know? [Hint: check out **42.302(a)**]

2. FUNFAR, Inc., a federal government contractor finished a contract six months ago. The contract itself has $50,000 in unsettled direct and indirect costs. What steps must the contracting officer take before the quick-closeout procedure at **42.708** can be used?

3. FARFUN, Inc. purchases all of the stock of GoFARTHER LLC, a purveyor of fine government contracting training services. At the time of the purchase, GOFARther LLC had a government contract with the General Services Administration. After the purchase, there will be no legal change in the contracting party, and no change in control of the assets and party performing the contract. Under this circumstance, is a novation agreement "required/necessary" to transfer the contract to the FARFUN? Why or why not? [Hint: check out **42.1204**]

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4. What specific information must a contractor provide to the Government to initiate a "contract close-out"? [Hint: See Resources]

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5. FARFUN Inc. received an "Unsatisfactory" rating on its most recent CPARS report from the General Services Administration. The management at FARFUN Inc. thinks that the CPARS rating it received from the Government was unfair. What steps can FARFUN Inc. take to improve this situation? [Hint: check out **42.1503**]

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6. What type of contract actions may be issued via a unilateral change order? [Hint: Check out **FAR 43.103**.]

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7. **FAR QUESTION**: Episode 22 deals closely with changes. How does the FAR define a change order, and where in the FAR can that definition be found?

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Answer Key

Answer 1 – The Defense Contract Management Agency is the independent agency solely dedicated to offering contract administration and support services.

Answer 2 – A listing of CACOs and the contractors to whom they support can be found in the Federal Directory of Contract Administration Services Components.

Answer 3 – Construction services contracts and contracts entered into under the GSA Federal Supply Schedule program are not subject to the guidance set forth at FAR 42.11.

Answer 4 – CPARS is the name of the metric tool that agencies should use to measure the quality and timely reporting of past performance information and FAPIIS is the system that contains past performance as well as other "adverse action" related information.

Answer 5 – The contract must notify its cognizant contract administrative officer within 5 days of the initiation of bankruptcy proceedings. FAR 52.242-13 Bankruptcy contains this guidance.

Answer 6 – A contractor is required to formally submit its request for novation package AFTER the execution of the Merger/Acquisition agreement or Asset Sale Agreement. If the Government refuses to sign the novation agreement, the original contractor remains under obligation to perform.

Answer 7 – Stop-work orders should include (1) A description of the work to be suspended; (2) Instructions concerning the contractor's issuance of further orders for materials or services; (3) Guidance to the contractor on action to be taken on any subcontracts; and (4) Other suggestions to the contractor for minimizing costs.

Answer 8 – The following penalties apply to contracts covered by FAR 42.709: (1) If the indirect cost is expressly unallowable under a cost principle in the FAR, or an executive agency supplement to the FAR, that defines the allowability of specific selected costs, the penalty is equal to- (i) The amount of the disallowed costs allocated to contracts that are subject to this section for which an indirect cost proposal has been submitted; plus (ii) Interest on the paid portion, if any, of the disallowance. (2) If the indirect cost was determined to be unallowable for that contractor before proposal submission, the penalty is two times the amount in paragraph (a)(1)(i) of this section. (b) These penalties are in addition to other administrative, civil, and criminal penalties provided by law. (c) It is not necessary for unallowable costs to have been paid to the contractor in order to assess a penalty.

Answer 9 – Per the guidance at FAR 42.801(c), at a minimum, the notice shall (i) Refer to the contract's Notice of Intent to Disallow Costs clause; (ii) State the contractor's name and list the numbers of the affected contracts; (iii) Describe the costs to be disallowed, including estimated dollar value by item and applicable time periods, and state the reasons for the intended disallowance; (iv) Describe the potential impact on billing rates and forward pricing rate agreements; (v) State the notice's effective date and the date by which written response must be received; (vi) List the recipients of copies of the notice; and (vii) Request the contractor to acknowledge receipt of the notice.

Answer 10 – Per the guidance at FAR 42.803(b)(3), if the contractor disagrees with the deduction from current payments, the contractor may (i) Submit a written request to the cognizant contracting officer to consider whether the reimbursed costs should be paid and to discuss the findings with the contractor; (ii) File a claim under the Disputes clause, which the cognizant contracting officer will process in accordance with agency procedures; or (iii) Do both of the above.

Answer 11 – When an FPRA is invalid, the contractor should submit and negotiate a new proposal to reflect the changed conditions. If an FPRA has not been established or has been invalidated, the ACO will issue a forward pricing rate recommendation (FPRR) to buying activities with documentation to assist negotiators. In the absence of an FPRA or FPRR, the ACO shall include support for rates utilized.

Answer 12 – In a R&D services type contract the contracting officer is permitted to "make changes within the general scope of this contract in any one or more of the following: (1) Drawings, designs, or specifications; (2) Method of shipment or packing; and (3) Place of inspection, delivery, or acceptance.

Answer 13 – The Standard Form 30 (SF 30), Amendment of Solicitation/Modification of Contract. The Optional Form 336 (OF 336), Continuation Sheet

Discussion Questions Answer Key

1. Yes: 42.302(a) The contracting officer normally delegates the following contract administration functions to a CAO: (1) Review the contractor's compensation structure; (3) Conduct post-award orientation conferences. (8)Issue Notices of Intent to Disallow or not Recognize Costs (see subpart 42.8).

2. (a) The contracting officer responsible for contract closeout shall negotiate the settlement of direct and indirect costs for a specific contract, task order, or delivery order to be closed, in advance of the determination of final direct costs and indirect rates and shall:
   (1) Get a statement from the contractor that the contract, task order, or delivery order is physically complete;
   (2) Get a statement that the total amount of unsettled direct costs and indirect costs to be allocated to the contract, task order, or delivery order is no more than $50,000 or (ii) 10 percent of the total contract, task order, or delivery order amount;
   (3) The contracting officer shall perform a risk assessment and determine that the use of the quick-closeout procedure is appropriate. The risk assessment shall include- (i) Consideration of the contractor's accounting, estimating, and purchasing systems; (ii) Other concerns of the cognizant contract auditors; and (iii) Any other pertinent information, such as, documented history of Federal Government approved indirect cost rate agreements, changes to contractor's rate structure, volatility of rate fluctuations during affected periods, mergers or acquisitions, special contract provisions limiting contractor's recovery of otherwise allowable indirect costs under cost reimbursement or time-and-materials contracts; and 4) Agreement can be reached on a reasonable estimate of allocable dollars.

3. A novation agreement is unnecessary when there is a change in the ownership of a contractor as a result of a stock purchase, with no legal change in the contracting party, and when that contracting party remains in control of the assets and is the party performing the contract. However, whether there is a purchase of assets or a stock purchase, there may be issues related to the change in ownership that appropriately should be addressed in a formal agreement between the contractor and the Government - (see 42.1203(e)Any separate agreement between the transferor and transferee regarding the assumption of liabilities (e.g., long-term incentive compensation plans, cost accounting standards non-compliances, environmental cleanup costs, and final overhead costs) should be referenced specifically in a novation agreement.

4. Common Closeout Actions documentation include (1) Disposition of classified material is completed; (2) Final patent report is cleared. (3) Final royalty report;(4) There is no outstanding value engineering change proposal; (5) Plant clearance report provided; (6) Property clearance is provided; (7) All interim or disallowed costs are settled; (8) Price revision is completed; (9) Subcontracts docket is completed;(12) Contract audit is completed; (13) Contractor's closing statement is completed; (14) Contractor's final invoice has been submitted; and 15) Contract funds review is completed and excess funds de-obligated.

5. FARFUN Inc. is afforded up to 14 calendar days from the date of notification of availability of the past performance evaluation to submit comments, rebutting statements, or additional information. Agencies shall provide for review at a level above the contracting officer to consider disagreements between the parties regarding the evaluation. The ultimate conclusion on the performance evaluation is a decision of the contracting agency.

6. Unilateral modifications are used, for example, to-(1) Make administrative changes; (2) Issue change orders; (3) Make changes authorized by clauses other than a changes clause (e.g., Property clause, Options clause, or Suspension of Work clause); and 4) To issue termination notices.

7. Per the definition found at FAR 2.101, change order means “a written order, signed by the contracting officer, directing the contractor to make a change that the Changes clause authorizes the contracting officer to order without the contractor’s consent”.

APPENDIX

All of the following materials are linked and can be found via the Links Document or online.

CPARS Guidance

Guidebook for the contractor performance assessment reporting system (CPARS) published on April 2022. The guidance provides best practices based on the authorities prescribed by the FAR and agency supplements including consistent process and procedures for agencies to use when reporting on past performance information.

DCMA Contract Closeout Handbook

Defense Contract Management Agency contract closeout manual from January 2019 implementing policy, assigning responsibility and defining procedures for executing contract closeout. In addition, the handbook identifies a resource page with additional information relating to contract closeout.

DCMA INST 130 Forward Pricing Rates

Department of Defense publication from July 2014 (updated April 2021) containing revised and reissued DCMA instructions for "Forward Pricing Rates." The directorate also establishes policies, assigns roles and responsibilities, and outlines process and procedures for developing and monitoring forward pricing rate agreements (FPRA) and forward pricing rate recommendations (FPRR).

DoD Stop Work Letter Template

Template of a stop work letter from the Defense Security Cooperation Agency for government use.

DOE 43.2 Change Order Template

Template of a change order from June 2010 used to expedite the contracting process by helping assure a consistent application of the contract terms for various change order modifications to contracts for changes to existing work and associated requirements.

GSA Post Award Orientation and Conference Letter

Template of a GSA Post Award Letter or Conference containing key issues and information should a post award conference be appropriate.

Guidelines Novation Agreement Action

A checklist of required information and instructions for novation and change-of-name agreements under FAR 42.12.

Introduction To Contract Audit

The introductory chapter to contract audits including information on the contract audit mission, responsibilities of the DCAA and contract auditor, and the relationships of DCAA to other DoD components, other Government agencies, and contractors.

FUN WITH THE FAR
Episode 22
FAR Parts 42 & 43
Summary Outline

I. Introduction

II. FAR PART 42

A. General Observations

B. Contract Administration Offices

C. Special Issues Affecting Contract Administration

III. FAR PART 43

A. General Observations

B. Contract Modifications

C. Change Orders

IV. Closing Remarks