



**FAR FACTS**  
**SEASON 2023, EPISODE TWENTY-THREE**  
**FAR PART 44**

1. The subcontractor consent and advance notification requirements in Subpart 44.2 are not applicable to prime contracts for commercial items acquired pursuant to Part 12. **FAR 44.000.**
2. The contracting officer may require consent to subcontract if the contracting officer has determined that consent is required to protect the Government because of subcontract type, complexity, or value, or because the subcontract needs special surveillance. **FAR 44.201-1.**
3. A contracting officer's consent to subcontract or approval of the contractor's purchasing system *does not* constitute a determination of the acceptability of the subcontract terms or price, or of the allowability of costs, unless the consent or approval specifies otherwise. **FAR 44.203(a).**
4. Contracting officers shall not consent to a subcontract that:
  - a. is issued on a cost reimbursement basis and contain a "fee" in excess of the limitations found at FAR 15.404-4(c)(4)(i);
  - b. provides for payment on a cost-plus-percentage-of-cost basis;
  - c. obligates the contracting officer to deal directly with the subcontractor;
  - d. makes the results of arbitration, judicial determinations, or voluntary settlement agreements binding on the Government; or
  - e. reflects the repetitive use of cost reimbursement, time and materials or labor hour payment provisions when firm fixed price may be more appropriate as noted in FAR 16.103(c).**FAR 44.203(b).**
5. The contracting officer does not have to insert the Competition in Subcontracting Clause (52.244.5) when:
  - a. A firm-fixed price contract, awarded on the basis of adequate price competition or whose prices are set by law or regulation, is contemplated. **FAR 44.204(c)(1).**
  - b. When a time-and-materials, labor-hour, or architect-engineer contract is contemplated. **FAR 44.204(c)(2).**
6. The objective of a Contractor Purchasing System Review (CPSR) is to evaluate the efficiency and efficacy with which the contractor spends Government funds and complies with Government policy when subcontracting. Administrative contracting officers determine the necessity of a CPSR. A CPSR provides the administrative contracting officer a basis for granting, withholding, or withdrawing approval of the contractor's purchasing system—but as noted above, a CPSR does not constitute approval of any one specific subcontract. **FAR 44.301; FAR 44.302.**
7. A CPSR will generally entail an examination of a prime contractor's compliance with various purchasing procedures, including, but not limited to, notifying and obtaining Government

subcontract consent, per FAR 52.244-2; the degree of price competition obtained; pricing policies and techniques, including methods of obtaining certified cost or pricing data, and data other than certified cost or pricing data; the treatment accorded to affiliates or other concerns having close working arrangements with the contractor; and planning, award, and post-award management or major subcontract programs. **FAR 44.303.**

8. Contractors and subcontractors at all tiers must, to the maximum extent practicable, incorporate commercial or non-developmental items as components of items delivered to the Government. **FAR 44.402.**
9. As a matter of law, non-commercial prime contractors are only required to flow-down to its commercial item subcontractors those special clauses identified at **FAR 52.244-6(c)(1).**
10. While not required, prime contractors may also flow-down to commercial item subcontractors a minimal number of additional prime contract clauses necessary to satisfy its contractual obligations. **FAR 52.244-6(c)(2).**