



PUBLIC
CONTRACTING
INSTITUTE

CONTRACT CLOSEOUT

It's Not Over 'Til Somebody Sings

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What is Closeout?

- Process of completing all performance, financial, and administrative requirements for both contractor and Government.
- Closeout preparation begins at AWARD.

Why is Closeout Important?

- Allows contractors and the government to officially consider a matter closed.
- For the Government, get funds de-obligated or get repayment from contractor.
 - NOTE: Appropriated funds are cancelled after 5 years. Delays in settling claims and completing closeout can easily result in the loss of necessary funding.
- For contractors, ensure that they are paid in full, including any holdbacks.
- Starts the clock
 - Audit clause – 3 years for Government to inspect records
- Slacking now may result in a crisis later.

Who are the Closeout Players?

- Contracting Officer or ACO, with support from:
 - DCMA
 - DFAS
 - Buying Activity
 - DCAA
 - Legal Counsel
 - DCIS, IG or DOJ, if necessary
- Contractor (Contracting Officer/Project Mgr)

Who Initiates Closeout?

It depends. It varies by agency.

- Some agencies notify the contractor
- Some agencies wait for the Contractor to notify the agency
- Some agencies have their own local forms to aid the process.

Closeout Process Overview

- Timing
- Completion
 - Performance
 - Financial
 - Administrative

Timing of Closeout

	Type	Closeout Timeframe	Contract Type
1.	Contracts Under the Simplified Acquisition Threshold (“SAT”) (\$150,000)	Upon Receipt of Item or Service and Final Payment	
2.	FFP Contracts Above SAT	6 Months	
3.	Contracts Requiring Settlement of Overhead Rates	36 Months	FPI, Cost+, T&M, Labor Hour
4.	All other contracts	20 Months	FP Redetermination, FP EPA, and Basics/BOA’s

Timing of Closeout (Cont'd)

- FAR 4.804-1(a) regarding timing of closeout uses word “should”
- Process often takes longer
- During litigation or appeal, no closeout—goes dormant
- With recent Government shutdown, furloughs, and continued budget cuts, expect significant delays.

Performance Completion

- Work completed
 - Contractor has made all deliveries of items/supplies
 - Contractor performed/provided all services
- Work Accepted by the Government
 - Inspected supplies/deliverables
 - Accepted all services provided
- Contract and all options expired

Financial Completion

- Contractor final invoices submitted
- Disputes involving monies resolved
- Audits are complete
- Cost-Reimbursement: all indirect rates settled
- All interim or disallowed costs settled
- Holdbacks released
- Final total price/cost revision completed
- Contract funds review is complete and any excess funds deobligated.
- Payments equal to the contract amount

Closeout Terms to Know

- Cancelled Funds
 - Funds can no longer pay any obligations.
- Current Funds
 - Funds can be obligated and used for payment.
- Dormant
 - Contract cannot be closed because of litigation, bankruptcy, or investigation.
- Excess Funds
 - Funds relating to a specific line item or deliverable that was not performed in the contract.

Administrative Completion

- See FAR 4.804-5 - Closeout List
- FORM DD 1597 “Contract Closeout Check-List”
- Subcontracts settled
- Claims/disputes resolved (important to complete this and other actions requiring fundings *before* funding expires)
- No outstanding VECs
- Contract modifications received, noted, and performed/completed
- Classified material properly disposed of
- Government furnished property (FAR Part 45) returned or properly disposed of
- Plant clearance report is received

Administrative Completion (Cont'd)

- Patents/Intellectual Property
 - Final Royalty Report Cleared
 - FAR 52.227-9
 - Final Patent Report Cleared
 - FAR 52.227-1 states final patent report due within 3 months after completion of the work
- If termination, are all termination actions complete
- Contract records updated to establish completion and outstanding issues (e.g. disputes, audits, etc.) resolved

Administrative Completion (Cont'd)

- Final Past Performance Evaluations completed, commented on, and posted
- Contract Completion Statement completed and signed
- Process final payment or collection of overpayment, including the Contractor release of claims against the Government

Contract Completion Statement Specifics

- Contracting office name/address
- Contract Number & Last Modification Number
- Contract last call or order number
- Contractor name/address
- Amount of excess funds, if any
- Voucher number/date of final payment (if made)
- Contractor Invoice number/date of final invoice

Contract Completion Statement Specifics (cont'd)

- Statement that all required contract administrative actions have been fulfilled/completed and contract requirements fulfilled
- Name/signature of contracting officer and date of execution
- Alternate is to use DD Form 1594 Contract Completion Statement

Quick-Closeout Procedure

- FAR 42.708
- Settlement between CO and contractor
- Eligible when amount of unsettled costs “relatively insignificant”. (Does not exceed lesser of \$1,000,000 or 10 percent of the total contract, task order, or delivery order amount.)
- CO performs a risk assessment to determine whether quick-closeout is appropriate.
- Determinations are final and no adjustment can be made later for over or under recoveries to other contracts.
- Indirect cost rates cannot be used as binding precedent on other contracts.

DCMA Quick Closeout Deviation

DCMA's Quick Closeout Class Deviation is currently effective from September 18, 2013 to September 30, 2015, per IPC-1, dated March 4, 2015 (Has Not Yet Been Re-extended but still in DCMA's Handbook.)

Paragraph 3.3.1 provides: ***The ACO will use the Quick-Closeout procedures to the maximum extent possible.***

Differs from FAR 42.708:

1. The Contractor has submitted a final certified indirect cost rate proposal that has been audited by DCAA. (Note: Audit requirement may be waived when compelling reasons exist. ACO must consult with DCAA.)
2. Physically Complete
3. Unlike FAR 42.708, there is no limit on the dollar value amount or percentage of unsettled indirect costs allocable to cost-type contracts for that fiscal year.
4. Agreement can be reached on a reasonable estimate of allocable dollars.

Administrative Unilateral Closeout

The Government uses a process referred to as Administrative Unilateral Closeout in those situations when the contractor is unable or unwilling to proceed with Closeout. The authority for such action is FAR 42.705-1 (Contracting Officer Determination Procedure).

Examples of Problem Contract Closeout include:

A. Contractor No Longer in Business:

1. The Government takes every reasonable measure to locate the contractor or its principals, e.g., check the telephone directory, the internet website, certified mail, return receipt requested, check with other Government officials who may have used the contractor, SAM.gov and the Bankruptcy Court dockets.
2. Document the file to show every attempt made to locate the contractor. If unsuccessful, initiate Administrative Unilateral Closeout, by doing the following:
 - a. Confirm physical completion with the correct Government Point of Contact.

Administrative Unilateral Closeout

- b. Confirm any contract payments made to the contractor, including requesting a payment history from the cognizant DFAS office if DoD.
- c. Check with DCAA to determine the status of any indirect cost rate settlement if the contract is cost type or has cost CLINS.
- d. Determine whether the contract was terminated for default or convenience.
- e. Check any other pertinent information relative to the contract, including subcontract costs, litigation, etc.
- f. Final check with agency legal office to determine if the agency/activity has done other business with the contractor.
- g. Review all available data to determine the final contract price and any excess funds that can be de-obligated from the contract.
- h. Issue a unilateral SF30 Modification of Contract to de-obligate excess funds and formally closeout the contract. Before signature, coordinate the draft modification with leadership and legal office.

Administrative Unilateral Closeout

B. Contractor Fails to Submit Indirect Cost Data

1. The contractor is required to submit a final indirect cost proposal to the Government within 6 months following the expiration of each of its fiscal years. If the contractor does not submit its proposal in a timely manner, the Government can take steps to protect the Government interest.
2. The Contracting Officer should issue letters requesting submission and, if unsuccessful, schedule a meeting with the contractor to advise that its continued non-responsiveness will result in a billing decrement.
3. If continued non-receipt, and the contract is physically complete, the Contracting Officer should consider proceeding with unilateral determination of indirect cost rates (FAR 42.703-2(c)) and a unilateral determination of the final contract cost.

NOTE: This only makes sense when (1) the Contract is NOT a fixed price contract; and (2) there is an expectation of excess funds to be de-obligated.

Administrative Unilateral Closeout

C. Contractor in Bankruptcy

When notified, per FAR 42.9, that a contractor has filed for bankruptcy, the Contracting Officer:

1. Determines the impact of the bankruptcy on the Government and its interests;
2. Furnishes the bankruptcy notice to the Legal Office, the Contract point of contact, and, if appropriate, the cognizant, DFAS, DCAA and DCMA offices.
3. Determines whether to file a claim against the contractor. Any such Proof of Claim is filed in the Bankruptcy court by DFAS if a DoD contract.
4. Once a bankruptcy petition is filed, an automatic stay goes into effect. The stay precludes contract closeout unless the stay is lifted. Government attorneys work with the debtor's trustee to obtain relief where closeout is in the best interests of the Government.
5. Initiate all the steps articulated above to pursue an Administrative Unilateral Closeout and determination of final contract price (and de-obligation of any excess funds).

Closeout Process ~ The Quick and Dirty Version (Gov't)

- Verify contract completion
- Obtain all forms, reports, and clearances
- Resolve outstanding issues
- Initiate final payment (or collect overpayment)
- De-obligate excess funds (or request additional funds)
- Prepare contract completion statement
- Prepare past performance input
- Contract file disposition (e.g., storage and ultimately disposal)

Fixed Price Contracts

- Follow Closeout Checklist
- Consider Warranty issues but don't delay closeout

Cost Type Contracts

- Follow Closeout Checklist
- Biggest stumbling block is finalizing indirect cost rates
 - Contractor must submit all Incurred Cost Submissions
 - DCAA must audit and issue audit report
- Delays always occurred and now will be worse
- Contracting Officer (with DCAA assistance) negotiate final indirect rates with Contractor
- Once rates are finalized, Contractor can finalize its costs and submit a completion voucher
- Final modification with reflect the final cost and add/subtract funds to equal final cost

IDIQ Contracts

- Task or Delivery Orders may be complete long before the Contract expires
- Consider Early Closeout and Quick Closeout of individual Task/Delivery Orders to avoid cancellation of funds.

Archive

- Complete file maintained by agencies
 - Periods stated in chart at FAR 4.805 (range from 1 year to 6 years and 3 months)
- Failure to properly store records can have disastrous effects
 - Documents get lost/print fades on hard copies
 - Electronic storage systems become corrupted, lost, or obsolete
 - Contracting officials and employees move, retire or cannot be located
- Contractors should keep their own files for the same reasons. *Do you trust the Government to store a record that might protect you?*
 - Typically required to retain documents for 4 years after final payment
 - Should consider keeping for the 6 years 3 months after final payment so that the documentation is available to defend against Government claims.

Final Word

- Be prepared
- Establish and maintain good record-keeping habits NOW

Contract Closeout Applicable FAR/DFARS Provisions

PROVISIONS	TITLE
FAR 3.1003	Subpart 3.10 –Contractor Code of Business Ethics and Conduct
FAR 4.705	Specific Retention Records
FAR 4.803	Contents of Contract Files
FAR 4.804-1	Closeout by the Office Administering the Contract
FAR 4.804-2	Closeout of the Contracting Office Files if Another Office Administers the Contract
FAR 4.804-4	Physically Completed Contracts
FAR 4.804-5	Procedures for Closing Out Contract Files
FAR 4.805	Storage, Handling, and Disposal of Contract Files
FAR 27.303	Subpart 27.3 – Patent Rights Under Government Contracts
FAR 32.606	Subpart 32.6 – Contract Debts
FAR 42.1502	Subpart 42.15 – Contractor Performance Information
FAR 42.705	Final Indirect Cost Rates
FAR 42.705-1	Contracting Officer Determination Procedure
FAR 42.708	Quick Closeout Procedure

Contract Closeout Applicable FAR/DFARS Provisions

PROVISION	TITLE
FAR 45.600	Subpart 45.6 – Reporting, Reutilization, and Disposal
FAR 48.101	Subpart 48.1 – Policies and Procedures
FAR 52.204-2	Security Requirements
FAR 52.215-2	Audit and Records - Negotiation
FAR 52.216-7	Allowable Cost and Payment
FAR 52.216-8	Fixed Fee
FAR 52.216-9	Fixed Fee – Construction
FAR 52.216-10	Incentive Fee
FAR 52.227-1	Authorization and Consent
FAR 52.227-9	Refund of Royalties
FAR 52.227-11	Patent Rights – Ownership by the Contractor
FAR 52.227-13	Patent Rights – Ownership by the Government
FAR 52.232-7	Payments under Time and Materials and Labor Hour Contracts
FAR 52.248	Value Engineering Provisions and Clauses

Contract Closeout Applicable FAR/DFARS Provisions

PROVISION	TITLE
FAR 52.249-2	Termination for Convenience of the Government (Fixed Price)
FAR 52.249-8	Default (Fixed Price Supply and Service)
DFARS 204.804-2	Closeout of Contract Files
DFARS 252.232.7003	Electronic Submission of Payment Requests and Receiving Reports