



# Managing Contracts with Department of Energy

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# What's the Difference?

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- **The government uses grants and cooperative agreements to facilitate activities for the public good.**
- **Contracts are used to procure supplies or services for the benefit of the government.**
- **Financial assistance is more flexible than contracts. For example: With contracts, changes cannot be made to the scope of work or budget, whereas in grants these changes can usually be made.**
- **Failure to deliver under a contract can have legal or financial consequences to all parties, whereas in financial assistance typically a final report explaining the outcome is sufficient.**



# What's the Difference? (cont.)

	Grant/Financial Assistance/COOP	Contract
Purpose	Public benefits from it	Government benefits from it
Cost Principles	2 CFR 200/OMB Guidance	FAR Part 31/Cost Accounting Principles
Rates	DHHS	DCAA/Independent Audit
How Advertised	<a href="http://www.grants.gov">www.grants.gov</a> <a href="http://www.fedconnect.gov">www.fedconnect.gov</a>	<a href="http://www.fedbizopps.gov">www.fedbizopps.gov</a> <a href="http://www.fedconnect.gov">www.fedconnect.gov</a>
Terms & Conditions	2 CFR 200, 2 CFR 910 statutory and national policy requirements and special terms and conditions (incorporated into award)	FAR, DEARS, DOE Local Many more clauses
Invoicing	Unused funds can be carried into next Period of Performance	Invoicing can only be for the Period of Performance
Deliverables	Report (typically)	Reports and tangibles
Government Acquired Property	Can vest with the recipient	Vests with the Government
Intellectual Property	Usually Government use	Negotiable; usually Government use
Termination	Recipient; by Government for cause, noncompliance or mutual	Government reserves the right to terminate for convenience



# Uniform Contract Format

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- **Contract Format**

- Section A: Contract Award Cover Page
- Section B: Services and Price (CLIN Structure)
- Section C: Description (Statement of Work provided as attachment)
- Section D: Packaging and Markings
- Section E: Inspection and Acceptance
- Section F: Deliveries or Performance
- Section G: Contract Administration Data
- Section H: Special Contract Requirements
- Section I: Standard Clauses (Terms and conditions under which the SOW will be executed)
- Section J: List of all Attachments



# Contract Clause Structure

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- **Federal Acquisition Regulations (FAR)**
  - Clauses Designation of **52.XXX-X**
- **Department of Energy FAR Supplement (DEAR)**
  - Clauses Designation of **952.XXX-X**
  - Clauses Designation of **970.XXXXX-X**
- **Some FAR/DEARS clauses must be flowed down to any subcontract**
  - It is the contractor's responsibility to determine the required flow-down clauses



# Deliverables

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- **You will have deliverables**
- **Regular reports (weekly, monthly, quarterly, annually as required in the Request for Proposal)**
- **Other tangibles as appropriate for the requirement**
  - Examples include:
    - Data codes for IT SW
    - Compounds for Research and Development projects
    - Prototypes for design builds
    - Schematic drawings for designs



# Contract Modifications

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- **Changes to the SOW, POP or Cost/Price require a modification to the contract.**
  - Notify the COR, CS, and CO in sufficient time to finalize changes prior to need.
  - Only the CO can approve.
- **Unilateral Changes**
  - Government has limited rights to modify the contract.
    - Administrative changes
    - Funding
    - Option exercises within terms/conditions of 52.217-9 and 52.217-8
    - Change Orders
    - Terminations



# Important Clauses

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- **FAR 52.232-22, Limitation of Funds**
  - Contractor shall notify the Contracting Officer in writing whenever it has reason to believe that the costs it expects to incur under this contract in the next 60 days, when added to all costs previously incurred, will exceed 75 percent of -
    - (1) the total amount so far allotted to the contract by the Government or,
    - (2) if this is a cost-sharing contract, the amount then allotted to the contract by the Government plus the Contractor's corresponding share.
  - The notice shall state the estimated amount of additional funds required to continue performance for the applicable performance period.





# Important Clauses (cont.)

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- **DOE-G-2005 Billing Instructions**

- Contractors shall submit vouchers electronically through the Oak Ridge Financial Service Center's:
  - (ORFSC) Vendor Inquiry Payment Electronic Reporting System (VIPERS). VIPERS allows vendors to:
    - Submit vouchers,
    - Attach supporting documentation and
    - Check the payment status of any voucher that has been submitted
- Instructions concerning contractor enrollment and use of VIPERS can be found at
  - <https://vipers.doe.gov>
- ***Please note that funding is dedicated to a specific contracting period and cannot be used for any other contracting period***
  - ***If you complete all of the work in the Base Period, you shall not use any remaining funds from the Base Period to fund work associated with an Option Period***



# Important Clauses (cont.)

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- **DOE-G-1007 Contracting Officer's Representative**
  - Advises who the COR is and where to find his/her specific duties and responsibilities
- **HQ-H-1002 Technical Direction (Jan 2000)**
  - Defines Technical Direction
- **52.216-7 Allowable Cost and Payment (June 2013)**
  - Authorization to request additional documentation to support the invoiced amount



# What do you need to be successful?

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- **Copy of the contract**
- **Copy of relevant TAs**
- **Link to the FAR/DEAR**
- **Copy of the Contract Management Plan (once approved)**
- **Copy of the Performance Evaluation and Measurement Plan (once approved)**
- **When in doubt ask the COR or the Contracting Team**



# Roles and Responsibilities

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- **Contracting Officer's Representative (COR):**
  - Verifies contractor performance in accordance with the contract
  - Performs on-site inspections
  - Acceptance of the work stated in the SOW
  - Reviews and approves invoices submitted
  - CO's representative for technical matters
  - COR does not have the authority to take any action that would affect cost, schedule, performance or any other terms and conditions associated with the contract.



# Roles and Responsibilities (cont.)

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- **Contracting Officer (CO):**
  - The ONLY Government representative with the authority to change the terms and conditions of the contract and obligate the Government.
- **Contract Specialist (CS):**
  - Acts on behalf of the CO. However, he/she cannot obligate the Government nor change the terms of the contract. Serves as the primary POC on contractual matters.



# Personal Service Contracts (FAR 37.104)

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- **A personal services contract is characterized by the employer-employee relationship it creates between the Government and the contractor's personnel. The Government is normally required to obtain its employees by direct hire under competitive appointment or other procedures required by the civil service laws. Obtaining personal services by contract, rather than by direct hire, circumvents those laws unless Congress has specifically authorized acquisition of the services by contract.**



# Non-Personal Service Contracts

## FAR 37.101-Definitions

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- **A contract under which the personnel rendering the services are not subject, either by the contract's terms or by the manner of its administration, to the supervision and control usually prevailing in relationships between the Government and its employees**





# Terminations and Contracts

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- **Unlike a Financial Assistance (FA), the Government reserves the right to terminate a contract for convenience.**
- **Types of Terminations**
  - Termination for Convenience (T4C)
  - Termination for Cause
  - Termination for Default (T4D)





# DOE Contract Opportunities

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- **Non-commercial:** [www.fedbizopps.gov](http://www.fedbizopps.gov)
- **Commercial:** [www.ebuy.gsa.gov](http://www.ebuy.gsa.gov)
- **Commercial:** [www.fedconnect.gov](http://www.fedconnect.gov)



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# Questions ?





**Back up slides**



# Federal Grant and Cooperative Agreement Act of 1977

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- **Established basic distinctions between procurement contracts, grants, and cooperative agreements.**
- **Procurement Contract - An executive agency shall use a procurement contract as the legal instrument reflecting a relationship between the United States Government and a State, a local government, or other recipient when— (1) the principal purpose of the instrument is to acquire (by purchase, lease, or barter) property or services for the direct benefit or use of the United States Government; or (2) the agency decides in a specific instance that the use of a procurement contract is appropriate.**



# Federal Grant and Cooperative Agreement Act of 1977 (cont.)

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- **Grant** - An executive agency shall use a grant agreement as the legal instrument reflecting a relationship between the United States Government and a State, a local government, or other recipient when— (1) the principal purpose of the relationship is to transfer a thing of value to the State or local government or other recipient to carry out a public purpose of support or stimulation authorized by a law of the United States instead of acquiring (by purchase, lease, or barter) property or services for the direct benefit or use of the United States Government; and (2) substantial involvement is not expected between the executive agency and the State, local government, or other recipient when carrying out the activity contemplated in the agreement.



# Federal Grant and Cooperative Agreement Act of 1977 (cont.)

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- **Cooperative Agreement** - An executive agency shall use a cooperative agreement as the legal instrument reflecting a relationship between the United States Government and a State, a local government, or other recipient when— (1) the principal purpose of the relationship is to transfer a thing of value to the State, local government, or other recipient to carry out a public purpose of support or stimulation authorized by a law of the United States instead of acquiring (by purchase, lease, or barter) property or services for the direct benefit or use of the United States Government; and (2) substantial involvement is expected between the executive agency and the State, local government, or other recipient when carrying out the activity contemplated in the agreement.



# Treatment of Contractors

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- **DO:**
  1. **Remember that contractor personnel are not government employees.**
  2. **Identify contractor personnel as such with distinctive badges.**
    - a) Clearly identify the contractor's work area. This will help preclude any appearance of a personal service relationship between government employees and contractor personnel.
    - b) Contractor identification should also extend to e-mail accounts. E-mail and signature blocks should clearly identify contractor personnel.
  3. **Respect the employer-employee relationship between contractor and their employees.**
  4. **Ensure the contractor invoices/vouchers are carefully reviewed and processed in a timely manner.**
  5. **Monitor contractor performance against cost, schedule and quality requirements in the contract.**



# Treatment of Contractors (cont.)

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- **Don't:**

1. Select or recruit contractor personnel.
2. Supervise contractor personnel.
3. Rate individual contractor personnel performance.
4. Hire or fire individual contractor personnel.
5. Determine who should perform contract tasks or how they should be done.
6. Don't intervene in the contractor's chain of command.
7. Don't require "out of scope" work, personal services, or performance of "inherently governmental functions." There are no "and other duties as assigned."
8. Accept gifts from contractors or act in any manner that would create even the appearance of a conflict of interest.





# Ratifications and Unauthorized Commitments

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- **Ratification is defined as “the act of approving an unauthorized commitment by an official who has the authority to do so.”**
- **Unauthorized Commitment is defined as “an agreement that is not binding solely because the Government representative who made it lacked the authority to enter into that agreement on behalf of the Government.”**



# Common Causes for a Ratification

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- **An unauthorized individual does not take the time to process a requisition to contracting or to follow procedures for a Government Purchase Card (GPC). In addition to delays and extra work, government personnel who make a financial commitment when adequate funds are not available may be subject to serious administrative and criminal penalties under the Anti-deficiency Act.**
- **A vendor mistakes a request for information as an order, ships the item, the receiver does not realize it is an improper order and accepts the item rather than reject and return the item.**



# Common Causes (cont.)

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- **An unauthorized individual approves work above the scope or dollar value of the contract. Note: Sometimes these unauthorized actions are corrected under the contract's "Disputes". The CO will review the circumstances and determine the proper process.**
- **A contractor continues to perform a service contract or provide leased/rented equipment after the expiration date of the contract. This frequently occurs on yearly services, maintenance, and lease-type contracts for which there is a continuing need. Often the services are so much a part of the organizational operation that it becomes, in effect, invisible - thus forgotten about.**



# How do I know?

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- **How do I know if I've made an unauthorized commitment?**
  - If you think you've crossed the line, you probably have. Some key signals would be the vendor offering to send you the products, agreeing on a delivery date, discussing payment terms or negotiating price.
  - Problems usually surface when the vendor asks for payment and there is no existing contract. Payment cannot be made unless a Contracting Officer has awarded a contract.



# How are Unauthorized Commitments Rectified?

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- **Unauthorized commitments are rectified through a process known as "ratification." Ratification is a legal and regulatory process that makes the unauthorized commitment legal within the constraints of fiscal policy. The outcome of the ratification process is a contract that legally binds the Government.**



# How do I Decrease the Chances?

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- **As the Government Program Manager/Contracting Officer's Representative, make sure the contractor knows you are not authorized to place orders or make changes to the contract.**
- **As the Contractor, if you believe you are being asked to take the contract out of scope, contact the Contracting Officer.**
- **Get the Contracting Officer/Specialist involved early in the planning process.**



# Types of Terminations, Commercial

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- **Termination for Convenience (T4C)**
  - Used in both commercial and non-commercial contracts
  - “The Government’s needs changed”
  - Contractor gets paid
    - percentage of the contract price reflecting the work performed or an amount for direct labor hours.
    - any charges directly resulting from the termination.
  - Mutual agreement on the requirements of the termination proposal



# Types of Terminations, Commercial (cont.)

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- **Termination for Cause**
  - Used in commercial contracts
  - Defaulted contractor charged
    - Any excess procurement costs (Government acquires similar items from another contractor).
    - Any incidental or consequential damages incurred because of termination.
  - Any information related to termination for cause notices and any amendments are reported





# Types of Terminations, Non-Commercial

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- **Termination for Convenience (T4C)**
  - Used in both commercial and non-commercial contracts
  - “The Government’s needs changed”
  - Contractor gets paid
    - percentage of the contract price reflecting the work performed or an amount for direct labor hours.
    - any charges directly resulting from the termination.
  - Mutual agreement on the requirements of the termination proposal



# Types of Terminations, Non-Commercial (cont.)

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- **Termination for Default (T4D)** FAR 49.4
  - The performer had issues with:
    - Performance
    - Delivery
    - Schedule
    - Cost
- **Complex subject**