



DEPARTMENT OF DEFENSE
Defense Contract Management Agency

INSTRUCTION

Consent to Subcontract

Contracts Directorate
OPR: DCMA-AQCF

DCMA-INST 143
March 19, 2013

1. PURPOSE. This Instruction:

a. Cancels DCMA Instruction (DCMA-INST), Consent to Subcontract/Contractor Purchasing System Review (CPSR), (Reference (a)) and establishes Consent to Subcontract as a stand-alone Instruction.

b. Establishes policies, assigns roles and responsibilities, and outlines procedures for administrative contracting officers (ACO) to gain insight into prime contractor's subcontracting actions when their Purchasing System has not been approved or when specifically required by contract provisions.

c. Is established in compliance with DoD Directive 5105.64 (Reference (b)), and implements DCMA policy pursuant to references listed on page 3.

2. APPLICABILITY. This Instruction applies to all DCMA activities that manage, review, validate, and approve contractor subcontracting actions.

3. MANAGERS' INTERNAL CONTROL PROGRAM. In accordance with DCMA-INST 710, "Managers' Internal Control Program" (Reference (c)), this instruction is subject to evaluation and testing. The process flowchart is located at Appendix A.

4. RELEASABILITY – UNLIMITED. This Instruction is approved for public release.

5. PLAS CODE(S).

- a. Process: 094 - Consent to Subcontracts/CPSRs
- b. Programs: ACAT/Other Customers (when applicable)
- c. Other National; Training and Travel; Local Programs (when applicable)

6. POLICY RESOURCE PAGE. <https://home.dcma.mil/policy/143r/>

7. EFFECTIVE DATE. By order of the Director, DCMA, this Instruction is effective immediately.

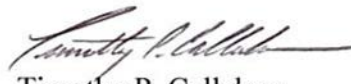

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REFERENCES

- (a) DCMA-INST, "Consent to Subcontract/Contractor Purchasing System Review (CPSR)" (hereby canceled)
- (b) DoD Directive 5105.64, "Defense Contract Management Agency (DCMA)," January 10, 2013
- (c) DCMA-INST 710, "Managers' Internal Control Program," September 12, 2011
- (d) Advance Notification/Consent to Subcontract Checklist
- (e) Federal Acquisition Regulation (FAR) 52.244-2, "Subcontracts"
- (f) FAR 44.204(a), Contract Clauses
- (g) FAR 44.201-2, Advance Notification Requirements
- (h) FAR 44.201-1, Consent Requirements
- (i) FAR 52.244-2(e)(1), Subcontracts
- (j) FAR 44.202-2, Considerations
- (k) FAR Part 19, Small Business Programs
- (l) United States Code, Title 41, Section 48
- (m) Code of Federal Regulations, Title 48, Part 9903.201-2(d), Types of Cost Accounting Standards (CAS) Coverage
- (n) FAR 9.404, Excluded Parties List System
- (o) FAR 44.203, Consent Limitations
- (p) FAR 15.404-4(c)(4)(i), Profit
- (q) FAR 16.103(c), Negotiating Contract Type
- (r) FAR 44.101, Definitions
- (s) FAR 52.244-2, Subcontracts
- (t) FAR 3.502-1, Definitions

CHAPTER 1

POLICY

1.1 POLICY. It is DCMA policy that:

1.1.1. Advance Notification and Consent are required before the award of subcontracts if the prime contractor does not have an approved purchasing system, where the Government is assuming a large portion of the contract risk and, therefore, has a vested interest in knowing and controlling costs associated with the contract.

1.1.2. The ACO is responsible for reviewing the contractor's Notification and supporting data to ensure that the proposed subcontract is appropriate for the risks.

1.1.3. The Advance Notification/Consent to Subcontract Checklist (Reference (d)) shall be used to document receipt and review of the contractor's Advance Notification submission.

CHAPTER 2

RESPONSIBILITIES

2.1. ADMINISTRATIVE CONTRACTING OFFICER (ACO). The ACO:

2.1.1. Performs a review of the contract to determine if FAR clause 52.244-2, Subcontracts, (Reference (e)), is contained in the contract and makes note if Alternate I of the clause is applicable.

2.1.2. Reviews the contractor's notification and supporting data to ensure that the proposed subcontract is appropriate for the risks involved and consistent with current policy and sound business judgment.

2.1.3. Uses the Advance Notification/Consent to Subcontract Checklist (Reference (d)) to document the findings.

2.1.4. If specifically identified by the procuring contracting officer (PCO) in the subcontracts clause of the contract, provides consent for award of subcontracts even if the contractor has an approved purchasing system.

2.2. PRIME CONTRACTOR. The Prime Contractor:

2.2.1. Notifies the ACO in advance of awarding any subcontract or making a modification to a subcontract, for which consent is required.

CHAPTER 3

PROCEDURES

3.1. CONTRACT REVIEW. The ACO shall:

3.1.1. Review FAR 44.204(a), Contract Clauses, (Reference (f)) for appropriate use of FAR clause 52.244-2, Advance Notification and Consent, (Reference (e)). If the clause is required, the ACO must verify that it is included in the contract. If included as required, the ACO makes special note if Alternate I of the clause is applicable, and pays special attention to provisions (if any) in paragraphs (d) and (j) of the clause.

3.1.2. Prepare a Contract Deficiency Report if the clause should be included but is not. The ACO will coordinate with the PCO to determine who shall prepare the contract modification to insert the clause.

3.2. GENERAL APPLICABILITY.

3.2.1. If the prime contractor has an approved purchasing system, Advance Notification (contractor notification to the contracting officer of the intent to subcontract) per FAR 44.201-2, Advance Notification Requirements, (Reference (g)) is usually not required. Likewise, Consent (the contracting officer's written authorization as to the placement of the subcontract) is not generally required according to FAR 44.201-1, Consent Requirements, (Reference (h)). However, there are exceptions in the regulation and overriding contract provisions that may apply.

3.2.2. If the prime contractor does not have an approved purchasing system, Advance Notification and Consent are required before the award of cost-reimbursement, time-and-materials, labor-hour, or letter contracts, and unpriced actions (including unpriced modifications and unpriced delivery orders) under fixed-price contract that exceed the simplified acquisition threshold or 5 percent of the total estimated cost of the contract (FAR 44.201-1, Consent Requirements, Reference (h)).

3.3. ADVANCE NOTIFICATION.

3.3.1. The ACO is responsible for reviewing the contractor's Advance Notification and supporting data to ensure that the proposed subcontract is appropriate for the risks involved and consistent with current policy and sound business judgment.

3.3.2. Requirements for Advance Notification under an Approved Purchasing system. FAR 44.201-2, "Advance Notification Requirements," (Reference (g)) states that for cost-reimbursement contracts issued by DoD, U.S. Coast Guard and National Aeronautics and Space Administration (NASA) customers, the contractor is required to notify the ACO prior to award of any cost-plus-fixed-fee subcontract or any fixed-price subcontract **that exceeds the greater of** the simplified acquisition threshold or five percent of the total estimated cost of the contract. For cost-reimbursement prime contracts issued by civilian agencies (other than the U.S. Coast Guard and NASA) even if the contractor has an approved purchasing system the contractor is required to notify the ACO prior to the award of any cost-plus-fixed-fee subcontract or any fixed-price

subcontract that exceeds either the simplified acquisition threshold or five percent of the total estimated cost of the contract.

3.3.3. When Advance Notification is required, the contractor must notify the ACO reasonably in advance of placing certain subcontracts. The contractor will need to incorporate an appropriate lead time into its purchasing process to ensure the information required by FAR 52.244-2(e)(1), Subcontracts, (Reference (i)) is obtained and supplied to the ACO for review prior to award, as follows:

3.3.3.1. A description of the supplies or services to be subcontracted.

3. 3.3.2. Identification of the type of subcontract to be used.

3. 3.3.3. Identification of the proposed subcontractor.

3. 3.3.4. The proposed subcontract price.

3. 3.3.5. The subcontractor's current, complete and accurate certified cost or pricing data and Certificate of Current Cost or Pricing Data, if required by other contract provisions.

3. 3.3.6. The subcontractor's Disclosure Statement or Certificate relating to Cost Accounting Standards (CAS) when such data are required by other provisions of the contract.

3. 3.3.7. A negotiation memorandum reflecting the following:

3. 3.3.7.1. The principle elements of the subcontract price negotiations.

3. 3.3.7.2. The most significant considerations controlling establishment of the initial or revised prices.

3. 3.3.7.3. The reason why certified cost or pricing data were or were not required.

3. 3.3.7.4. The extent, if any, to which the contractor did not rely on the subcontractor's certified cost or pricing data in determining the price objective and in negotiating the final price.

3. 3.3.7.5. The extent to which it was recognized in the negotiation that the subcontractor's certified cost or pricing data were not accurate, complete or current; the action taken by the contractor and the subcontractor; and the effect of any such defective data on the total price negotiated.

3. 3.3.7.6. The reasons for any significant difference between the contractor's price objective and the price negotiated.

3. 3.3.7.7. A complete explanation of the incentive fee or profit plan when incentives were used. The explanation shall identify each critical performance element, management

decisions used to quantify each incentive element, reasons for the incentives, and a summary of all trade-off possibilities considered.

3.3.4. ACO Review. The Advance Notification/Consent to Subcontract Checklist (Reference (d)) shall be used to document receipt and review of the contractor's Advance Notification submission.

3.3.4.1. Upon receipt of the contractor's notification, the ACO shall review the information supplied to ensure it complies with the requirements of the clause and contact the contractor immediately if the notification package is incomplete or insufficient, and request supplementation.

3.3.4.2. Once the package is determined complete and compliant, the ACO shall consult with a member of the Contractor Purchasing System Review (CPSR) Group to determine whether the proposed subcontract is appropriate for the risks involved and is consistent with current policy and sound business judgment.

3.3.5. Document the File. Upon the determination by the ACO the package is complete and compliant, the notification, the functional specialist input, and the checklist will be filed in the appropriate contract folder in Electronic Document Workflow (EDW), or in the physical contract folder for classified contracts. If consent is not required, no further action is necessary unless required by individual customer requests.

3.4. CONSENT.

3.4.1. The cognizant ACO is responsible for consenting to subcontract except when the PCO retains contract administration or withholds delegation of the consent responsibility from the ACO. When consent to subcontract is retained by the PCO, the contract administration office should assist the contracting office in its evaluation of a request for consent if asked.

3.4.2. Consent Under an Approved Purchasing System. FAR 44.201-1, paragraph (a), Consent Requirements (Reference (h)) provides that even if the contractor has an approved purchasing system, consent is required for subcontracts specifically identified by the PCO in the subcontracts clause of the contract. In practice, the ACO would find the requirement for consent included in FAR 52.224-2, paragraph (d), Subcontracts (Reference (e)), or as a special contract provision. Therefore, a complete review of the contract is necessary, especially for prime contracts with subcontracts for critical systems, subsystems, components, or services.

3.4.3. Consent Under a Disapproved Purchasing System. FAR 44.201-1, paragraph (b) (Reference (h)) provides that consent to subcontracts is required under flexibly priced prime contracts, undefinitized fixed-price contracts, and undefinitized modifications to fixed-price contracts. Note also if paragraph (j) of the FAR 52.244-2 (Reference (e)) references any subcontracts that were evaluated during negotiations and are, therefore, not subject to the clause. Table 1 is intended to simplify application of the language in the FAR provision. Requirement for consent is represented with an X:

Table 1. Consent Requirements

Type of Subcontract	Consent Requirements by Type of Prime Contract Applies when Purchasing System is not approved							
	Cost-reimbursement (CR)	Time and Materials (T&M)	Labor-hour (LH)	Letter Contract (LTR)	Undefinitized Contract Actions (UCAs) under Fixed-price contracts over the simplified acquisition threshold (SAT) (includes modifications and delivery orders)	Fixed-Price	Commercial Contract (FAR part 12 - SF 1449)	Architect-engineer Services
CR	X	X	X	X	X	NA	NA	As req'd
T&M	X	X	X	X	X	NA	NA	As req'd
LH	X	X	X	X	X	NA	NA	As req'd
For DoD, Coast Guard and NASA: Fixed-price that exceeds the greater of the SAT or 5 percent of the total estimated cost of the contract	X	X	X	X	X	X	NA	As req'd
For Civilian Agencies: Fixed-price that exceeds either the SAT or 5 percent of the total estimated cost of the contract	X	X	X	X	X	X	NA	As req'd

3.4.4. FAR 44.201-1 (Reference (h)) specifies these consent requirements when the contractor does not have an approved purchasing system. This includes contractors that have not had their purchasing system reviewed as well as those contractors that have had their purchasing system approval withheld or withdrawn.

3.4.5. ACOs shall enter into Agreements with their contractor specifying the length of time required for processing requests for consent and include a provision for the processing of urgent requirements. Agreements should also outline information (if any) not supplied in the Advance Notification, but essential to the consent considerations in paragraph 3.4.5.1. below. Agreements must be reviewed by the Contract Management Office (CMO) Contracts Director.

3.4.5.1. Prior to consenting to subcontract, the ACO must enlist support from the DCMA CPSR Group to determine the impact of any negative or unfavorable input in response to the following questions (Reference (j)):

3.4.5.1.1. Is the decision to subcontract consistent with the contractor's approved make-or-buy program, if any?

3.4.5.1.2. Is the subcontract for special test equipment, equipment, or real property that is available from Government sources?

3.4.5.1.3. Is the selection of the particular supplies, equipment, or services technically justified?

3.4.5.1.4. Has the contractor complied with the prime contract requirements regarding small business subcontracting including, if applicable, its plan for subcontracting with small, veteran-owned, service-disabled veteran-owned, HUBZone, small disadvantaged and women-owned small business concerns (see FAR Part 19 (Reference (k))); and to purchase from nonprofit agencies designated by the Committee for Purchase From People Who Are Blind or Severely Disabled (Javits-Wagner-O'Day Act (United States Code, title 41, section 48 (Reference (l))).

3.4.5.1.5. Was adequate price competition obtained or its absence properly justified?

3.4.5.1.6. Did the contractor adequately assess and dispose of subcontractors' alternate proposals, if offered?

3.4.5.1.7. Does the contractor have a sound basis for selecting and determining the responsibility of the particular subcontractor?

3.4.5.1.8. Has the contractor performed adequate cost or price analysis, or price comparisons; and obtained accurate, complete, and current cost or pricing data, including any required certification?

3.4.5.1.9. Is the proposed subcontract type appropriate for the risks involved and consistent with current policy?

3.4.5.1.10. Has adequate consideration been obtained for any proposed subcontract that will involve the use of Government-provided equipment and real property?

3.4.5.1.11. Has the contractor adequately and reasonably translated prime contract technical requirements into subcontract requirements?

3.4.5.1.12. Does the prime contractor comply with applicable CAS for awarding the subcontract? Subcontract awards subject to CAS require the same type of CAS coverage as would prime contracts awarded to the same business unit. In measuring total CAS-covered awards for a year, a transfer by one segment to another shall be deemed to be a subcontract award by the transferor (Code of Federal Regulations, title 48, part 9903.201-2(d) of title 48 (Reference (m))).

3.4.5.1.13. Is the proposed subcontractor in the Excluded Parties List System? (FAR subpart 9.404, Excluded Parties List System, (Reference (n))).

3.4.5.1.14. Did the contractor adequately substantiate the selection of the subcontractor as offering the greatest value to the Government when other than the lowest price is the basis for the award?

3.4.6. In addition, the consent decision should consider the impact when these heightened areas of risk are present:

3.4.6.1. The prime contractor's purchasing system or performance is inadequate.

3.4.6.2. Close working relationships or ownership affiliations between the prime and subcontractor may preclude free competition or result in higher prices.

3.4.6.3. Subcontracts are proposed for award on a noncompetitive basis at prices that appear unreasonable, or at prices higher than those offered to the Government in comparable circumstances.

3.4.6.4. Subcontracts are proposed on a cost-reimbursement, time-and-materials or labor-hour basis.

3.4.7. ACOs shall **not** grant consent to (FAR 44.203 (Reference (o))):

3.4.7.1. Cost-reimbursement subcontracts if the fee exceeds the fee limitations of FAR 15.404-4(c)(4)(i) (Reference (p)).

3.4.7.2. Subcontracts providing for payment on a cost-plus-percentage-of-cost basis.

3.4.7.3. Subcontracts obligating the contracting officer to deal directly with the subcontractor.

3.4.7.4. Subcontracts that make the result of arbitration, judicial determination or voluntary settlement between prime contractor and subcontractor binding on the Government.

3.4.7.5. Repetitive or unduly protracted use of cost-reimbursement, time-and-materials or labor-hour subcontracts (contracting officers should follow the principles of FAR 16.103(c) (Reference (q))).

3.4.8. Consent Approval Letter. The ACO's decision to consent to the award of subject proposed subcontract or placement of subject purchase order must be in writing, signed, and dated. It should include a statement that the notice is not a determination of the allowability or acceptability of costs, does not authorize the contractor to exceed the maximum cost permitted to be incurred under the contract, and that the consent is subject to the clauses contained in the prime contract. Here is an example statement:

“Consent is hereby given to the award of subject proposed subcontract or placement of purchase order, subject to the clauses contained in the prime contract and conditioned upon the information furnished by the contractor in support thereof. This consent shall in no way relieve the contractor of any obligations or responsibilities it may otherwise have under the contract or under law, shall neither create any obligation of the Government to, nor privity of contract with, the subcontractor or vendor, and shall be without prejudice to any right or claim of the Government under the prime contract. This consent does not constitute determination as to the acceptability of the subcontract price, terms or conditions or the allowability of costs.”

3.4.9. Neither the ACO’s consent to subcontract, nor approval of the contractor’s purchasing system constitutes a determination of the acceptability of the subcontract terms, price, or allowability of costs, unless a consent or approval action specifies otherwise.

3.4.10. Denial of Consent. The ACO’s decision to refuse consent must also be in writing, signed, and dated and include a specific justification for the refusal.

3.4.11. Use the Advance Notification/Consent to Subcontract Checklist (Reference (d)) to document the findings.

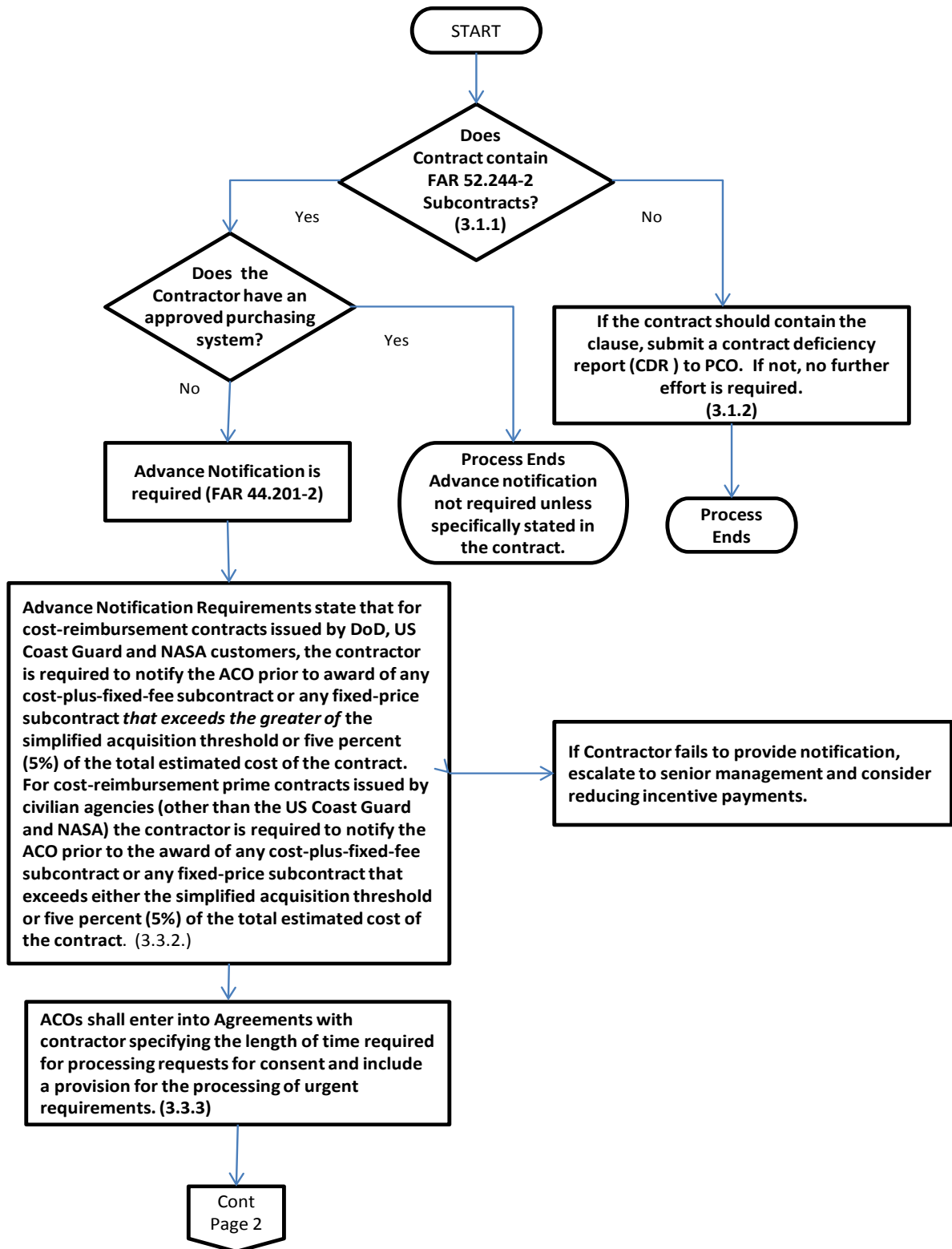
3.5. NONCOMPLIANCE.

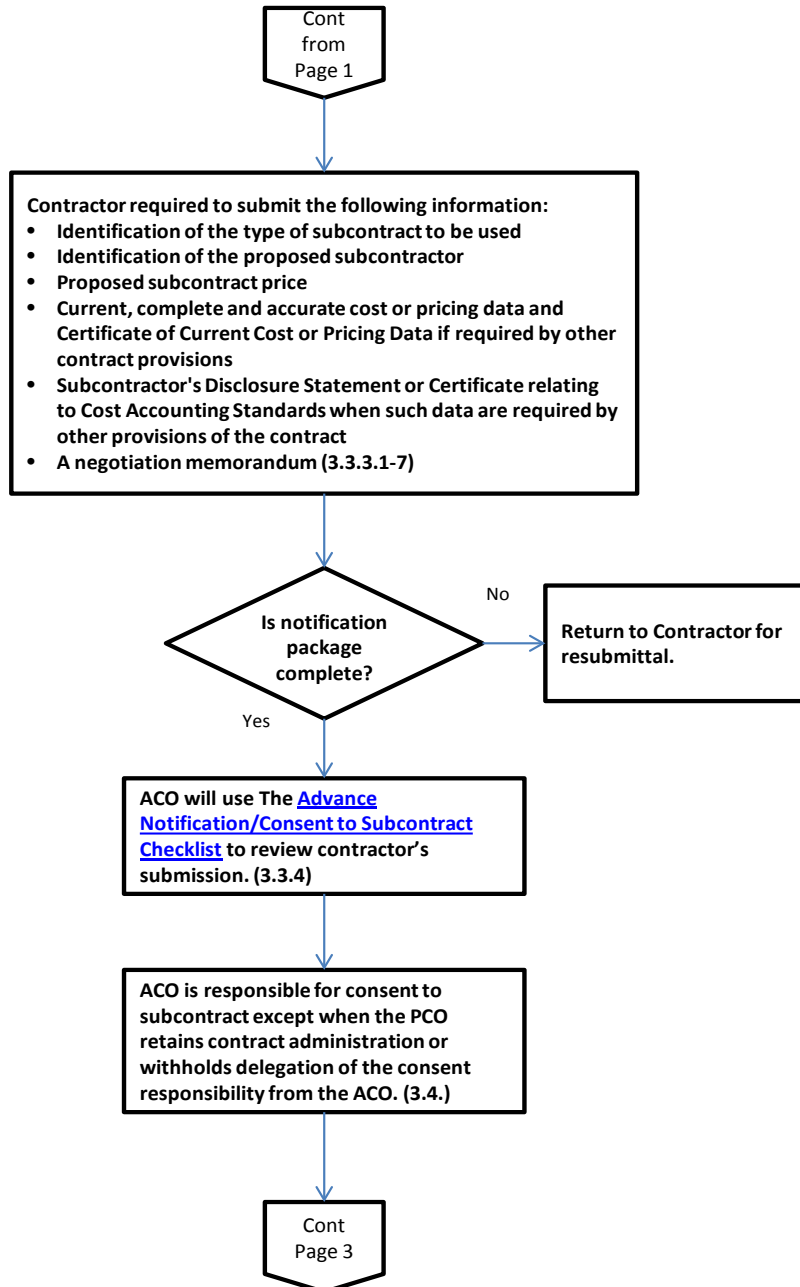
3.5.1. Contractor failure to supply information required by the contract should be addressed in writing and escalated to senior CMO contract management. Repeated instances of noncompliance may constitute sufficient rationale to withdraw approval of the contractor’s purchasing system.

3.5.2. If the contractor does not already have an approved purchasing system, the ACO should track and report performance in this area, advising customers to reduce incentive payments where applicable. The ACO should also consider requesting audit of proposed subcontract costs prior to final price negotiations with the prime contractor.

3.6. RECORDS. The ACO should have a method for retrieving information regarding Advance Notification and/or Consent actions to facilitate post-award review during CPSRs or other internal or external review activities. This record should also serve as the basis for determining adherence to the consent processing cycle time identified in the Agreement required by paragraph 3.4.5. It is recommended that the ACO create a document at the Contract level in EDW with a title of “Advance Notification/Consent to Subcontract.”

APPENDIX



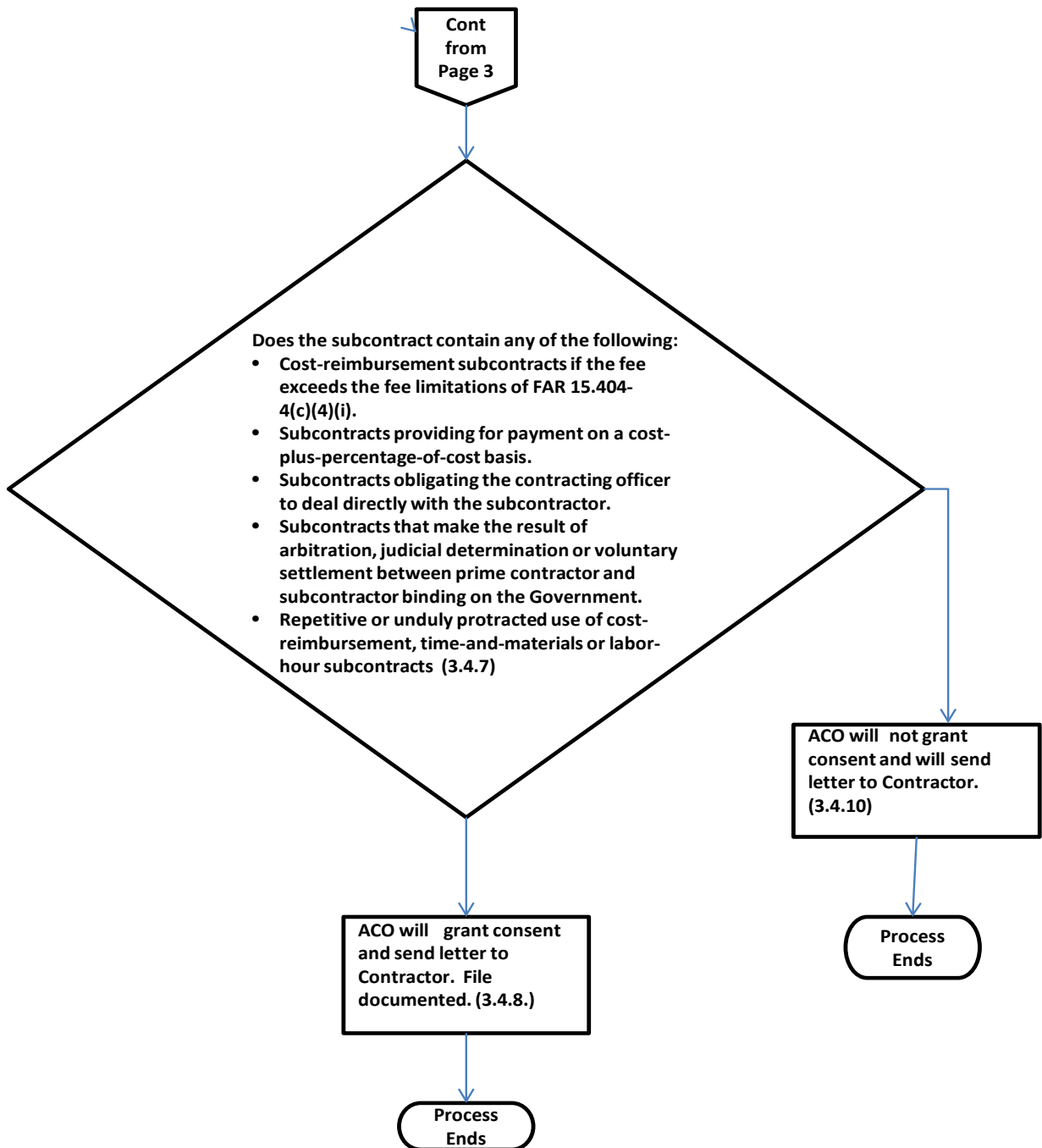


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If the Contractor does not have an approved purchasing system, consent to subcontract is required for any cost-reimbursement, time-and-materials, or labor-hour type subcontract. Consent to subcontract is required on fixed-price contracts for a contract awarded by the DoD, the Coast Guard, or NASA, the greater of the simplified acquisition threshold or 5 percent of the total estimated cost of the contract; or for a contract awarded by a civilian agency other than the Coast Guard and NASA, either the simplified acquisition threshold or 5 percent of the total estimated cost of the contract. (FAR 52-244-2) (Table 1)

- ACO shall consult with CPSR personnel concerning the following:
- Is the decision to subcontract consistent with the contractor's approved make-or-buy program, if any
 - Is the subcontract for special test equipment, equipment or real property that is available from Government sources?
 - Is the selection of the particular supplies, equipment or services technically justified?
 - Has the contractor complied with the prime contract requirements regarding small business subcontracting?
 - Was adequate price competition obtained or its absence properly justified?
 - Did the contractor adequately assess and dispose of subcontractors' alternate proposals, if offered?
 - Does the contractor have a sound basis for selecting and determining the responsibility of the particular subcontractor?
 - Has the contractor performed adequate cost or price analysis or price comparisons and obtained accurate, complete and current cost or pricing data, including any required certification?
 - Is the proposed subcontract type appropriate for the risks involved and consistent with current policy?
 - Has adequate consideration been obtained for any proposed subcontract that will involve the use of Government-provided equipment and real property?
 - Has the contractor adequately and reasonably translated prime contract technical requirements into subcontract requirements?
 - Does the prime contractor comply with applicable cost accounting standards in awarding the subcontract?
 - Is the proposed subcontractor in the Excluded Parties List System
 - Did the contractor adequately substantiate the selection of the subcontractor as offering the greatest value to the Government when other than the lowest price is the basis for the award? (3.4.5.1.)

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GLOSSARY

DEFINITIONS

Approved purchasing system. A contractor's purchasing system that has been reviewed and approved in accordance with FAR 44.101, Definitions, (Reference (r)).

Consent to subcontract. The Contracting Officer's written consent for the contractor to enter into a particular subcontract (FAR 52.244-2, Subcontracts, Reference (s)).

Contractor purchasing system review. The complete evaluation of a contractor's purchasing of material and services, subcontracting, and subcontract management from development of the requirement through completion of subcontract performance (FAR 44.101, Definitions, Reference (r)).

Prime contract. A contract or contractual action entered into by the United States for the purpose of obtaining supplies, materials, equipment, or services of any kind (FAR 3.502-1, Definitions, Reference (t)).

Prime contractor. A person who has entered into a prime contract with the United States (FAR 3.502-1, Definitions, Reference (t)).

Subcontract. Any contract, as defined in FAR Subpart 2.1, entered into by a subcontractor to furnish supplies or services for performance of the prime contract or subcontract. It includes, but is not limited to, purchase orders, and changes and modifications to purchase orders (FAR 44.101, Definitions, (Reference (r))).

Subcontractor. Any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime contractor or another subcontractor (FAR 44.101, Definitions, Reference (r)).

ACRONYMS

ACO	Administrative Contracting Officer
CAS	Cost Accounting Standards
CMO	Contract Management Office
CPSR	Contractor Purchasing System Review
DCMA-INST	DCMA Instruction
EDW	Electronic Document Workflow
FAR	Federal Acquisition Regulation
NASA	National Aeronautics and Space Administration
PCO	Procuring Contracting Officer
PLAS	Performance Labor Accounting System
SAT	Simplified Acquisition Threshold
UCA	Undefinitized Contract Action