

Tips for managing your Government contract. . .

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Tips from an insider. . .

- 1. Know your contract**
- 2. Contract Communication**
- 3. Changes/Impacts (REA)**
- 4. Overheads/Pricing**
- 5. Getting Paid**

In 1995 Mr. Scott Wakefield, President of PSW Electric (then Baird Electric) published an article in the Daily Journal of Commerce entitled:

“10 stupid things contractors do to mess up federal contracts”

These are still true today - 27 years later

- (1) Contractors try to solve the government’s problems.
- (2) Contractors proceed on change orders before entitlement is settled and a cost is agreed to.
- (3) Contractors fail to track costs for extra work separately
- (4) Contractors assume the government will explain their rights to them when settling changes.
- (5) Contractors assume the government’s interpretation of the contract documents is correct
- (6) Contractors fail to notify the government of changes, impacts, and delays as they occur
- (7) Contractors finance the performance of changes for the government
- (8) Contractors fail to understand what costs they are entitled to recover when changes occur
- (9) Contractors allow the government to intimidate them when negotiating changes
- (10) Contractors fail to administer changes like a separate job

Rule No. 1 - Follow the contract

- What does the contract say?
- Somewhere in the contract it explains what to do – there is a swim lane for everything
- Do not over think it, re-design it, or try to better it
- More importantly. . . don't try to understand it

Rule No. 2 - Only the Contracting Officer can change the contract

NFAS 5252.201-9300 Contracting Officer Authority

In no event shall any understanding or agreement between the Contractor and any Government employee other than the Contracting Officer on any contract, modification, change order, letter or verbal direction to the Contractor be effective or binding upon the Government. All such actions must be formalized by a proper contractual document executed by an appointed Contracting Officer.

The Contractor is hereby put on notice that in the event a Government employee other than the Contracting Officer directs a change in the work to be performed or increases the scope of the work to be performed, it is the Contractor's responsibility to make inquiry of the Contracting Officer before making the deviation.

Payments will not be made without being authorized by an appointed Contracting Officer with the legal authority to bind the Government.

Rule No. 3 -

Document
Document
Document

- If there is an issue, put it in writing
- If there is an agreement – put it in writing
- If there is a change – get it is
- If you are ask to do something – get it writing
- Put it on a log and schedule
- You cannot recreate history

Rule No. 4 -

Your Government
Team did not get
the email

In American Constitutional law, the doctrine of sovereign immunity bars suits against the government in most circumstances. The Government is King.

However, in his annual message of 1861, President Lincoln called for changes in the Court of Claims based on the principle that *“it is as much the duty of Government to render prompt justice against itself in favor of citizens, as it is to administer the same between private individuals.”*

Know your contract . . . *even the hidden parts*

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Clause: *A term or condition used in contracts or in both solicitations and contracts and applying after contract award, or both before and after award. FAR 2.101.*

Provision: *A written term or condition used only in solicitations and applying only before contract award. FAR 52.101.*

FAR – Federal Acquisition Regulations (52.225-11)

DFAR – Defense Federal Acquisition Regulations (252.225-7001)

NFAS – Naval Facilities Acquisition Standards (5252.225-9506)

GSAM – General Services Acquisition Manual (552.211-76)

Provided in full text (fill ins) and/or incorporated by reference

SUPPLIES/SERVICES		CONSTRUCTION	
SECTION	TITLE	SECTION	TITLE
A	Solicitation/contract form	00	Solicitation/contract form
B	Supplies or services and prices/costs	01	Solicitation/contract form
C	Description/specifications/statement of work		Specifications and Drawings
D	Packaging and marking		<i>Not applicable</i>
E	Inspection and acceptance		<i>Division 1/Part 2 (DB)</i>
F	Deliveries or performance		<i>Not applicable</i>
G	Contract administration data	00800	Special Contract Requirements
H	Special contract requirements		
I	Contract clauses	00700	Contract clauses
J	List of attachments		<i>Not Applicable/Part 6 (DB)</i>
K	Representations, certifications, and other statements of offerors or respondents	00600	Representations, certifications, and other statements of offerors or respondents
L	Instructions, conditions, and notices to offerors or respondents	00100	Instructions, conditions, and notices to offerors or respondents and evaluation factors for award
M	Evaluation factors for award		

**W91238-20-C-0022; Replacement of Fresno Jet Fuel Complex
FAR Clauses Full Text**

52.202-1 - Definitions (Nov 2013)

When a solicitation provision or contract clause uses a word or term that is defined in the Federal Acquisition Regulation (FAR), the word or term has the same meaning as the definition in FAR 2.101 in effect at the time the solicitation was issued, unless—

- (a) The solicitation, or amended solicitation, provides a different definition;
- (b) The contracting parties agree to a different definition;
- (c) The part, subpart, or section of the FAR where the provision or clause is prescribed provides a different meaning; or
- (d) The word or term is defined in FAR Part 31, for use in the cost principles and procedures. (End of Clause)

52.203-3 – Gratuities (Apr 1984)

(a) The right of the Contractor to proceed may be terminated by written notice if, after notice and hearing, the agency head or a designee determines that the Contractor, its agent, or another representative --

- (1) Offered or gave a gratuity (e.g., an entertainment or gift) to an officer, official, or employee of the Government; and
- (2) Intended, by the gratuity, to obtain a contract or favorable treatment under a contract.

(b) The facts supporting this determination may be reviewed by any court having lawful jurisdiction.

(c) If this contract is terminated under paragraph (a) of this clause, the Government is entitled –

- (1) To pursue the same remedies as in a breach of the contract; and

(2) In addition to any other damages provided by law, to exemplary damages of not less than 3 nor more than 10 times the cost incurred by the Contractor in giving gratuities to the person concerned, as determined by the agency head or a designee. (This subparagraph (c)(2) is applicable only if this contract uses money appropriated to the Department of Defense.)

(d) The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract. (End of Clause)

52.203-5 - Covenant Against Contingent Fees (May 2014)

(a) The Contractor warrants that no person or agency has been employed or retained to solicit or obtain this contract upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the Government shall have the right to annul this contract without liability or to deduct from the contract price or consideration, or otherwise recover, the full amount of the contingent fee.

(b) “Bona fide agency,” as used in this clause, means an established commercial or selling agency, maintained by a contractor for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds itself out as being able to obtain any Government contract or contracts through improper influence.

“Bona fide employee,” as used in this clause, means a person, employed by a contractor and subject to the contractor’s supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds out as being able to obtain any Government contract or contracts through improper influence.

“Contingent fee,” as used in this clause, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a Government contract.

“Improper influence,” as used in this clause, means any influence that induces or tends to induce a Government employee or officer to give consideration or to act regarding a Government contract on any basis other than the merits of the matter. (End of Clause)

52.203-6 - Restrictions on Subcontractor Sales to the Government (Sep 2006)

*Taxes
Standard of Conduct
Ethics
EEO
Whistle blower
Posting
Labor
Security (computer)
Order priority
Audits/Records
Cos Accounting
Ownership
Payments
Employment verification
Drug free
Human trafficking
Insurance
Hazardous Materials
Warranties*

**W91238-20-C-0022; Replacement of Fresno Jet Fuel Complex
FAR Clauses Full Text**

(b) Before awarding subcontracts over the simplified acquisition threshold, as defined in FAR 2.101 on the date of subcontract award, for items other than commercial items, the Contractor shall conduct market research to—

(1) Determine if commercial items or, to the extent commercial items suitable to meet the agency's needs are not available, nondevelopmental items are available that—

- (i) Meet the agency's requirements;
- (ii) Could be modified to meet the agency's requirements; or
- (iii) Could meet the agency's requirements if those requirements were modified to a reasonable extent; and

(2) Determine the extent to which commercial items or nondevelopmental items could be incorporated at the component level.
(End of clause)

☑ 52.211-10 - Commencement, Prosecution, and Completion of Work (Apr 1984)

The Contractor shall be required to (a) Commence work under this contract within ten (10) calendar days after the date the Contractor receives the notice to proceed*, (b) Prosecute the work diligently, and (c) Complete the entire work ready for use not later than the period of performance identified in Block 11 calendar days after notice to proceed.

The time stated for completion shall include final cleanup of the premises.

52.211-12 - Liquidated Damages—Construction (SEP 2000)

(a) If the Contractor fails to complete the work within the time specified in the contract, the Contractor shall pay liquidated damages to the Government in the amount of **\$3118.00** for each calendar day of delay until the work is completed or accepted.

(b) If the Government terminates the Contractor's right to proceed, liquidated damages will continue to accrue until the work is completed. These liquidated damages are in addition to excess costs of repurchase under the Termination clause.

52.211-15 - Defense Priority and Allocation Requirement (Apr 2008)

This is a rated order certified for national defense, emergency preparedness, and energy program use, and the Contractor shall follow all the requirements of the Defense Priorities and Allocations System regulation (15 CFR 700). (End of Clause)

☑ 52.211-18 - Variation in Estimated Quantity (Apr 1984)

If the quantity of a unit-priced item in this contract is an estimated quantity and the actual quantity of the unit-priced item varies more than 15 percent above or below the estimated quantity, an **equitable adjustment** in the contract price shall be made upon demand of either party. The **equitable adjustment shall** be based upon any increase or decrease in costs due solely to the variation above 115 percent or below 85 percent of the estimated quantity. If the quantity variation is such as to cause an increase in the time necessary for completion, the Contractor may request, in writing, an extension of time, to be received by the Contracting Officer within 10 days from the beginning of the delay, or within such further period as may be granted by the Contracting Officer before the date of final settlement of the contract. Upon the receipt of a written request for an extension, the Contracting Officer shall ascertain the facts and make an adjustment for extending the completion date as, in the judgement of the Contracting Officer, is justified. (End of clause)

52.215-2 - Audit and Records - Negotiation (Oct 2010)

(a) As used in this clause, "records" includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.

(b) *Examination of costs.* If this is a cost-reimbursement, incentive, time-and-materials, labor-hour, or price redeterminable contract, or any combination of these, the Contractor shall maintain and the Contracting Officer, or an authorized representative of the Contracting Officer, shall have the right to examine and audit all records and other evidence sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred directly or indirectly in performance of this contract. This right of examination shall include inspection at all reasonable times of the Contractor's plants, or parts of them, engaged in performing the contract.

*Terms that allow you
"recovery" - search for
equitable adjustment*

**W91238-20-C-0022; Replacement of Fresno Jet Fuel Complex
FAR Clauses Full Text**

(2) Periodic evaluation of the effectiveness of the business ethics awareness and compliance program and internal control system, especially if criminal conduct has been detected; and

(3) Periodic assessment of the risk of criminal conduct, with appropriate steps to design, implement, or modify the business ethics awareness and compliance program and the internal control system as necessary to reduce the risk of criminal conduct identified through this process.

(D) An internal reporting mechanism, such as a hotline, which allows for anonymity or confidentiality, by which employees may report suspected instances of improper conduct, and instructions that encourage employees to make such reports.

(E) Disciplinary action for improper conduct or for failing to take reasonable steps to prevent or detect improper conduct.

(F) Timely disclosure, in writing, to the agency OIG, with a copy to the Contracting Officer, whenever, in connection with the award, performance, or closeout of any Government contract performed by the Contractor or a subcontractor thereunder, the Contractor has credible evidence that a principal, employee, agent, or subcontractor of the Contractor has committed a violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 U.S.C. or a violation of the civil False Claims Act (31 U.S.C. 3729-3733).

(1) If a violation relates to more than one Government contract, the Contractor may make the disclosure to the agency OIG and Contracting Officer responsible for the largest dollar value contract impacted by the violation.

(2) If the violation relates to an order against a Governmentwide acquisition contract, a multi-agency contract, multiple-award schedule contract such as the Federal Supply Schedule, or any other procurement instrument intended for use by multiple agencies, the contractor shall notify the OIG of the ordering agency and the IG of the agency responsible for the basic contract, and the respective agencies' contracting officers.

(3) The disclosure requirement for an individual contract continues until at least 3 years after final payment on the contract.

(4) The Government will safeguard such disclosures in accordance with paragraph (b)(3)(ii) of this clause.

(G) Full cooperation with any Government agencies responsible for audits, investigations, or corrective actions.

(d) Subcontracts.

(1) The Contractor shall include the substance of this clause, including this paragraph (d), in subcontracts that have a value in excess of \$5.5 million and a performance period of more than 120 days.

(2) In altering this clause to identify the appropriate parties, all disclosures of violation of the civil False Claims Act or of Federal criminal law shall be directed to the agency Office of the Inspector General, with a copy to the Contracting Officer. (End of clause)

52.203-17 – Contractor Employee Whistleblower Rights and Requirement To Inform Employees of Whistleblower Rights (Apr 2014)

(a) This contract and employees working on this contract will be subject to the whistleblower rights and remedies in the pilot program on Contractor employee whistleblower protections established at 41 U.S.C. 4712 by section 828 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112-239) and FAR 3.908.

(b) The Contractor shall inform its employees in writing, in the predominant language of the workforce, of employee whistleblower rights and protections under 41 U.S.C. 4712, as described in section 3.908 of the Federal Acquisition Regulation.

(c) The Contractor shall insert the substance of this clause, including this paragraph (c), in all subcontracts over the simplified acquisition threshold. (End of clause)

52.203-19 - Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements (Jan 2017).

(a) Definitions. As used in this clause-

Internal confidentiality agreement or statement means a confidentiality agreement or any other written statement that the contractor requires any of its employees or subcontractors to sign regarding nondisclosure of contractor information, except that it does not

Flow down requirements

CONTRACTUAL COMMUNICATION

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- (1) **Submittals**
- (2) **Modifications**
- (3) **Letters**
- (4) **Non-compliance notices**
- (5) **Request for information**
- (6) **Other forms (outages, badging)**
- (7) **Meeting Minutes**

***Emails are a delivery system not
a communication system***

- ❑ The Quality Control Manager's certification buys it
- ❑ Never resubmit unless directed to do so (in writing)
- ❑ Everything required by the contract (other than forms) should be submitted with a submittal transmittal
- ❑ The Government's review period is a contractual requirement. When it expires – they are in breach.
- ❑ Treat review comments like design review comments – agree or disagree. Elevate, as necessary.
- ❑ Know the difference between a variation (substitution) and a variation (improvement)

FAR 52.236-21 Specifications and Drawings for Construction

(f) If shop drawings show variations from the contract requirements, the Contractor shall describe such variations in writing, separate from the drawings, at the time of submission. ***If the Contracting Officer approves any such variation, the Contracting Officer shall issue an appropriate contract modification, except that, if the variation is minor or does not involve a change in price or in time of performance, a modification need not be issued.***

MODIFICATION

- ❑ DO NOT start work before receipt of the modification
- ❑ All modifications are required to include a waiver “full accord” statement that releases all future claims.
- ❑ DO NOT sign a modification that is not 100% agreeable
- ❑ DO NOT proceed with work on a unilateral that exhaust the funding provided
- ❑ NFAS 43.102-100 (c) requires that all modifications for construction must adjust the CCD or include a statement that time is not required by reason of this modification
- ❑ Modifications are effective the date the Contracting Officer signs – no matter what block 3 says
- ❑ Know the difference between a Proposed Change (PC) for added, discretionary work and an equitable adjustment.
- ❑ Ensure any proposal submitted includes a period for which the proposal is valid. Resubmit.
- ❑ Watch the authority noted (block 13) – it could bite later

LETTERS

1. Serialize and date letter – timely!
2. Address to the Contracting Officer only
3. Project title and purpose for the letter
4. Site the applicable FAR clause
5. Brief justification for notice/letter
6. BLUF – summary of the situation
7. Bullets of the situation – basis for the letter/argument
8. Summary of findings and justification
9. What/Who has action or is required – *ask or tell?* If it is an ask. . . always give a due date.
10. Tracking number – log and schedule
11. Individuals and roles authorized regarding this issue
12. Signed by a contractual authority

1 Serial No. 000X
March 16, 2015

Naval Facilities Engineering Command, Northwest
Attn: Mr. John Smith, Contracting Officer
Public Works Department, Bremerton
Bldg 469 W
Bremerton, WA 98314

SUBJ: N44255-XX-C-XXXX – REPAIR ROOFS BUILDING 1021 AND 1023, PSNS & IMF,
BREMERTON; Differing Site Condition – Ceiling height

Dear Mr. Smith:

In accordance with FAR 52.236-2 Differing Site Conditions, this letter serves as official notification of the discovery of differing site conditions wherein the subsurface or latent physical conditions at the site differed materially from those indicated in this contract. Upon demolition of the soffits on January 4, 2015, it was discovered that the ceiling height was 7'10" and not 8' as indicated on the subject drawings. This letter also serves as notice that as a result of these differing site conditions and the direction provided by the Government in response to Request for Proposal (RFP) No. 0001, THIS Construction Firm will incur additional direct costs and will seek a modification as follows:

(1) As shown on Drawing S103, Note 4 the minimal height for this opening . . . As designed the door opening of 8' cannot be achieved/constructed and the specified doors will not fit. Proper notification was provided via RFI No. 0001 wherein the Government response directed THIS Construction Firm to modify the opening and grind the concrete floor as necessary to achieve the correct opening. This direction will result in additional time and costs.

(2). Request for Information (RFI) No 0001 was submitted on January 5, 2015 notifying the Government of the differing site. Government investigation and technical response was not provided until March 15, 2015, The work was suspended on January 4, 2015 and

As identified above, the Government has investigated the site and determined that the drawings do differ from the actual site conditions. Technical direction was received by the Government (RFI 0001 response from Ms. Jane Doe dated March 15, 2015). In accordance with FAR 52.236-2 this direction will result in an increase in cost and time required to perform this changed work. THIS Construction Firm will submit a cost proposal and Time Impact Analysis (TIA) for an issuance of a modification before performing the changed work. As reflected in the project schedule, this work (ACTIVITY NO. XXXX) was scheduled to begin April 15, 2015 and is suspended pending receipt of a modification.

For tracking purposes, REA No. XXX is assigned. XXXXXXXX can be reached at XXXXX for any technical issues or questions. XXXXXXXX is authorized to negotiation on behalf of THIS Construction Firm.

Project Manager

RFI

Sequential numbering -
update/revise – do not
renumber

Do not complete

Double check response

Be advised

REQUEST FOR INFORMATION

RFI NUMBER

001

CONTRACT NUMBER:

CONTRACT TITLE:

PRIME CONTRACTOR

SUBCONTRACTOR / SUPPLIER

SUBJECT OF RFI:

DRAWINGS:

DETAILS:

SPECIFICATION

CPM ACTIVITY #:

INFORMATION REQUESTED:

Date Response Required By:

Date RFI Submitted:

Signature:

CONTRACTOR RECOMMENDATION:

COST EFFECT: Increase: Decrease: None: Estimated Amount:TIME IMPACT: Increase: Decrease: None: Estimated Calendar Days:

From:

Date Received:

Signature:

To:

Date Returned:

FEAD

RECOMMENDED RESPONSE:

From:

Reply Date:

Signature:

FEAD

To:

REPLY:

 This response is for clarification only & results in no cost or time change to the contract.

 This response requires a modification to the contract. A formal request for proposal will follow under separate correspondence. No work is authorized until the modification is signed by the Contracting Officer. Proposed Change number assigned is .

The RFI system is intended to provide an efficient mechanism for responding to contractor's request for information ONLY. This system DOES NOT authorize the contractor to proceed with work – to do so, the contractor proceeds at his own risk. If the contractor considers the RFI response a changed condition, written notice to the Contracting Officer is required within 20 calendar days of reply date.

DISTRIBUTION: Original to File via REICC PL ET A/E PC # _____ via AROICC/Contract Officer

Question No. 1

*Do you
work for a
smart
company?*

Yes

What did we bid?

What did we say we would do?

What do we normally do?

What could be reasonably expected?

Is there a better contractual tool?

No - ??????



*50% of the RFIs
should never be
submitted*

Question No. 2

*Can you
reference
a drawing
or spec
section?*

Yes

What does it say?

What doesn't it say?

Is there a conflict?

Is it constructible?

What could be reasonably expected?

No – go back to Question No. 1



*99.9% of the RFIs
need to be posted to
the contract
documents*

Question No. 3

*What is the
purpose of
the RFI?*

- Request for assistance?
- Clarification?
- Request for substitution?
- Notice of contractual issue (differing site condition, conflict, unconstructible, deficiency, etc)
- Confirmation ??? – go back to Question No. 1



*99.9% of the RFIs do
not communicate
intent*

Question No. 4

*Asking or
telling?*

- What is the Contractor doing?
- What is the Government required to do?
- Does it have a question mark?



*Whenever possible
get to yes or no
answer . . . “please
confirm is not a
question!”*

Question No. 5

*Is there, or
will there
be, an
impact?*

Yes

How will this affect the project?

Is there a cost difference?

When do we need an answer?

When does it impact the schedule?

*What will happen if the Government fails
to respond?*

No . . .rethink this answer



*Need to protect the
your rights*

Question No. 6

*Who is the
decision
maker for
the project?*

- Who is responsible for reviewing in before it goes out?
- Who should see the response when it comes back?



*99% of the RFIs
pose a potential
contractual conflict*

CHANGES/IMPACTS

Request for Equitable Adjustment

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The Contractor seeking an equitable adjustment bears the "*essential burden of establishing the fundamental facts of liability, causation, and resultant injury.*"

The Contractor must show that the increased costs arose from work which was materially different from that contemplated by the parties. The increased costs must be the direct and necessary result of the changes.

FEDERAL ACQUISITION REGULATION (FAR) Remedies for Contractual Relief

Request for Equitable Adjustment (REA) - Compensable Items

Construction ~ Firm Fixed Price

CLAUSE REFERENCE	Direct Costs	Overheads	Profit	Acceleration	Time	LD Adjustment	Comments
CHANGES FAR 52.243-4	X	X	X	X	X	None	(1) Written order by the Contracting Officer (2) Any other written or oral order perceived as direction
DIFFERING SITE CONDITION FAR 52.236-2	X	X	X	None	X	None	(1) Subsurface or latent physical conditions differing from contract (2) Unknown physical conditions of unusual nature
DEFAULT FAR 52.249-10	None	None	None	None	X	None	Delays beyond the control or the fault or negligence of the contractor
SUSPENSION OF WORK FAR 52.242-14	X	X	None	None	None	None	Suspend, delay, or interruption by an act of the Contracting Officer (including failure to act)
INSPECTION FAR 52.246-12	X	X	X	None	X	None	Additional examination or testing of completed construction found to be compliant/acceptable
USE & POSSESSION PRIOR TO COMPLETION FAR 52.236-11	X	X	X	None	X	None	Delays progress of work resulting from possession prior to acceptance
TIME EXTENSION FAR 52.211-13	None	None	None	None	None	X	Phased construction/LD schedule
GOVERNMENT PROPERTY FAR 52.245-1	X	X	X	X	X	X	In accordance with the Changes clause

52.243-4 CHANGES

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(b) Any other written or oral order (which, as used in this paragraph (b), includes direction, instruction, interpretation, or determination) from the Contracting Officer that causes a change shall be treated as a change order under this clause; Provided, that the Contractor gives the Contracting Officer written notice stating-

- (1) The date, circumstances, and source of the order; and
- (2) That the Contractor regards the order as a change order.

(c) Except as provided in this clause, no order, statement, or conduct of the Contracting Officer shall be treated as a change under this clause or entitle the Contractor to an equitable adjustment.

(d) If any change under this clause causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the work under this contract, whether or not changed by any such order, the Contracting Officer shall make an equitable adjustment and modify the contract in writing.

(e) The Contractor must assert its right to an adjustment under this clause within 30 days after (1) receipt of a written change order under paragraph (a) of this clause or (2) the furnishing of a written notice under paragraph (b) of this clause, by submitting to the Contracting Officer a written statement describing the general nature and amount of the proposal, unless this period is extended by the Government.

CONSTRUCTIVE CHANGES

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Most common constructive changes:

- (1) MISINTERPRETATION BY THE GOVERNMENT** ~ *Usually contractor proposes one way to do work, Government proposes more expensive way*
- (2) DEFECTIVE SPECIFICATIONS** ~ *Usually the work is not as described or cannot be performed as stated and requires more \$ than anticipated*
- (3) GOVERNMENT INTERFERENCE & FAILURE TO COOPERATE** ~ *Did the Government act reasonably?*
- (4) SUPERIOR KNOWLEDGE/FAILURE TO DISCLOSE** ~ *Government knows something it should disclose to the contractor but doesn't*
- (5) CONSTRUCTIVE ACCELERATION** ~ *Government tells contractor to hurry up in order to complete work earlier (or on time where there is excusable delay)*

CHANGES

- ✓ *Date and time of occurrence*
- ✓ *Action directed*
- ✓ *Individual directing change*
- ✓ *Action is perceived as a change*
- ✓ *Action taken by the Contractor*

- ❑ Review comment
- ❑ Response to an Request for Information (RFI)
- ❑ Non-Compliance Notice (NCN)
- ❑ Gov fails to perform as agreed in the contract
- ❑ Email
- ❑ Any other verbal or written direction received in a meeting, on-site, by telephone, etc. Even in the presence of the Contracting Officer

52.236-2 DIFFERING SITE CONDITIONS

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(a) The Contractor shall promptly, and before the conditions are disturbed, give a written notice to the Contracting Officer of-

(1) Subsurface or latent physical conditions at the site which differ materially from those indicated in this contract; or

(2) Unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in the contract.

(b) The Contracting Officer shall investigate the site conditions promptly after receiving the notice. If the conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performing any part of the work under this contract, whether or not changed as a result of the conditions, an equitable adjustment shall be made under this clause and the contract modified in writing accordingly.

52.236-2 DIFFERING SITE CONDITIONS

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(c) **No request by the Contractor for an equitable adjustment** to the contract under this clause shall be allowed, **unless the Contractor has given the written notice required**; provided, that the time prescribed in paragraph (a) of this clause for giving written notice may be extended by the Contracting Officer.

(d) No request by the Contractor for an equitable adjustment to the contract for differing site conditions shall be allowed if made after final payment under this contract.

DIFFERING SITE CONDITION

- ✓ *Drawing, specification, or reference in contract*
- ✓ *Condition found*
- ✓ *Condition was not anticipated by Contractor*
- ✓ *Actions taken by the Contractor*

- ❑ Subsurface or latent physical conditions. . .utilities, soil conditions, demo'd walls/structures, missing utilities/structures – most anything that is not seen during a walk through.
- ❑ Unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in the contract

52.249-10 DEFAULT

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- (b) The Contractor's right to proceed shall not be terminated nor the Contractor charged with damages under this clause, if-
- (1) The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include-
- (i) Acts of God or of the public enemy,
 - (ii) Acts of the Government in either its sovereign or contractual capacity,
 - (iii) Acts of another Contractor in the performance of a contract with the Government,
 - (iv) Fires,
 - (v) Floods,
 - (vi) Epidemics,
 - (vii) Quarantine restrictions,
 - (viii) Strikes,
 - (ix) Freight embargoes,
 - (x) Unusually severe weather, or
 - (xi) Delays of subcontractors or suppliers at any tier arising from unforeseeable causes beyond the control and without the fault or negligence of both the Contractor and the subcontractors or suppliers; and

52.249-10 DEFAULT

30

- (2) The Contractor, within 10 days from the beginning of any delay (unless extended by the Contracting Officer), notifies the Contracting Officer in writing of the causes of delay. The Contracting Officer shall ascertain the facts and the extent of delay. If, in the judgment of the Contracting Officer, the findings of fact warrant such action, the time for completing the work shall be extended. The findings of the Contracting Officer shall be final and conclusive on the parties, but subject to appeal under the Disputes clause.
- (c) If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the Government.
- (d) The rights and remedies of the Government in this clause are in addition to any other rights and remedies provided by law or under this contract.

DEFAULT

- ✓ *Date and time of occurrence*
- ✓ *Action directed*
- ✓ *Individual directing change*
- ✓ *Action is perceived as a change*
- ✓ *Action taken by the Contractor*

- ❑ Late response on submittal
- ❑ No or reduced access
- ❑ Failure to hold or late meetings
- ❑ Unofficial suspension of work
- ❑ Any other verbal or written direction received in a meeting, on-site, by telephone, etc. Even in the presence of the Contracting Officer

52.246-INSPECTION OF CONSTRUCTION

32

(h) If, before acceptance of the entire work, the Government decides to examine already completed work by removing it or tearing it out, the Contractor, on request, shall promptly furnish all necessary facilities, labor, and material. If the work is found to be defective or nonconforming in any material respect due to the fault of the Contractor or its subcontractors, the Contractor shall defray the expenses of the examination and of satisfactory reconstruction. **However, if the work is found to meet contract requirements, the Contracting Officer shall make an equitable adjustment for the additional services involved in the examination and reconstruction, including, if completion of the work was thereby delayed, an extension of time.**

INSPECTION OF CONSTRUCTION

- ✓ *Date and time of occurrence*
- ✓ *Action directed*
- ✓ *Individual directing change*
- ✓ *Evidence of Contractors inspection results*
- ✓ *Action is perceived as a change*
- ✓ *Action taken by the Contractor*

- ❑ Removing or tearing it out completed work
- ❑ Unusual or excessive inspection by Government
- ❑ Retesting????
- ❑ Any other verbal or written direction received in a meeting, on-site, by telephone, etc. Even in the presence of the Contracting Officer

52.236-11 USE AND POSSESSION

34

(b) While the Government has such possession or use, the Contractor shall be relieved of the responsibility for the loss of or damage to the work resulting from the Government's possession or use, notwithstanding the terms of the clause in this contract entitled "Permits and Responsibilities." **If prior possession or use by the Government delays the progress of the work or causes additional expense to the Contractor, an equitable adjustment shall be made in the contract price or the time of completion, and the contract shall be modified in writing accordingly.**

USE AND POSSESSION

- ✓ *Date and time of occurrence*
- ✓ *Evidence of impact or damage*
- ✓ *Action taken by the Contractor*

- ❑ Damage to construction work
- ❑ Delays or obstructed access
- ❑ Any other verbal or written direction received in a meeting, on-site, by telephone, etc. Even in the presence of the Contracting Officer

52.242-14 SUSPENSION OF WORK

36

(b) If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed, or interrupted (1) **by an act of the Contracting Officer** in the administration of this contract, or (2) **by the Contracting Officer's failure to act** within the time specified in this contract (or within a reasonable time if not specified), **an adjustment shall be made for any increase in the cost of performance of this contract (excluding profit) necessarily caused by the unreasonable suspension, delay, or interruption**, and the contract modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor, or for which an equitable adjustment is provided for or excluded under any other term or condition of this contract.

(c) A claim under this clause shall not be allowed-

(1) For any costs incurred more than **20 days before the Contractor shall have notified the Contracting Officer in writing** of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order); and

(2) Unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the suspension, delay, or interruption, but not later than the date of final payment under the contract.

SUSPENSION OF WORK

- ✓ *Date and time of occurrence*
- ✓ *Action directed*
- ✓ *Individual directing change*
- ✓ *If not in writing, the action is perceived as a suspension*
- ✓ *Action taken by the Contractor*

- ❑ Late response on submittal
- ❑ No access
- ❑ Failure to hold or late meetings
- ❑ Unofficial suspension of work
- ❑ Any other verbal or written direction received in a meeting, on-site, by telephone, etc. Even in the presence of the Contracting Officer

52.211-13 TIME EXTENSIONS

38

Time extensions for contract changes will depend upon the extent, if any, by which the changes cause delay in the completion of the various elements of construction. The change order granting the time extension may provide that the contract completion date will be extended only for those specific elements related to the changed work and that the remaining contract completion dates for all other portions of the work will not be altered. **The change order also may provide an equitable readjustment of liquidated damages under the new completion schedule.**

NOTE: Should only be used with phased construction clause and phased liquidated damages

REA STEPS

Protect your rights regardless of whether or not there are final impacts (time or money),

Your chances for recovery are significantly lower if you don't submit a "place holder" correctly.

(1) Notification

- ❑ Request for Information (RFI)
- ❑ Letter

(2) Document & Track

(3) Determination of Merit

- ❑ "Golden Ticket"
- ❑ Discovery of Government position

(4) Equitable Adjustment

- ❑ If necessary. . . time and/or costs
- ❑ Forward price or upon completion

REA

“trips”

- Underestimating the Government’s reliance on FAR requirements
- Failure to recognize the Government process
- Failure to provide timely notification
- Failure to sight proper relief clause and assert rights
- Failure to provide supporting evidence
- Failure to seek direction or state actions to be taken
- Faith in the “honor system”
- Waiting for actual impact (bottom line loss)
- Presenting an emotional case rather than a factual case



OVERHEAD (*Pricing*)

41



Overhead - An accounting term that refers to all ongoing business expenses not including or related to direct labor, direct materials, direct equipment, or third-party expenses that are billed directly to customers. Overhead must be paid for on an ongoing basis, regardless of whether a company is doing a high or low volume of business. It is important not just for budgeting purposes, but for determining how much a company must charge for its products or services to make a profit.

INDIRECT COSTS

42

- **Indirect costs** are expenses that are not directly accountable to a specific cost object (such as a particular project, facility, function, or product). Indirect costs include administration, personnel, facility, and security costs, costs which are not directly related to production. With minor exception indirect costs are classified as overhead expenses.
- In business, **overhead expenses** (also known as G&A), refer to the ongoing expense of operating a business; it is also known as an "operating expenses" such as corporate salaries, personnel/payroll salaries, accounting fees, advertising, insurance, interest, legal fees, labor burden, rent, repairs, supplies, taxes, telephone bills, travel expenditures, and utilities

DIRECT COSTS

43

- **Direct costs** are directly attributable to an object. Direct costs are those expense elements that solely benefit one specific projects, for example salaries of project staff, labor, materials, equipment, and subcontractor costs required for a particular project. Because these activities are easily traced to one project, their costs are charged as direct cost on an item-by-item basis
- In construction, the costs of materials, labor, and equipment for the cost object are direct costs. In manufacturing or other non-construction industries the portion of operating costs that is directly assignable to a specific product or process is a direct cost.
- General rule of thumb ~ if the project or order didn't exist, the cost wouldn't exist.

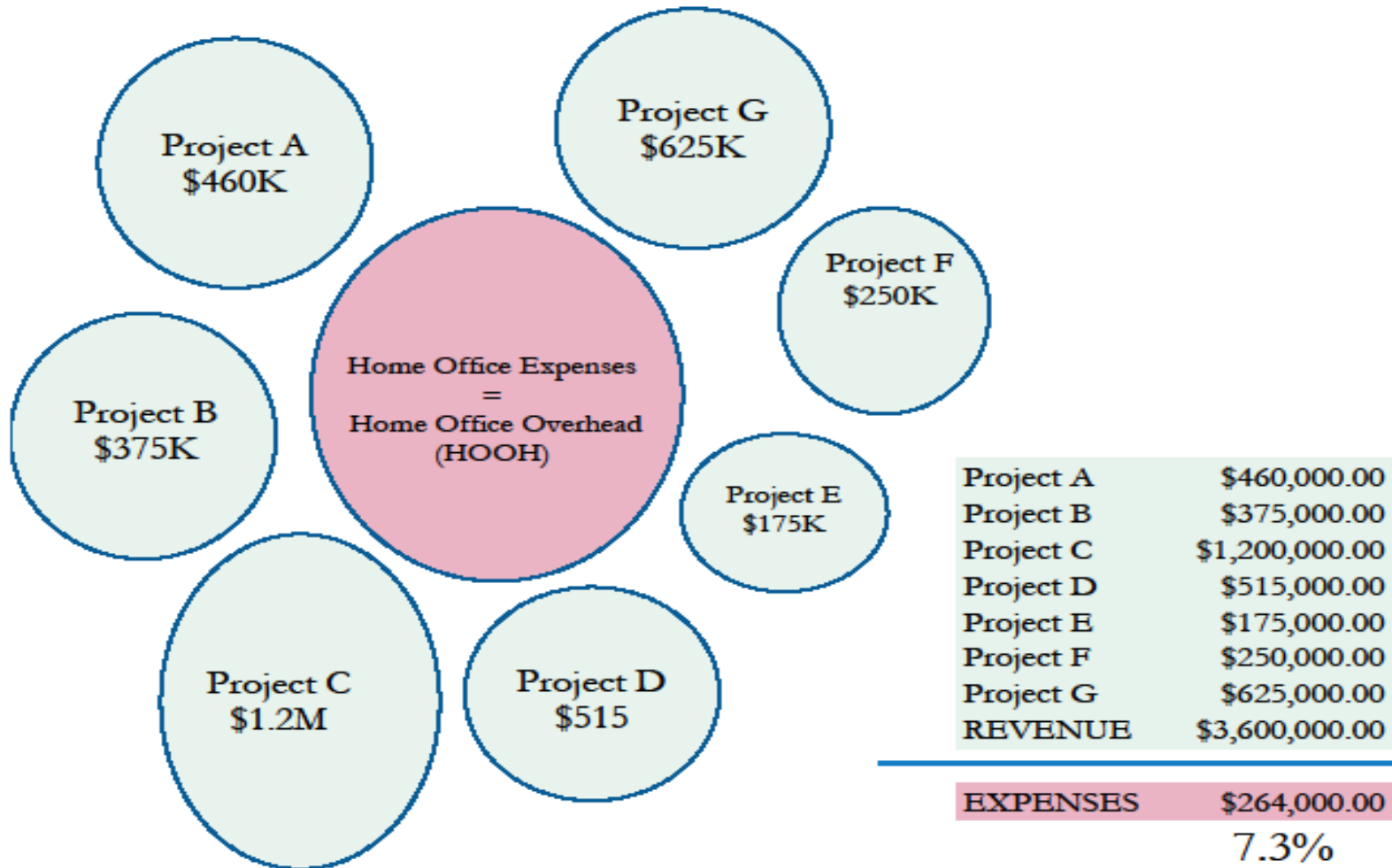
ACCOUNTABILITY

44

- It is possible to justify the handling of almost any kind of cost as either direct or indirect. Labor costs, can be indirect in the case of maintenance personnel and executive officers; or direct, as in the case of project staff members.
- Similarly, materials such as miscellaneous office supplies (pencils, pens, paper) are typically handled as indirect costs, while paper purchased for submittals on a project are charged as direct costs.
- **COST ACCOUNTING STANDARDS (CAS)** are a set of 19 standards and rules promulgated by the Government for use in determining costs on negotiated procurements. While you may not be required to have an approved CAS system, you must have an established accounting practice to allocate costs – that does not change.

DIRECT vs INDIRECT

45



HOOH

- ❑ Annually, as reported to the IRS
- ❑ Based on a three (3) year average or trend
- ❑ Based on cost accounting procedures
- ❑ Generally will not adjusted on contract (firm fixed price)
- ❑ Will always be presented in a %

ATTACHMENT 2-4

SAMPLE INCOME STATEMENT

	1985	1986	1987	1988	1989
BASE					
Revenue	117,956	180,914	271,520	297,645	441,350
Materials & Supplies	29,995	39,577	72,246	82,570	106,507
Gross Margin	87,961	141,337	199,274	215,075	334,843
POOL					
Expenses:					
Accounting & Legal	1,054	1,120	1,688	2,451	888
Auto	6,494	8,024	9,134	8,549	11,962
Bad Debt	803	897	1,353	870	6,235
Depreciation	2,996	3,091	4,439	7,748	15,888
Freight	20	0	4,619	7,210	5,783
Insurance	357	357	0	0	1,895
Interest & Bank Charges	325	148	204	1,436	14,002
Loss/Gain Sale of Assets	0	0	0	2,923	(3,734)
Management Fees	24,000	30,000	45,000	45,000	0
Miscellaneous	555	0	569	1,723	0
Office Supplies	968	485	1,651	676	2,308
Rental Expense	2,078	3,266	6,051	7,760	0
Repairs & Maintenance	3,499	0	0	0	0
Relocation Expense	2,264	0	0	0	0
Taxes-Business	575	1,530	1,616	2,018	5,643
Utilities	2,247	3,082	3,261	8,561	12,123
Wages	23,088	35,192	42,739	43,026	145,649
Total Expenses	71,323	87,192	122,324	139,951	218,642
Net Income Before Taxes	16,638	54,145	76,950	75,124	116,201
Income Tax	2,852	11,293	15,592	14,095	19,922
Net Income After Taxes	13,786	42,852	61,358	61,029	96,279
Retained Earnings, Beginning	23,218	37,004	79,856	141,214	202,243
Retained Earnings, Ending	37,004	79,856	141,214	202,243	298,522

HOME OFFICE OVERHEAD (HOH) ANALYSIS FORM

Budget FY 2016

Account Title	FAR Citations (Note 1)	Budget FY 2016			Actual Expenses (Note 3)		
		Budget (Note 2)	FAR 31 Unallowable	Net Allowable Expenses	FY 2013	FY 2014	FY 2015
Marketing/Advertising/Promotion	31.205-01	\$ 5,000		\$ 5,000	\$ 4,000	\$ 5,000	\$ 5,000
Bad debts	31.205-03	\$ 4,000	4000	-			
Bonding Costs	31.205-04			-	-	-	-
Salaries	31.205-06	300,000		300,000	290,000	250,000	200,000
Commission and Bonuses	31.205-06	80,000		80,000	78,000	75,000	73,000
Health and Life Insurance	31.205-06	12,000		12,000	11,000	10,000	9,000
Pension, Retirement	31.205-06	18,000		18,000	17,000	16,000	15,000
Vacation, Holiday and Sick Leave	31.205-06	24,000		24,000	23,000	22,000	21,000
Contingencies	31.205-07			-	-	-	-
Contributions and donations	31.205-08	6,000	6,000	-			
Cost of Money	31.205-10			-			
Depreciation-Office equipment	31.205-11	15,000		15,000	19,000	16,000	15,000
Depreciation-Vehicles	31.205-11	13,000		13,000	-	-	-
Economic Planning	31.205-12			-			
Employee Morale, Health, & Welfare	31.205-13	3,500	2,000	1,500	1,500	1,000	500
Dues Non-Professional Organizations	31.205-14	1,500	1,500	-	-	-	-
Entertainment	31.205-14	1,500	1,500	-			
Fines and Penalties	31.205-15	500	500	-			
Gains and Losses	31.205-16			-	-	-	-
R&D - Bid/Proposal Costs	31.205-18	750	250	500	450	450	400
Insurance/Indemnification	31.205-19	2,500		2,500	2,000	1,500	1,500
Interest & Other Financial Costs	31.205-20			-			
Labor Relations Costs	31.205-21	1,000		1,000	1,000	1,000	950
Lobbying and Political Activity	31.205-22	1,000	1,000	-	-	-	-
Losses	31.205-23			-	-	-	-
Manufacturing/Production Engineering	31.205-25			-	-	-	-
Organizational Costs	31.205-27	500	500	-			

Other Business Expenses	31.205-28			-	-	-	-
Professionals and Consultants	31.205-33	25,000		25,000	11,000	11,000	11,000
Recruitment Costs	31.205-34	300		300	300	-	200
Relocation Costs	31.205-35	10,000		10,000	-	3,000	500
Rental Costs	31.205-36	50,000		50,000	45,000	45,000	45,000
Income Taxes	31.205-41	6,500		6,500	6,000	6,000	5,500
Payroll Taxes	31.205-41	36,000		36,000	35,000	34,000	33,000
Taxes (State, Federal, Local)	31.205-41	6,700		6,700	6,000	5,500	5,400
Trade/Business/Technical/Professional Activity costs	31.205-43	2,000		2,000	2,000	2,000	2,000
Training	31.205-44			-	-	-	-
Travel	31.205-46	250		250	500	400	150
Legal Proceedings	31.205-47	4,000	4,000	-	-	-	-
Goodwill	31.205-49			-	-	-	-
Alcoholic Beverages	31.205-51	500	500	-	-	-	-
Office Supplies		2,500		2,500	2,000	2,000	1,500
Utilities		3,700		3,700	3,500	3,000	2,500
Postage		550		550	450	400	500
Telephone		1,200		1,200	1,200	1,200	1,200
Others:				-	-	-	-
				-	-	-	-
Total G&A (Home Office Overhead) Pool		\$ 638,950	\$ 21,750	\$ 617,200	\$ 559,900	\$ 511,450	\$ 449,800
Allocation Base - Total Cost Input (Note 4):							
Direct Labor				\$ 2,000,000	\$ 1,600,000	\$ 1,500,000	\$ 1,450,000
Fringe				500,000	480,000	450,000	435,000
Labor Overhead				1,800,000	1,440,000	1,350,000	1,305,000
Other Direct Costs				50,000	45,000	44,000	39,000
Direct Materials				65,000	55,000	50,000	45,000
Material Overhead				6,500	5,300	5,000	45,000
Total Allocation Base				\$ 4,421,500	\$ 3,625,300	\$ 3,399,000	\$ 3,319,000
Rate				14.0%	15.4%	15.0%	13.6%

HOOH is computed by dividing the expenses by the revenue

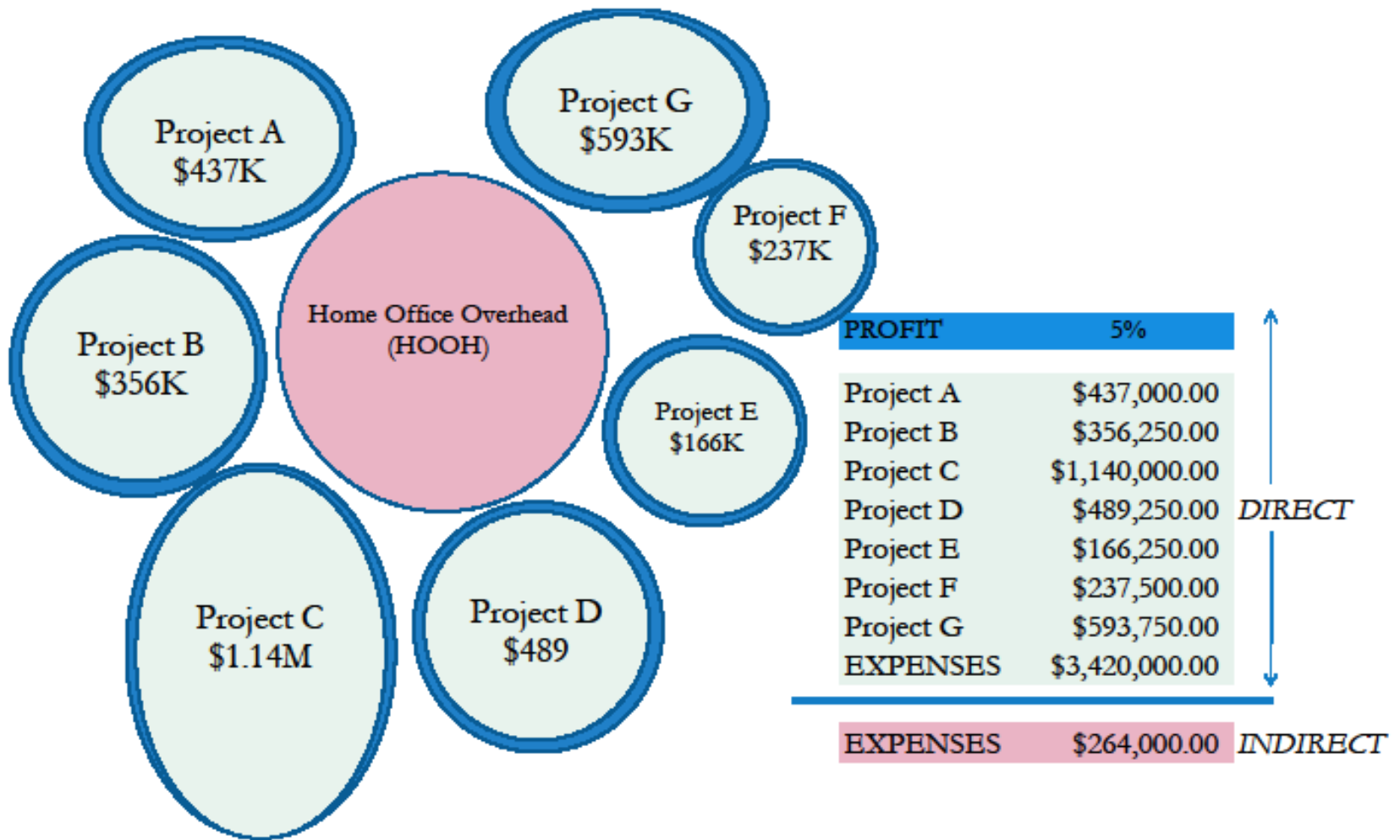
$$\frac{\text{G\&A (Pool)}}{\text{Total Revenue (Base)}} = \text{HOOH \%}$$

$$\frac{\$1,250,000 \text{ (Pool)}}{\$17,890,000 \text{ (Base)}} = 6.99\% \text{ HOOH}$$

How you divide it is how you apply it

DIRECT vs INDIRECT

51



Specific to
construction
contracts
direct costs
are divided
into two
categories –
direct and
indirect

By definition all project (or job) expenses are considered direct costs as they can be allocated to a specific element. These expenses would not exist if not for that project. However, within those direct costs, there are costs that are incurred that cannot be allocated to a single unit of work. Generally they are not identified as a definable features of work on the schedule.

By definition, these costs are indirect costs and are referred to as **Field Office Overhead (FOOH)**.

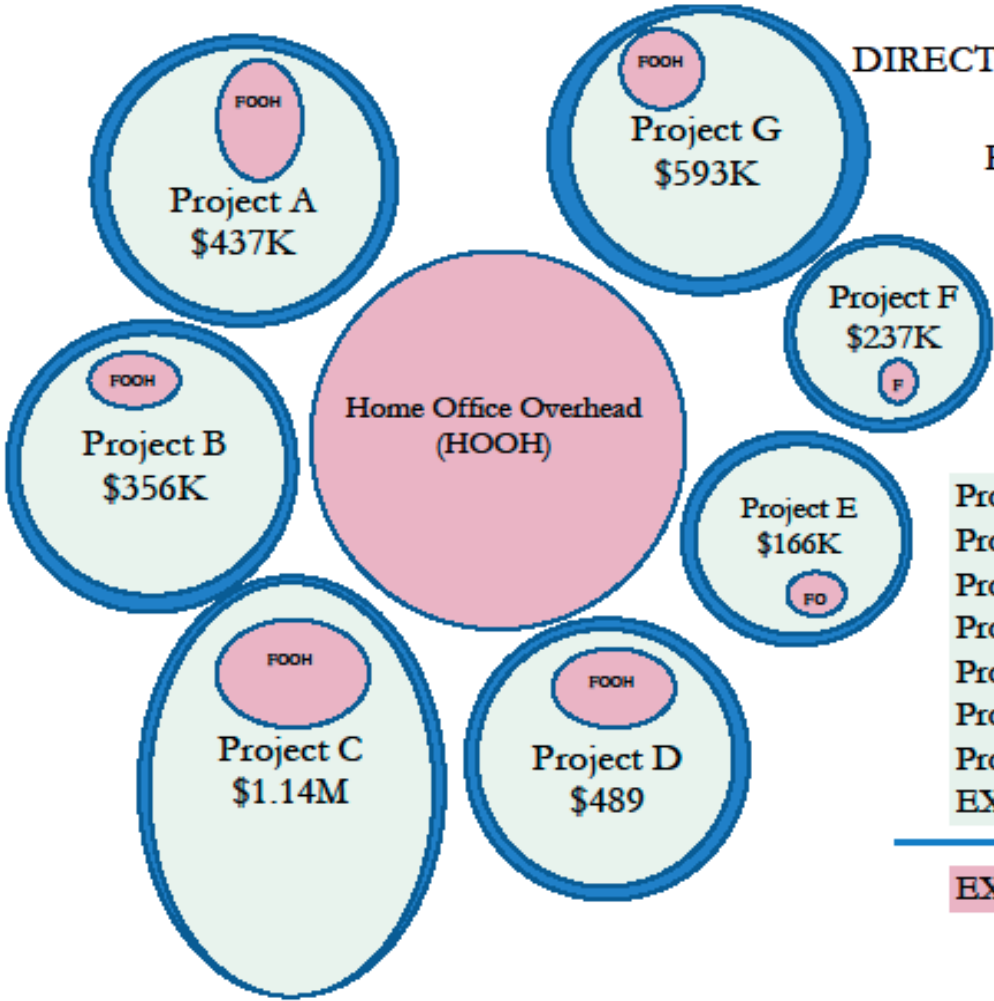
For these costs, their precise benefits to a specific project are often difficult or impossible to trace ~ for example it is impossible to determine precisely how the activities of the Safety Manager on a construction site affect any one specific task, say forming a concrete pad that is one of 50 ongoing tasks.

For example:

- Renting a job trailer for a project. The rental expense is properly charged in accordance with cost accounting standards as a direct cost, however; on the project the expense cannot be allocated to a specific definable feature of work and therefore is considered an indirect cost on the project.
- If the company does not own or rent forklifts until a specific project is awarded the rental expense is a direct cost to the project. If the forklift is used to lift beams into place as part of the framing work element, the expense would be classified a direct cost to a specific definable feature of work. However, if a forklift is used for unloading various materials (plumbing supplies, painting supplies, steel, doors, etc.) On the job site, it cannot be attributed on any one single expense element therefore it is an indirect cost to the project and is classified as a FOOH expense

FIELD OFFICE OVERHEAD (FOOH)

DIRECT/ DIRECT INDIRECT EXPENSES
 =
 FIELD OFFICE OVERHEAD (FOOH)



Project A	\$437,000.00	55,750.00	12.8%
Project B	\$356,250.00	37,800.00	10.6%
Project C	\$1,140,000.00	185,000.00	16.2%
Project D	\$489,250.00	41,250.00	8.4%
Project E	\$166,250.00	26,000.00	15.6%
Project F	\$237,500.00	10,000.00	4.2%
Project G	\$593,750.00	26,000.00	4.4%
EXPENSES	\$3,420,000.00		

EXPENSES \$264,000.00

<i>Cost Element</i>	<i>Characteristics</i>	<i>Most likely</i>	<i>Consider</i>
Project Manager	Smaller project, generally not on site, only attends periodic meetings	HOOH	Confirm contractors' Cost Accounting System
Project Manager	Only part time, i.e., 25% to several projects	FOOH	CAS must reflect HOOH credit
Project Manager	Larger project, generally assigned full time, on site.	FOOH	Ensure the correct percentage of time is allocated.
Superintendent	Salaried employee overseeing multiple disciplines and activities	FOOH	
Superintendent/ Foreman	Supervising a few employees in one discipline – for example Electrical Foreman with 4 employees to 1 supervisor.	Direct cost	Individuals performing craft work more than 20% of their week meet the criteria for Davis Bacon Act, must submit payrolls/generally considered direct labor.
Administration	Assigned, full time on site	FOOH	
Administration	Not assigned on site, covers multiple projects	HOOH	
Project Engineer	Design Bid-Build contract, not located on site, minimal oversight	HOOH	
Project Engineer	Design Bid Build contract overseeing submittals and shop drawings	FOOH	
Project Engineer	Design-Build contract	Direct cost	Design costs – including support is a direct cost on this type of contract.
Safety Supplies	Hearing protection, fall protection, signage, welding shield, vapor suits – equipment that is consumed or stays on site	FOOH	
Safety Equipment	Personal Protective Equipment (PPE) – steel toed shoes, reflective coats, hard hats, safety vests, etc., that employees would take home	Not allowed	The distinction is whether or not the item stays on site and whether or not it is consumed in its entirety on this project.
Safety Awards	Monetary awards or product	HOOH	Generally is not allowed
Office Furniture, Computers, Office Equipment	Rented	FOOH	
Office Furniture, Computers, Office Equipment	Owned	HOOH	Don't forget software and other computer requirements

<i>Cost Element</i>	<i>Characteristics</i>	<i>Most likely</i>	<i>Consider</i>
Small Tools	Tools of the trade that are generally consumed (useful life consumed) or are incidental – screw drivers, hammers, pry bar, etc.,	FOOH or Direct cost	Cost of doing business, but the Government does not purchase tools that will be used elsewhere. Allowing a % provides for a fair compensation without assuming title of the material
Small Tools/parts	Items that are directly related to a work element that is consumed just for the element, for example, concrete cutting blades, coring bits,	Direct cost	
Phones/Radios	Required for the project	FOOH	Allowing a percentage or average rental rate provides for fair compensation without assuming title of the material.
Phones	Used both on the job and off the job (personal)	HOOH	May not be allowed.
Vehicles/Pickup Trucks	Generally assigned full time, on site. Used for general pickup/deliveries, transportation, etc.,	FOOH	Allowing a percentage or average rental rate provides for fair compensation without assuming title of the material.
Vehicles/Pickup Trucks	Assigned to individuals.	HOOH	May not be allowed per FAR 31.205-6(m) does not allow company furnished automobiles that are used for personal use (including transportation to and from work)
Material Handling Equipment	Such as forklifts, cranes, scissor lifts, etc., assigned and the largest percentage of usage is in production of a construction element	Direct cost	Direct equipment is sometimes used for minor administrative issues such as relocation of temporary toilets, placement of stairways/construction egress, etc.
Material Handling Equipment	Such as forklifts assigned for general use, load/unload deliveries, site improvement/changes,	FOOH	FOOH equipment is sometimes used for minor construction elements such as lifting block onto scaffolding.
Fencing	Temporary construction material that is removed once the project is complete.	FOOH	Rented fencing
Mob/Demob	May include one-time fees including trailer install, utility hookups, site prep, etc.	Direct Costs	Schedule of values generally includes a cost element for this element
Quality Control Manager	Salaried employee overseeing all the activities	FOOH	
Specialty Inspector	Required inspection/testing for certain work elements	FOOH	
Specialty Inspector	Required inspection/testing for certain work elements	Direct Cost	When the work is specific to a definable feature of work such as pile driving, concrete test

PROPOSAL BREAK DOWN

57

[DFARS] 252.236-7000 MODIFICATION PROPOSALS--PRICE BREAKDOWN.

AS PRESCRIBED IN [236.570](#)(A), USE THE FOLLOWING CLAUSE:

MODIFICATION PROPOSALS--PRICE BREAKDOWN (DEC 1991)

(A) THE CONTRACTOR SHALL FURNISH A PRICE BREAKDOWN, ITEMIZED AS REQUIRED AND WITHIN THE TIME SPECIFIED BY THE CONTRACTING OFFICER, WITH ANY PROPOSAL FOR A CONTRACT MODIFICATION.

(B) THE PRICE BREAKDOWN—

(1) MUST INCLUDE SUFFICIENT DETAIL TO PERMIT AN ANALYSIS OF PROFIT, AND OF ALL COSTS FOR—

(I) MATERIAL;

(II) LABOR;

(III) EQUIPMENT;

(IV) SUBCONTRACTS; AND

(V) OVERHEAD; AND

(2) MUST COVER ALL WORK INVOLVED IN THE MODIFICATION, WHETHER THE WORK WAS DELETED, ADDED, OR CHANGED.

(C) THE CONTRACTOR SHALL PROVIDE SIMILAR PRICE BREAKDOWNS TO SUPPORT ANY AMOUNTS CLAIMED FOR SUBCONTRACTS.

(D) THE CONTRACTOR'S PROPOSAL SHALL INCLUDE A JUSTIFICATION FOR ANY TIME EXTENSION PROPOSED.

FIELD OFFICE OVERHEAD (FOOH) ANALYSIS FORM

Period of Performance (# of days)

365

Months

12.0

Number
of man
years

Cost Element	No.	Unit	No. of Units	Unit Rate	Total Cost	Comments
Project Salaries						
Project Manager	0.25	MO	12.0	\$12,616.88	\$37,850.63	
Contract Admin Manager	0.25	MO	12.0	\$10,610.63	\$31,831.88	
Superintendent(s)	1	MO	12.0	\$8,852.25	\$106,227.00	
		MO	12.0		\$0.00	
		MO	12.0		\$0.00	
Quality Control Manager	1	MO	12.0	\$10,610.63	\$127,327.50	
Quality Control Manager Alt		MO	12.0		\$0.00	
Quality Control Assistant		MO	12.0		\$0.00	
Safety Manager	1	MO	12.0	\$10,610.63	\$127,327.50	
Speciality Inspectors		GS MO/5	12.0		\$0.00	
Project Engineer		MO	12.0		\$0.00	
Scheduler	0.25	MO	12.0	\$10,610.63	\$31,831.88	
Environmental Control	0.25	MO	12.0	\$10,610.63	\$31,831.88	
Administrative Support	0.5	MO	12.0	\$7,316.38	\$43,898.25	
Site Cleanup/Laborer		MO	12.0		\$0.00	
		MO	12.0		\$0.00	
		MO	12.0		\$0.00	
		MO	12.0		\$0.00	

a

b

c

(a x b) x c

LABOR RATES	Annual	Labor Markup	Average Salary	Monthly Rate
GS 13/5	\$100,935.00	50%	\$151,402.50	\$12,616.88
GS 12/5	\$84,885.00	50%	\$127,327.50	\$10,610.63
GS 11/5	\$70,818.00	50%	\$106,227.00	\$8,852.25
GS 9/5	\$58,531.00	50%	\$87,796.50	\$7,316.38

Other (Non-Salaried Expenses)						
Safety Supplies/Equipment	1	MO	12.0	\$25.00	\$300.00	
Environmental Control Materials	1	MO	12.0	\$50.00	\$600.00	
Pickups	3	MO	12.0	\$275.00	\$9,900.00	
Office Trailers	1	MO	12.0	\$275.00	\$3,900.00	
Office Furniture	1	MO	12.0	\$75.00	\$900.00	
Office Supplies	1	MO	12.0	\$50.00	\$600.00	
Computers	3	MO	12.0	\$50.00	\$1,800.00	
Drinking Water	1	MO	12.0	\$45.00	\$540.00	
Phones	3	MO	12.0	\$100.00	\$3,600.00	
Radios	3	MO	12.0	\$30.00	\$1,080.00	
Dryhack/Workhack	1	MO	12.0	\$75.00	\$900.00	
Power Hookups	1	EA	1.0	\$2,500.00	\$2,500.00	
Site Power	1	MO	12.0		\$0.00	
Water Hookups	1	EA	1.0	\$1,500.00	\$1,500.00	
Site Water	1	MO	12.0		\$0.00	
Saricams	2	MO	12.0	\$80.00	\$1,920.00	
Small Tools	1	MO	12.0	\$25.00	\$300.00	Or direct % labor hour
Janitorial		MO	12.0		\$0.00	
Mailing expenses	1	MO	12.0	\$25.00	\$300.00	
Material Handling Equipment		MO	12.0		\$0.00	
Forklift	1	MO	12.0	\$75.00	\$900.00	
Water buffalo	1	MO	12.0		\$0.00	
Fence Rental	1	MO	12.0	\$200.00	\$2,400.00	
Partnering		EA	1.0		\$0.00	
Site Improvements (gravel, temp roads, repairs, etc)		MO	12.0		\$0.00	
		MO	12.0		\$0.00	
		MO	12.0		\$0.00	

a.	TOTAL ALLOWABLE COSTS	\$571,466.50	← TOTAL COSTS
b.	Award Amount	\$3,975,000.00	
c.	Overhead Rate (%) (a/b)	14.38%	← Percentage (%)
d.	Period of Performance (# of days)	365	
e.	Daily Rate (a/d)	\$1,565.66	← Daily Rate

How you divide it is how you apply it

THINGS TO CONSIDER

1. Selection of method is a business decision – don't let it be a lazy one
2. Understand the project, client, and contract terms before decision
 - Most GEs do not identify subcontracting methods
 - Most GEs are prepared based on % 's - often an overall %
 - Most GEs do not include a schedule
 - Default clause does not allow for recovery of costs
 - Some agencies mandate the method for future modifications
3. Normal method is most practical for primes (Cat I and II)
4. NAVFAC Alternate method is most practical for most subcontractors
5. Daily rate more accurately covers the incurred costs
6. Percentage rate – completed on time – equates to more profit
7. Historically more costs have been received with percentage rates
8. Reflects the abilities of the company
9. Must select only one method ~ applied consistently up or down, time or no time

RULES OF THE ROAD

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- *Must have an established system that will withstand an audit*
- *Remember any cost proposal over \$750,000 must have certification*
- *HOOH are indirect costs ~ and are always distributed as a %*
- *Unallowable costs cannot be included - recovery of HOOH skewed*
- *FOOH is a direct, indirect cost and must be recovered under the contract terms (award, modifications, terminations, etc)*
- *If it's not a definable feature of work. . . It is most likely FOOH*
- *99% of Division 1 costs are FOOH*
- *Every party (prime and subcontractors) are entitled to markups.*
- *Documentation is CRITICAL.*
- *Track FOOH costs incurred and received for future recovery if needed*
- *Make sure the team understands the pool assignments*
- ***MOST IMPORTANTLY – HOW YOU DIVIDE IT IS HOW YOU APPLY IT***

GETTING PAID

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Indirect costs are expenses that are not directly accountable to a specific cost object (such as a particular project, facility, function, or product). Indirect costs include administration, personnel, facility, and security costs, costs which are not directly related to production. With minor exception indirect costs are classified as overhead expenses.

Direct costs are directly attributable to an object. Direct costs are those expense elements that solely benefit one specific projects, for example salaries of project staff, labor, materials, equipment, and subcontractor costs required for a particular project. Because these activities are easily traced to one project, their costs are charged as direct cost on an item-by-item basis

GETTING PAID

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- ❑ FAR 52.232-5 Payments under Fixed Price Construction Contracts and FAR 52.232-27 Prompt Payment for Construction Contracts and the terms and conditions of the subject contract. These documents state that the Government ***shall pay the Contractor the contract price and progress payments monthly as the work proceeds on estimates of work accomplished*** which meets the standards of quality established under the contract, as approved by the Contracting Officer.
- ❑ Section 01 32 17.05 20 paragraph 1.7.1 identifies the requirements regarding the monthly network analysis updates Contractor and Government representatives shall meet at monthly interval to review and agree on the information presented in the updated project schedule. ***The submission of an acceptable, updated schedule to the Government is a condition precedent to the processing of the Contractors pay request.*** If a Schedule of Prices is the basis for progress payments, it shall be consistent with the logic and activity breakdowns on the progress schedule. If progress payments are based on a cost-loaded schedule, the Contractor and Government shall agree on percentage of payment for each activity progressed during the update period.
- ❑ The schedule (clauses) has precedence over the specifications.

GETTING PAID

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- ❑ Completion of the project, or submission of a schedule that reflects **completion past Contract Completion Date (CCD) is allowed** and therefore is not a basis for refusal to pay the contractor. SECTION 01 32 17.00 20, paragraph 1.6.2.2 (c) requires that *“Calculation of schedule updates shall be such that if the finish of the "Projected Completion" milestone falls after the contract completion date, then negative float will be calculated on the longest path and if the finish of the "Projected Completion" milestone falls before the contract completion date, the float calculation shall reflect positive float on the longest path.”*
- ❑ FAR 52.232-5 allows for retention of monies if the Contracting Officer finds that satisfactory progress was not achieved during any period for which a progress payment is to be made. However, the clause stipulates **a maximum of 10% of the payment** amount will be withheld. Based on the value of work in progress invoiced for since XXXX 2015, the maximum penalty, if appropriate, should be \$XXXXXX. The Contracting Officer has no authority to reject the payment in its entirety. Retention of 10% represents an “administrative” penalty that would result in loss of field office overhead and profit. Amounts exceeding 10% are punitive and harmful to the Contractor and its subcontractors as direct cost will not be covered.

GETTING PAID

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- ❑ FAR 52.232-5 allows for **retention of monies the Contracting Officer finds necessary for the protection of the Government**. In the case of *late project completion*, FAR 52.211-12 Liquidated Damages--Construction stipulates if the Contractor fails to complete the work within the time specified in the contract, the Contractor shall pay liquidated damages to the Government. This clause recognizes the potential for a late finish and asserts the necessary remedies should the Contractor be found accountable for the delays. In accordance with the subject contract liquidated damages will be in the amount of \$XXXXX for each calendar day past CCD. Currently the schedule reflects contract completion approximately XXXX days past CCD or \$XXXXXXXX.
- ❑ FAR 52.232-5 allows for retention of monies the Contracting Officer finds necessary for the protection of the Government. In the case of **incomplete or unacceptable work** (i.e., rework), the definable feature of work in question should be adjusted (i.e., reduction from 100% complete to 90% complete) pending rework and acceptance by the Government. An additional retention is not necessary. Withholding payment on all work is punitive as the value retained for the work in question far exceeds the original value of the work. The balance remaining on this project is \$XXXXX for which only \$XXXXX has been invoiced allowing sufficient value for punch list or rework items. The Government has no authority to reject the invoice in its entirety for this purpose and therefore is in breach of contract.

QUESTIONS

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