

# End of Year Contracting Update

*2020*

**(23 January 2020)**



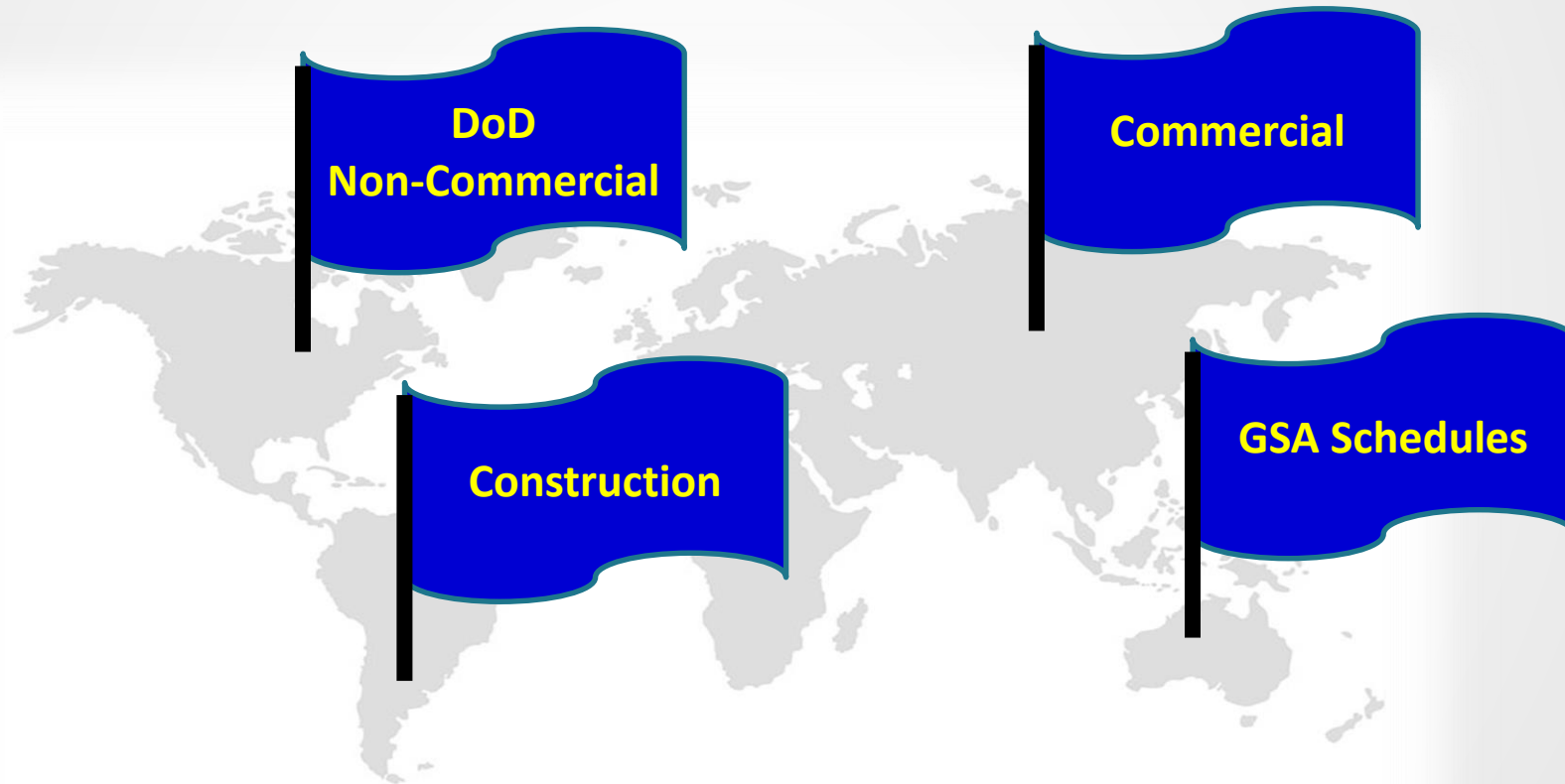
*By Jason Rathsack*  
*President, NCMA WI Chapter*

**DISCLAIMER: The views expressed are not necessarily representative of DCMA. We are here to present on behalf of NCMA, Wisconsin Chapter. Although much of the information contained within is public knowledge, any opinions expressed are those of the presenter alone. If you have any questions, feel free to contact Jason Rath sack at [visn12jr@gmail.com](mailto:visn12jr@gmail.com)**

## Agenda

- A. 2019/2020 Changes**
- B. Contract Closeout – where are we at?**
- C. Developing a Contract Administration Procedure**
- D. Breaking Down the Closeout Process**

# The FAR-side of the Planet



# State of the...DoD Contracting

A look back at 2019 and forward to 2020

- Executive Order 13771, titled “Reducing Regulation and Controlling Regulatory Costs.” **“1 in 2 out”**
- Section **809 Panel Recommendations** continue to permeate and will do for years
- Remember the **shutdown**? Night Court is in session
- *Faster...commercial...thresholds raised*
- FARSite and DUNS #s.....gone
- Discontinuation of Partial QTY Disbursements
- Did I miss anything?

	2017	2018	2019	TOTAL
Regulatory	3	14	35	52
Deregulatory	66	57	59	182
Ratio	<b>22 to 1</b>	<b>4 to 1</b>	<b>1.7 to 1</b>	<b>3.5 to 1</b>

**Cybersecurity –  
CPSR Team**

**Defense Industrial  
Cybersecurity Assessment  
Center**

**Cybersecurity  
Maturity Model**

**Cybersecurity –  
Evaluation Criteria**

## Discontinuation of Partial Quantities

- “Discontinuation of Partial Quantity Disbursements” Memo June 2019
- DFAS MOCAS payment office will discontinue disbursement of invoices partially billing against CLINs with a quantity of 1, usually a LOT
- DFARS PGI 204.7103 (d) establishes that “no contract line item shall contain a quantity less than the # of deliveries anticipated on the line item.
- For supplies, “line item quantities shall match the actual count of the supplies to be provided. For instance, if more than one delivery is expected, the quantity cannot be 1”
- This will NOT affect contracts awarded prior to FY20 (1 Oct 19)



# DCMA Policy Changes – CRR & Closeout

- DCMA-MAN 2501-01, Contract Receipt and Review, Mar 24, 2019
- DCMA-MAN 2507-01, Contract Closeout, Dec 19, 2019

**(20) Policies Guiding Contract Receipt and Review**  
 DCMA-INST 115, "Patents and Royalties,"  
 DCMA-INST 124, "Government Property,"  
 DCMA-INST 131, "Business Systems,"  
 DCMA-INST 133, "Estimating System,"  
 DCMA-INST 137, "Grants, Agreements and Other Transactions,"

DCMA-INST 115, "Patents and Royalties,"  
 DCMA-INST 124, "Contract Property Management"  
 DCMA-INST 135, "Contract Closeout)

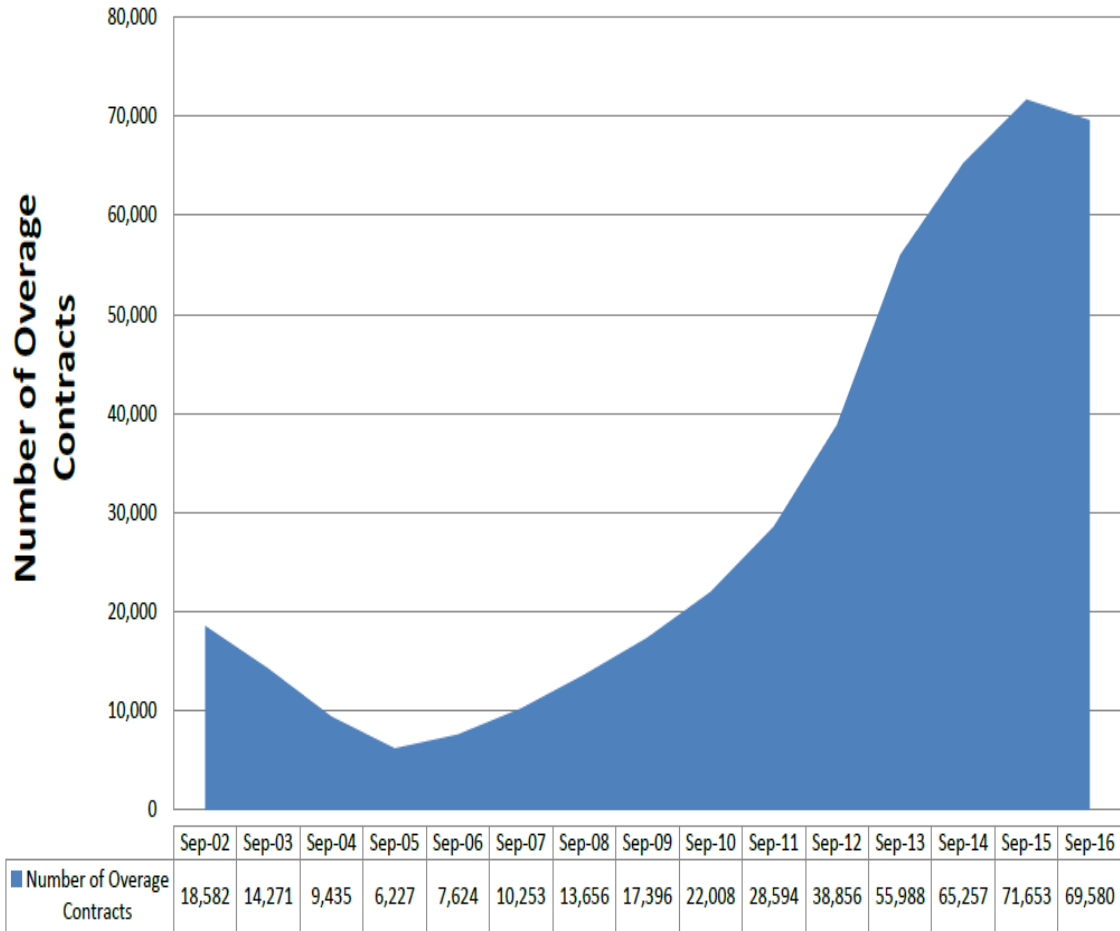
**DEFENSE CONTRACT MANAGEMENT AGENCY**

ABOUT US | NEWS | EMPLOYEES | E-BUSINESS | IWMS | POLICIES | CUSTOMERS | ETOOLS | SMALL BUSINESS

**CONTRACTS ANNOUNCED**  
January 13, 2020

DIRECTOR'S POLICY STATEMENTS				
CONTRACT MAINTENANCE				
Title	Type	Policy No	Published	Publication
Contract Maintenance	Instruction	2501	08/14/17	<a href="#">View Publication</a>
Contract Receipt and Review				<a href="#">View Publication</a>
Contract Modification Actions	Manual	2501-02	05/31/18	<a href="#">View Publication</a>
Funds Lifecycle	Manual	2501-03	04/03/19	<a href="#">View Publication</a>
Plant Clearance	Manual	2501-04	02/14/19	<a href="#">View Publication</a>
MOCAS Data Integrity Screening	Manual	2501-05	04/01/19	<a href="#">View Publication</a>
Terminations	Manual	2501-06	10/1/18	<a href="#">View Publication</a>
Contract Closeout				<a href="#">View Publication</a>
Grants, Cooperative Agreements, and Other Transactions	Manual	2501-08	03/27/19	<a href="#">View Publication</a>
Contract Claims and Disputes	Manual	2501-09	03/26/18	<a href="#">View Publication</a>
Contract Debts	Manual	2501-10	04/13/18	<a href="#">View Publication</a>
International Request for Contract Administration Services	Manual	2501-11	03/04/19	<a href="#">View Publication</a>
Contract Property Loss	Manual	2501-12	11/05/18	<a href="#">View Publication</a>
CONTRACTOR EFFECTIVENESS				

## DCMA Contract Closeout Trend: 2002 to 2016



*Bottleneck moved from DCAA to DCMA*

- Late contractor Incurred Cost Proposals
- Delayed DCAA Incurred Cost Audits
- Delayed ACO negotiation of Final Overhead Rates
- Late contractor Final Voucher submission
- Delayed settlement of subcontractors by prime contractors
- Replacement funds needed to pay Final Vouchers when funds already cancelled
- Contractors challenged with competing resources and indicate not enough resources to “catch up” to the multiple years settled



## Overage Contracts – Background

### **2012: DCMA “Material Weakness” identified**

- DCAA began to burn down their backlog of incurred cost audits
- Significant deficiency with Overage contract closeout at DCMA

### **2015: DCMA’s Overage contracts continued to drastically increase**

- Created a 5 year Corrective Action Plan (CAP) for OSD to address the overage contracts “within the Agency’s control”
- Recognized not all cost type contracts are within DCMA’s control (DCAA audits, DFAS reconciliations, litigation issues, etc.)
- Committed to reduction in Overage FFP contracts also

### **FY16-20: Agency Material Weakness closeout metrics implemented**

- Metric 1 – 20% reduction of total Number of Cost Type contracts identified as part of the MW baseline each FY
- Metric 2 – 20% reduction of total Obligated dollar value of Cost Type contracts identified as part of the MW baseline each FY
- Metric 3 – 50% Reduction of Overage FFP from original baseline

## Where are we today? **CAUGHT UP!!**

- More DCAA **Low Risk Memos** and Multi-year Audits
- Firm DCAA audit commitment dates and use of Independent Public Accountants to ensure **1 year deadline** is met
- DCMA/DCAA have more time to focus on active **Higher Value/Higher Risk** work – Interim Voucher Reviews, CBS Reviews, On Time Delivery etc.
- Beginning to function in the **“where we should be”** space by closing contracts within the FAR timeframes
- Contractor ICP submissions mostly on time (**we’re tracking!**)
- Enforcement FV submittal within 120 days after rate settlement
- **Closeout Teams** established to address backlogs
- Priorities placed on using **Quick Closeout Tools**

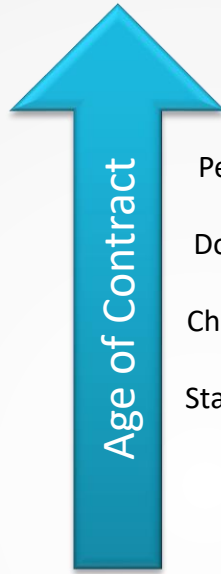


**DFARs Case 2018-D012:  
(4/30/19) Contract  
Closeout Authority**

# NCMA Wisconsin Chapter

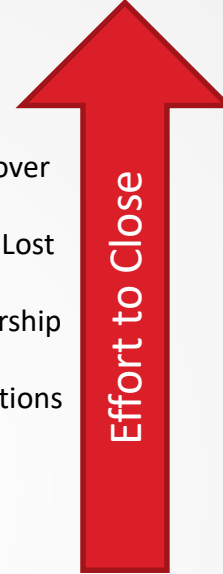
## Why is contract closeout important?

- Get Paid!
- Compliance with FAR
- De-obligate excess funds in order to avoid canceling
- Mitigate legal and financial risks
- The older, the uglier & more expensive to fix..



Age of Contract

- Personnel Turnover
- Documentation Lost
- Change in Ownership
- Statute of Limitations



Effort to Close

A contract is only considered closed when it is:

Physically Complete  
(FAR 4.804-4(a))

**AND**

Administratively Complete  
(FAR 4.804-5)

**Avoid DCMA  
special attention!**



## Timelines (FAR 4.804-1(a))

### 3 Months

- Fixed Price (FP) – Simplified Acquisition Procedures
- Commercial

### 6 Months

- Firm Fixed Price

### 20 Months

- FP Redetermine/EPA/Incentive
- BOA/BPA, Indefinite Delivery
- Labor Hour

### 36 Months

- Cost Reimbursable
- Time & Material
- Non-Procurement Instruments

# So what can you do as a contractor?

## Recommendation:

### **CONTRACT ADMINISTRATION PROCEDURE**

#### **PRE-SOLICITATION**

- Contract Type
- Technical Review
- Business Review

#### **CONTRACT RECEIPT AND REVIEW**

- POCs
- Schedule, Deliverables
- SOW
- Quality Requirements
- Clauses
- Special Requirements
- Cost Accounting

#### **CONTRACT CLOSEOUT**

- Reconciliation
- Property, Patents, Royalties, Classified
- Final Voucher/Invoice

## Firm-Fixed Price (FFP)

(FAR 16.202-1, 52.216-2)

- Nearly all supply and parts contracts
- Price is pre-negotiated and not subject to change based on contractor costs
- Maximum incentive for contractor to control costs and perform effectively
- Gov't surveillance focused on quality and delivery, minimal cost

## Cost Plus Fixed Fee (CPFF)

(FAR 16.306, 52.216-7)

- DoD SBIR R&D Contracts, Repairs, Engineering Services
- Reimbursement is based on costs incurred plus fixed fee
- Uncertain requirement, high performance risk, low incentive to control costs
- Gov't surveillance focused on cost, business systems, technical, and delivery

**Delivery Order**

**Task Order**

**Options**  
(FAR 17.2,  
52.217-8)

## Indefinite Delivery Indefinite Quantity (IDIQ)

(FAR 16.504, 52.216-22)

- Gov't is uncertain of when or how much of a product or service is needed however a minimum and maximum amount are included
- Pricing for goods or services may be pre-negotiated for quicker ordering
- Work is ordered via task or delivery orders, may include mix of FFP and CPFF

**Pre-Solicitation  
Commandments**

**Respect thy  
Contract Type!**

# NCMA Wisconsin Chapter

Remember your  
Flow-down Clauses



**Critical Safety Item (CSI)  
Safety of Flight (SOF)  
DFARS 252.209-7010  
DCMA MAN 8210, 2303  
Special Surveillance, Directed  
Suppliers, Adtl Reporting**

**Higher Level Quality  
(46.204, 52.246-11)  
"Quality Mgmt System"**

**Standard Inspection  
(46.202-3, 52.246-2 thru 9)  
"Gov't Inspection"**

**Commercial, < \$250K  
(46.202-1,2, 52.246-1)  
"Kind and Count"**



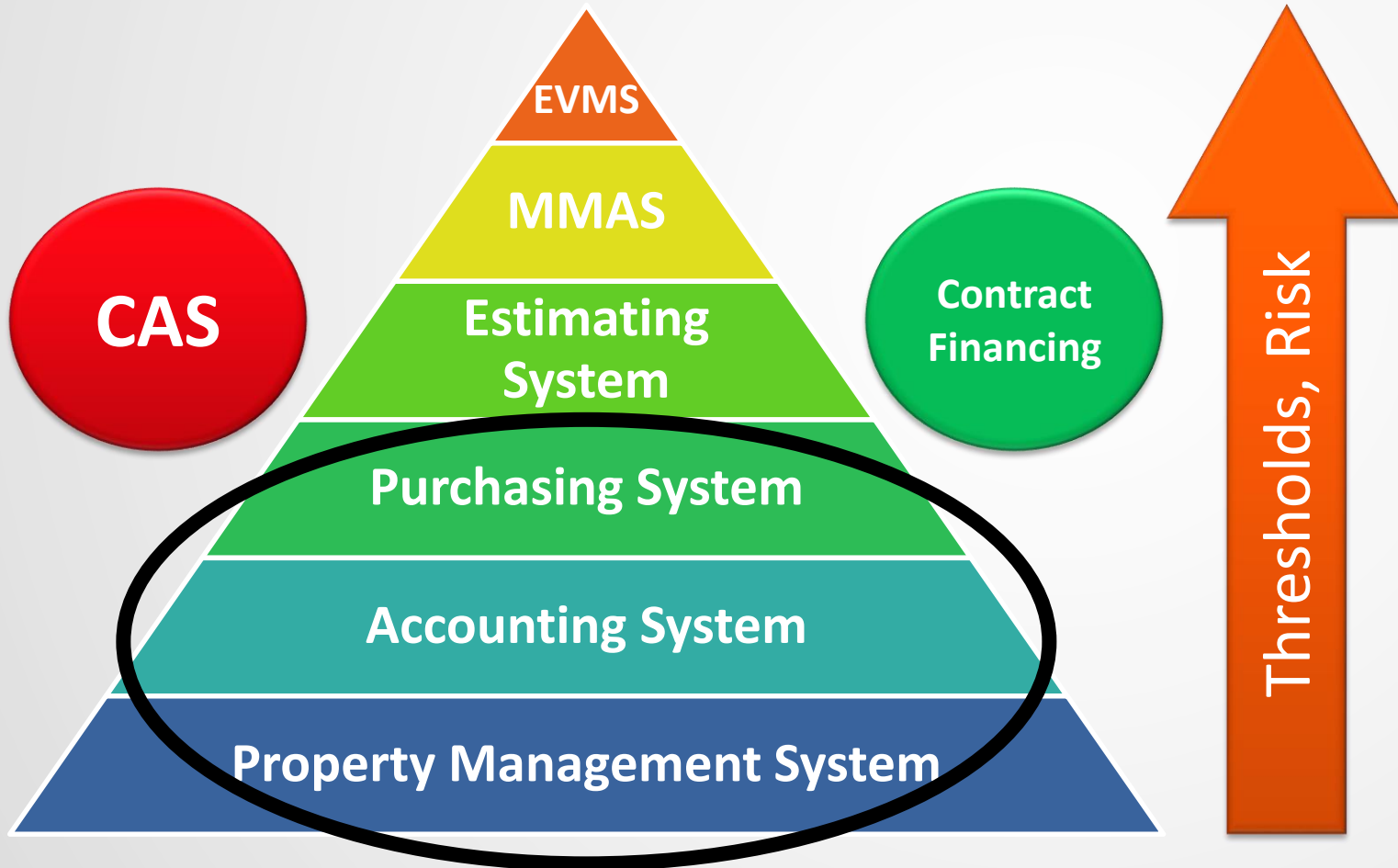
Pre-Solicitation  
Commandments

**Respect thy  
Technical  
Requirements!**

**FAR Case 2013-002:  
(11/22/19) Reporting of  
Nonconforming Items to  
the Government-Industry  
Data Exchange Program**



# Contractor Business System DFARS 252.242-7005



Pre-Solicitation  
Commandments

**Respect thy  
Business  
Requirements!**

- DFARS Case 2017-D038: (5/31/19) Contractor Purchasing System Review Threshold
- DFARS Case 2018-D065: (4/1/19) Consent To Subcontract
- Proposed DFARS Case 2019-D002: (4/30/19) Performance-Based Payments

## DCMA Points of Contact – 5 Steps

1

2

3

4

5

CMT Member	User Name	Acting Role	Job Series	E-Mail Address	Telephone
Kolb, Larry M.	ACO	1102		<a href="mailto:larry.kolb@dcma.mil">larry.kolb@dcma.mil</a>	414-299-5062
Baltus, Jason R.	CA	1102		<a href="mailto:jason.r.baltus.dv@mail.mil">jason.r.baltus.dv@mail.mil</a>	(414) 299-5638
Jarosz, Alex	DRPM	1910		<a href="mailto:alex.jarosz@dcma.mil">alex.jarosz@dcma.mil</a>	224-625-9179
Wert, Daniel	ENG	1150		<a href="mailto:daniel.wert@dcma.mil">daniel.wert@dcma.mil</a>	224-625-9181
Messel, Gregory A.	IS	1150		<a href="mailto:gregory.messel@dcma.mil">gregory.messel@dcma.mil</a>	(414) 299-5665
Ford, Eunice	PA	1103		<a href="mailto:eunice.ford@dcma.mil">eunice.ford@dcma.mil</a>	224-625-9174
Schweich, John J.	PKG	2032		<a href="mailto:John.Schweich@dcma.mil">John.Schweich@dcma.mil</a>	952-259-5502
Oneill, Patricia L.	PLCO	1103		<a href="mailto:pat.oneill@dcma.mil">pat.oneill@dcma.mil</a>	314-331-5577
Swartz, Jeffery M.	PLCO	1103		<a href="mailto:jeffery.swartz@dcma.mil">jeffery.swartz@dcma.mil</a>	314-331-5578
Bobber, Richard L.	QAR	1910		<a href="mailto:Richard.Bobber@dcma.mil">Richard.Bobber@dcma.mil</a>	414-299-5678





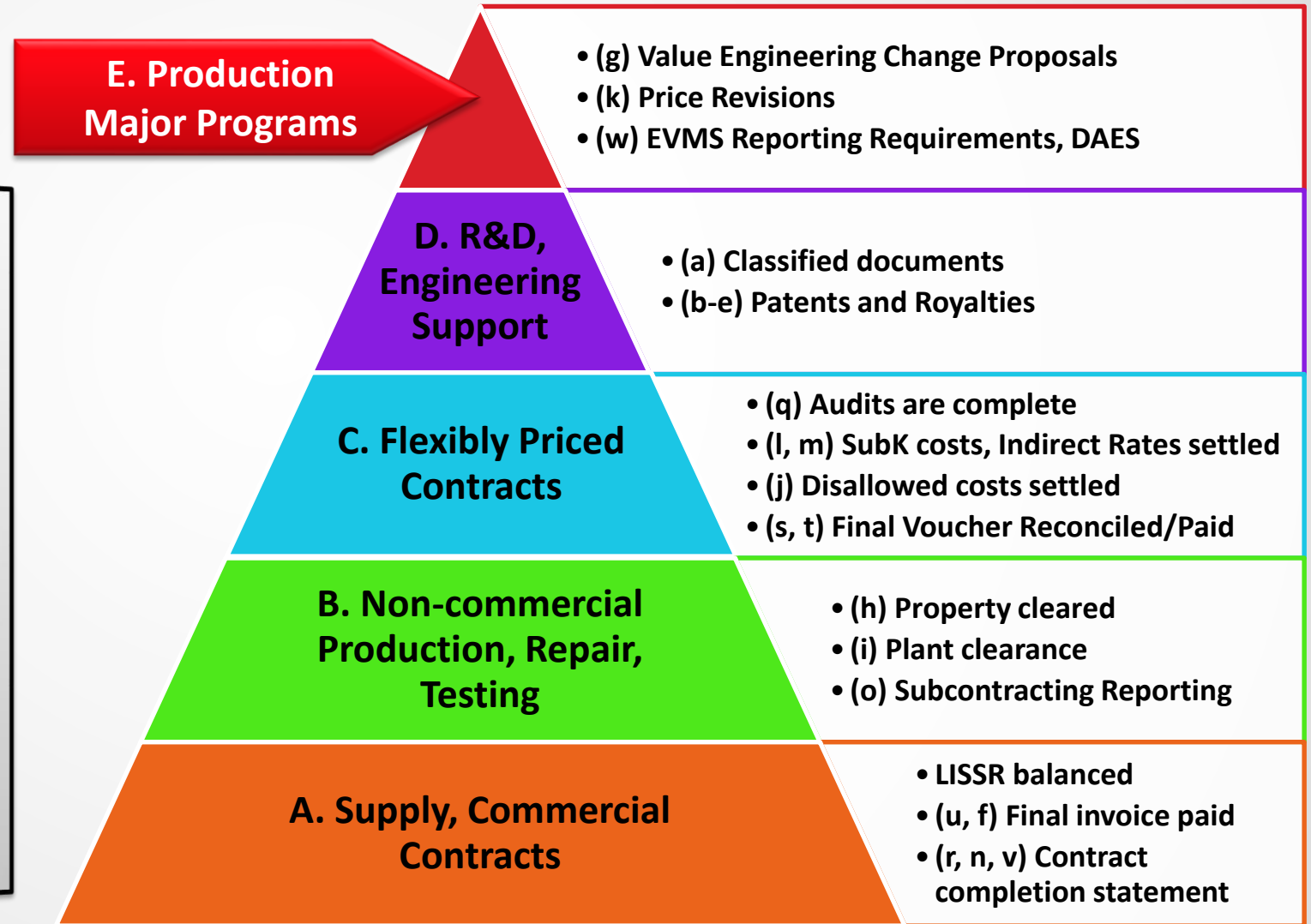


## Procedures for Closing out Contract Files

**LISSR (Line Item Schedule & Shipment Record)**  
**QTY Ordered = Shipped = Accepted**

### Contract Closeout Steps (FAR 4.804-5)

- 1) Disposition of classified material is completed;
- 2) *Final patent report is cleared.*
- 3) Final royalty report is cleared;
- 4) No outstanding value engineering change proposal;
- 5) Plant clearance report is received;
- 6) Property clearance is received;
- 7) All interim or disallowed costs are settled;
- 8) Price revision is completed;
- 9) Subcontracts are settled by the prime contractor;
- 10) Prior year indirect cost rates are settled;
- 11) Termination docket is completed;
- 12) Contract audit is completed;
- 13) Contractor's closing statement is completed;
- 14) Contractor's final invoice has been submitted; and
- 15) Contract funds review, excess funds deobligated.
- 16) Contract Completion Statement



### Regulations

- ✓ DFARS 252.204-7006 – Billing Instructions
- ✓ DFARS 252.232-7003 – Electronic Submission of Payment Requests and Receiving Reports

### Documentation Requirements

- ✓ DD 250: Material Inspection & Receiving Report
- ✓ Evidence of completion: Receiving Reports and the buying activity's completion statement.
- ✓ Contractor Release of Claims

## Supply, Commercial Contracts

### Best Practices

- ✓ Understand your Quality Requirements
- ✓ Know inspection/acceptance locations
- ✓ Understand your DPAS Requirements
- ✓ Accurate WAWF submittals
- ✓ Communicate with QAR, know your CA and IS

### Training/Resources

- ✓ WAWF (PIEE) Web Based Training!!
- ✓ DLA DIBBS – Virtual Library
- ✓ DLA Small Biz Office – Webinars and TKO Training
- ✓ PTAC – do you know one?

## Regulations

- ✓ FAR 52.245-1 – Government Property
- ✓ DFARS 252.245-7001; Tagging, Labeling, and Marking of Government-Furnished Property
- ✓ DFARS 252.245-7003; Contractor Property Management System Administration
- ✓ DFARS 252.245-7004; Reporting Reutilization, and Disposal
- ✓ FAR 52.219-9, DFARS 252.219-9; Small Biz Subk Reporting

## Best Practices

- ✓ Understand the Property Management System requirements for submitting a quote/proposal
- ✓ Alert the PCO or ACO if you anticipate bidding/receiving a contract w/ GFP
- ✓ Understand what Government Property is (GFP v GP)
- ✓ Understand your Small Business Goals, Reporting

## Documentation Requirements

- ✓ DD 1593 – Contract Admin Completion Record (auto generated from EDA)
- ✓ PIEE Property Management (old WAWF)
  - ✓ Individual Subcontract Reports, Summary Subcontract Reports

**DFARs Case 2015-D035:  
(4/30/19) Use of the  
Government Property  
Clause**

## Resources

- ✓ National Property Management Association
- ✓ DoD Procurement Toolbox, PIEE Website Training
- ✓ Small Business Administration
- ✓ NCMA Local Trainings

**Non-commercial  
Production,  
Repair, Testing**

## Regulations

- ✓ DFARS 252.242-7006; Accounting System Admin
- ✓ FAR 4.804-5(a)(9);
- ✓ FAR 52.216-7; Allowable Cost and Payment
- ✓ FAR 52.216-8; Fixed Fee
- ✓ FAR 52.242-1; Notice of Intent to Disallow Costs
- ✓ FAR 52.242-4; Certification of Final Indirect Rates

## Documentation Requirements

- ✓ Provisional Billing Rate Proposal
- ✓ Interim Voucher Support
- ✓ Subcontractor settlement memo
  - ✓ Incurred Cost Proposal
  - ✓ Adjustment Vouchers
  - ✓ Final voucher

## Flexibly Priced

## Best Practices

- ✓ Alert PCO, ACO, DCAA that you anticipate a flex priced contract or contract with contract financing
- ✓ Understand contract cost principles and incurred cost requirements
- ✓ Understand Provisional Billing Rates
- ✓ Understand Audit Requirements

## Resources

- ✓ NCMA Wisconsin – Spring Training Event
- ✓ DCAA Homepage – Help for Small Business
- ✓ SBIR.gov - Tutorials



## Regulations

- ✓ FAR 52.204-2; Security Requirements
- ✓ FAR 52.227-10; Patent Applications—Classified
- ✓ FAR 52.227-11; Patent Rights-Ownership by KTR
- ✓ FAR 52.227-13; Patent Rights-Ownership by the Government
- ✓ DFARS 252.227-7039; Patents-Reporting of Subject Inventions
- ✓ FAR 52.227-9; Refund of Royalties

## Documentation Requirements

- ✓ DD 254; DoD Contract Security Classification Specification
  - ✓ DD882; Report of Inventions and Subks, interim and final report
    - ✓ Patent Clearance Certification Memo
    - ✓ Royalty Certification Memo

## R & D, Engineering Support

## Best Practices

- ✓ Contract Receipt and Review – make sure you look at the clauses or lack thereof
- ✓ Communicate with your DCMA CA and PCO regarding the data delivery requirements
- ✓ Address patents, royalties, and tech data rights during pre-award stage

## Resources

- ✓ DCMA Policies/Procedures
- ✓ DCSA Website – National Industrial Security Program Resources
- ✓ DISA – Legal and Regulatory

# Safeguarding Classified Information

## FAR 4.4, 52.204-2

- **Perform Contract Receipt and Review:** If your contract contains the above clause, notify your Contract Administrator
- **FAR 52.204-2 Security Requirements:** for contracts involving info classified “Confidential,” “Secret,” or “Top Secret.”
- A Draft DoD Form (DD) 254, DoD Contract Security Classification Specification should be included in the solicitation.
- A final DD Form 254 is ONLY required if the contractor **requests retention of classified materials** beyond the automatic two year retention period (NISPOM DOD 5220.22-M)
- **DLA Policy Change:** mandates DoD contractors to Dispose of ALL Classified Material provided by DLA at Closeout or Termination of the Contract.
  - Contractors may either Return the Classified Information to the agency or provide a copy of the completed **DL5502 Vendor Document Accountability** Form at Closeout or Termination of the Contract.





# Safeguarding Classified Information

## What happens when far clause 52.204-2 is included in a contract while performing Contract Closeouts?

IAW DCMA-MAN 2501-07, section 7.6. Disposition of Classified Materials:

- The ACO will ensure classified material is dispositioned IAW Government security regulations and accounted for by the contractor.
- The ACO Notifies the Defense Security Service (DSS) the contract/order is complete and the classified material must be disposed of properly. The cognizant DSS/Industrial Security Office address may be found on the contract/order DD Form 254.



Contract Information: Defense Security Service - St. Louis Field Office  
Email: [dss.dss-northern.dss-isfo.mbx.st-louis-field-office@mail.mil](mailto:dss.dss-northern.dss-isfo.mbx.st-louis-field-office@mail.mil) Phone: 618-206-5524

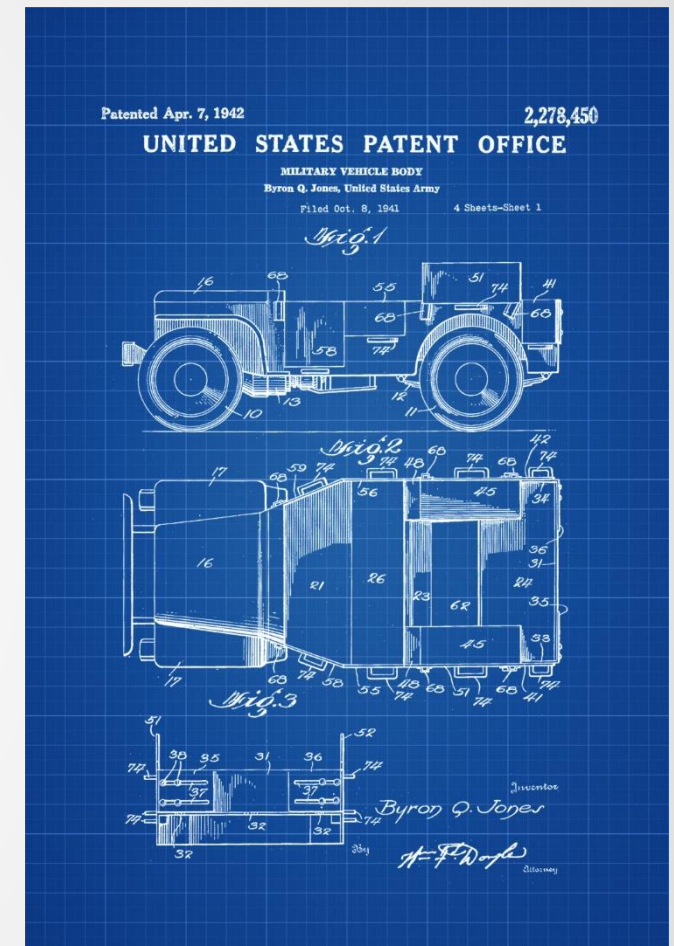
# Patents and Royalties

- **FAR 52.227-11** – Patent Rights – Ownership by the Contractor
- **FAR 52.227-13** – Patent Rights – Ownership by the Government
- **DFARS 252.227-7038**, Patent Rights – Ownership by the Contractor (Large Business)
- **DFARS 252.227-7039**, Patents – Report of Subject Inventions
- **FAR 52.227-9**, Refund of Royalties

**Patent** – A grant made by a government that confers upon the creator of an invention the sole right to make, use, and sell that invention for a set period of time.

**Royalty** – A share in the proceeds paid to an inventor or a proprietor for the rights to use his or her invention or services.

- **If your contract contains the above clause, notify your Contract Administrator**
- “Interim” reports are due to the ACO every (12) months, and the “Final” report is due within (6) months for small business/nonprofit organizations and w/I (3) months for large business after completion of the contract



## NCMA Wisconsin Chapter

### Regulations

- ✓ FAR 52.248-1; Value Engineering
- ✓ FAR 52.216-6; Price Redetermination-Retroactive
- ✓ OMB Circular Nos. A-109 & A-11, Part 7
- ✓ FAR 34, DFARS 234
- ✓ FAR 52.234-4; Earned Value Management
- ✓ DFARS 252.234-7002; Earned Value Management System

### Documentation Requirements

- ✓ Payment or Disposition of VECs
- ✓ Overhead rates are settled
- ✓ Repricing settlement proposal received
- ✓ Incentive negotiated/paid via bilateral mod
  - ✓ Release of claims
  - ✓ DAES Reporting
  - ✓ CSDR Requirements

## Production, Major Programs

### Best Practices

- ✓ Incentive type contracts – be prepared day 1
- ✓ If you're operating in this arena, you should have a robust internal training program
- ✓ Daily communication with the entire IPT is critical to success

### Resources

- ✓ DCMA-MAN 3101-01 Program Support
- ✓ DAU – the DAES Process
- ✓ NCMA, NDIA training and conferences

# Terminations

- **FAR 52.212-4**– Contract Terms and Conditions – Commercial items
  - **FAR 52.249-1** – Termination for Convenience of the Government (Fixed-Price) thru
  - **FAR 52.249-12** – Termination (Personal Services)
- 
- Terminations for Convenience will be handled by a Terminating Contracting Officer within DCMA.
  - Terminations for Default and Terminations for Cause will be handled by the Procuring Contracting Officer.
  - Terminated Contracts cannot be closed until final settlement mod is issued



## Common Closeout Roadblocks

### Fixed Price

- First Article Test delays
- Shipping without inspection
- Lack of communication with DLA/DFAS
- Inaccurate WAWF Submission
- Missing DD250 on CDRL
- Over shipment/paid on LOT
- Property Disposition – late start
- Shipping w/o inspection

### Flexibly Priced Contracts

- Reasons we reject or question Final Voucher:
  - CLIN/ACRN accuracy
  - Final Release/Assignment of Claims
  - Incorrect DoDAAC as Service Approver
  - Questioning of Allowable Costs/Fee/Outside POP Costs
- Challenges with obtaining proof of physical completion
- Prime settlement of subcontractor delay
- CACWS submission delay
- Replacement Funds delay
- DFAS Funds Reconciliation delay

**Industry perspective?**



## Recap

- FARsite is dead and I'm not happy about it
- Regulatory changes are starting to thaw out
- Acquisition Process - Faster, commercial...but secure
- On time Contract Closeout is the result of proper admin starting with CRR
- Establish a procedure tailored to the type, quantity, complexity, and value of your contracting portfolio
- Don't hesitate to use your local resources and the forms/templates already created

Questions?

NCMA WI Chapter

Jason Rathsack

[jrathsack@gmail.com](mailto:jrathsack@gmail.com)

## Resources

<https://www.dcaa.mil/>

- Guidance Tab – *“Audit Process Overview – Information for Contractors”*
- Checklists & Tools Tab – *“ICE Model”* template

<https://dodprocurementtoolbox.com/>

- DoD Procurement Toolbox online training

<https://www.aptac-us.org/find-a-ptac/>

- Procurement Technical Assistance Centers for Government contracting assistance



## Closeout Toolbox

- NDAA 836
- LRQCO
- DFAS Debt Forgiveness for <\$25
- MOA for <=\$300 example
- Have new hires focus solely on closeout
- Work smarter, not harder!



**National Defense Authorization Act  
(NDAA 836)**

**Procedures for NDAA 836 Closeout:**

- Entered into on a date that is at least 17 FYs before the current FY
- Has no further supplies or services deliverables due under the terms and conditions of the contract; and
- Was determined by an agency reviewing official at least one-level higher than the Contracting Officer to be not otherwise reconcilable, because-
  - The contract records have been destroyed or lost; OR
  - Although contract records are available, the time or effort required to establish the exact amount owed the U.S. Government or amount owed to the contractor is disproportionate to the amount at issue.
  - Prohibited for open litigation or termination action
- Bilateral mod required addressing the settlement agreed upon

## Low Risk Quick Closeout (LRQCO)

### Low Risk Quick Closeout Process:

- More streamlined process for low risk cost type contracts
- Designed to be used for Overage and non-Overage to close the backlog

### Highlights of Process:

- Unsettled Direct & Indirect Costs < \$750K
- Approved Accounting System during all unsettled years
- No outstanding CBS corrective actions or CAS issues
- Accept Contractor's rates as proposed
- Minimal FV review/reconciliation

## Safeguarding Controlled Unclassified Information

DCMA was engaged by DoD to Implement the intent of OUSD (A&S) Memorandum, *Addressing Cybersecurity Oversight as Part of a Contractor's Purchasing System Review*

- Issued by Ms. Lord on January, 21 2019

This Memo basically asks the CPSR Group to assure that Prime Contractors are able to safeguard DoD Controlled Information (CDI) when subcontracting

## Safeguarding Controlled Unclassified Information

### DFARS Clause 252.204-7012

The Memo asked that DCMA, when providing contract administration and oversight, review contractor procedures to:

- 1) ensure that requirements for marking and distribution of **DoD Controlled Unclassified Information (CUI) flow down appropriately to Tier 1** level suppliers, (DoD CUI = CDI)
- 2) validate that **prime contractor procedures assure that Tier 1 level suppliers are compliant with DFARS Clause 252.204-7012**, Safeguarding Covered Defense Information and Cyber Incident Reporting when a transfer of CDI is anticipated

## Safeguarding Controlled Unclassified Information

**DFARS Clause 252.204-7012**, Safeguarding Covered Defense Information and Cyber Incident Reporting requires contractors and subcontractors handling CDI to comply with the National Institute of Standards and Technology (NIST) Special Publication, NIST SP 800-171, Rev 1, Protecting Controlled Unclassified Information in Nonfederal Systems and Organizations.

- 14 Families of Requirements
- 110 Controls

**Supply Chain Management:** Proper management of a supply chain requires prime contractors to manage the flow of CDI to subcontractors.

- DFARS 252.204-7012, is a mandatory flow down.

Reviewing such flow downs has always been a part of a **contractor purchasing system review**. This flow down requirement is being emphasized as part of the Supply Chain Management (SCM) review process.

## Safeguarding Controlled Unclassified Information

### CPSR Review

- CPSR field reviews began in March of 2019 and will follow the instruction of the revised **SCM Job Aid** when evaluating contractor purchasing systems.
- Should a Safeguarding of CDI deficiency be identified, it will be captured in the CPSR report and forwarded to the ACO.
- No matter the decision on significance, **a CAR will be issued** and tracked to completion, thus resolving the deficiency.

**Download the CPSR Guidebook:**

[https://www.dcmamilitary.com/Portals/31/Documents/CPSR/CPSR\\_Guidebook\\_022619.pdf](https://www.dcmamilitary.com/Portals/31/Documents/CPSR/CPSR_Guidebook_022619.pdf)



# Safeguarding Controlled Unclassified Information

## Contractor Responsibilities

- 1) Prime contractor **policies and procedures** must provide adequate instruction to procurement personnel on both DFARS 252.204-7012, and NIST SP 800-171, Rev 1.
- 2) Prime contractors should **understand which prime contracts contain DFARS Clause 252.204-7012**, and specifically **require the protection of CDI identified in prime contract special instructions, statements of work, or identified as actual markings.**
- 3) Prime contractors should only include DFARS 252.204-7012, as part of the subcontract terms and conditions, **when they are sure that the 14 Families Requirements and 110 Controls outlined in NIST SP 800-171, Rev 1** have been adequately addressed by their subcontractors.



## Safeguarding Controlled Unclassified Information

### Contractor Responsibilities (Cont'd)

- 4) Prime contractors must document and be able to explain the steps taken to assure that any identified recipients or developers of CDI have a **Covered Contractor Information System (CCIS) and associated System Security Plan (SSP)**.
- 5) The prime contractors should be capable of **providing a listing of all subcontractors** that receive or create CDI as part of subcontract performance.
- 6) **Subcontractors should be informed** by prime contractors that when accepting DFARS 252.204-7012, they are asserting compliance with the 14 Families of Requirements and 110 Controls outlined in NIST SP 800-171 Rev 1.

# Safeguarding Controlled Unclassified Information

## Marking requirement

- 1) **DFARS 252.204-7012** requires contractors and subcontractors to safeguard or to have dissemination controls for CDI that resides on or is transiting through a contractor's internal information system or network.
- 2) CDI **should be properly marked** in subcontracts containing DFARS 252.204-7012 and should not be present in subcontract/PO files where DFARS 252.204-7012 is not included. CDI should maintain its markings in all Subcontract/PO files.

# Safeguarding Controlled Unclassified Information

## Notification/Reporting Requirements

### **DFARS 252.204-7012 (m)(2)(i)**

Prime contractors must have a system in place to track notifications from subcontractors that they have requested, from the Contracting Officer, a variance from NIST SP 800-171, Rev 1,

### **DFARS 252.204-7012 (m)(2)(ii)**

Prime contractors must have a system in place to track incident report numbers received from subcontractor as a result of cyber incidents being reported to the DOD at <http://dibnet.dod.mil>.