



DEPARTMENT OF DEFENSE
Defense Contract Management Agency

INSTRUCTION

Consent to Subcontract

Contracts Directorate
OPR: DCMA-AQCF

DCMA-INST 143
March 19, 2013
Change 1, March 6, 2014

SUMMARY OF CHANGES. *Incorporates multiple FAR and DFARS changes to delete references to the Excluded Parties List System and replace with the System for Award Management; deletes FAR and DFARS duplications; updates and moves flowchart to the resource Web page; adds reference for DCMA-INST 522, "Information Security Program," DCMA-INST 809, "Records Management," FAR 4.8 Government Contract Files, and renumbers as required. (C1)*

1. PURPOSE. This Instruction:

- a. *Updates* DCMA Instruction (DCMA-INST) *143*, "Consent to Subcontract," (Reference (a)). *(C1)*
- b. Establishes *policy*, assigns roles and responsibilities, and *provides* procedures for administrative contracting officers (ACO) to *determine* prime contractors' subcontracting actions *and purchasing system status. (C1)*
- c. *Complies* with DoD Directive 5105.64 (Reference (b)), and implements DCMA policy pursuant to references listed. *(C1)*

2. APPLICABILITY. This Instruction applies to all DCMA activities *unless higher-level statutes, regulations, policy, guidance, and/or agreements take precedence (e.g., International Directorate and Special Programs Directorate activities). For classified contracts with security requirements, exceptions to this Instruction shall be in accordance with supplemental instructions maintained by the special Programs Directorate. (C1)*

3. MANAGERS' INTERNAL CONTROL PROGRAM. In accordance with DCMA-INST 710, "Managers' Internal Control Program" (Reference (c)), this instruction is subject to evaluation and testing. The process flowchart is located *on the policy resource Web page. (C1)*

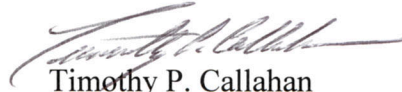
4. RELEASABILITY – UNLIMITED. This Instruction is approved for public release.

5. PLAS CODE(S).

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

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

7. EFFECTIVE DATE. *By order of the Director, DCMA, Change 1 to this Instruction is effective March 6, 2014, and all applicable activities shall be fully compliant within 60 days from this date.*



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REFERENCES

- (a) DCMA-INST 143, “Consent to Subcontract,” *March 19, 2013 (CI)*
- (b) DoDD 5105.64, “Defense Contract Management Agency (DCMA),”
January 10, 2013 *(CI)*
- (c) DCMA-INST 710, “Managers’ Internal Control Program,” September 12, 2011
- (d) *FAR 44.201-1, Consent requirements (CI)*
- (e) *FAR 44.201-2, Advance notification requirements (CI)*
- (f) Advance Notification/Consent to Subcontract Checklist *(Resource Web page)*
- (g) *DCMA-INST 552, “Information Security Program,” October 29, 2013(CI)*
- (h) Federal Acquisition Regulation (FAR) 52.244-2, “Subcontracts” *(CI)*
- (i) FAR 44.204(a), Contract Clauses *(CI)*
- (j) FAR 52.244-2, Subcontracts *(CI)*
- (k) *DCMA-INST 109, “Contractor Purchasing System Reviews” January 09, 2014 (CI)*
- (l) FAR 44.202-2, Considerations *(CI)*
- (m) *Part 9903.201-2 of Title 48 Code of Federal Regulation,. Types of Cost Accounting Standards (CAS) Coverage (CI)*
- (n) *FAR 44.203, Consent Limitations (CI)*
- (o) *DCMA-INST 809, “Records Management,” May 2011(CI)*
- (p) *FAR 4.8, Government Contract Files (CI)*
- (q) *FAR 44.101, Definitions (CI)*
- (r) *FAR 3.502-1, Definitions (CI)*

CHAPTER 1

POLICY

1.1 POLICY. It is DCMA policy that:

1.1.1. Advance *notification* and *consent* are required before the award of subcontracts if the prime contractor does not have an approved purchasing system, where the Government is assuming a large portion of the contract risk and, therefore, has a vested interest in knowing and controlling costs associated with the contract (*FAR 44.201-1 Consent requirements (Reference (d)) and FAR 44.201-2 Advance notification requirements (Reference (e))*). (CI)

1.1.2. The ACO is responsible for reviewing the contractor's *advance notification* and supporting data to ensure that the proposed subcontract is appropriate for the risks. (CI)

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

1.1.4. SECURITY. Protecting information is critical and integral when conducting the processes associated with this Instruction. DCMA personnel are responsible for protecting classified and controlled unclassified information (CUI) entrusted to them. Prudent steps shall be taken to ensure final disposition of classified and CUI per DCMA and DoD policy. These procedures vary based on the type, access, and nature of the material involved. Refer to DCMA-INST 552, "Information Security Program" (Reference (g)) for guidance in the control, transmission, destruction, and storage of such material."

CHAPTER 2

RESPONSIBILITIES

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

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

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

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

2.1.4. If *consent is required for subcontract(s), as* specifically identified by the procuring contracting officer (PCO) in the subcontracts clause of the contract, *the ACO determines whether* consent *should be given* for award of subcontracts, even if the contractor has an approved purchasing system (*FAR 44.201-1 Consent requirements (Reference (d))*). (*CI*)

2.2. PRIME CONTRACTOR. The Prime Contractor notifies the ACO in advance of awarding any subcontract or making a modification to a subcontract, for which consent is required. (*CI*)

CHAPTER 3

PROCEDURES

3.1. CONTRACT REVIEW. The ACO shall:

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

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

3.2. GENERAL APPLICABILITY.

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

3.2.2. If the prime contractor does not have an approved purchasing system, *consent to subcontract is* required *in advance of* the award of cost-reimbursement, time-and-materials, labor-hour, or letter contracts, and unpriced actions (including unpriced modifications and unpriced delivery orders) under fixed-price contract that exceed the simplified acquisition threshold or 5 percent of the total estimated cost of the contract (FAR 44.201-1, Consent requirements (Reference *(d)*)). *(CI)*

3.3. ADVANCE NOTIFICATION.

3.3.1. The ACO is responsible for reviewing the contractor's *advance notification* and supporting data to ensure that the proposed subcontract is appropriate for the risks involved and consistent with current policy and sound business judgment. *(CI)*

3.3.2. Requirements for *advance notification* under an *approved purchasing system at* FAR 44.201-2, "Advance *notification requirements*," (Reference *(e)*) states that for cost-reimbursement contracts issued by DoD, U.S. Coast Guard and National Aeronautics and Space Administration (NASA) customers, the contractor is required to notify the ACO prior to award of any cost-plus-fixed-fee subcontract or any fixed-price subcontract **that exceeds the greater of** the simplified acquisition threshold or 5 percent of the total estimated cost of the contract. For cost-reimbursement prime contracts issued by civilian agencies (other than the U.S. Coast Guard and NASA) even if the contractor has an approved purchasing system the contractor is required

by statute to notify the ACO prior to the award of any cost-plus-fixed-fee subcontract or any fixed-price subcontract that exceeds either the simplified acquisition threshold or 5 percent of the total estimated cost of the contract (*FAR 44.201-2 Advance notification requirements (Reference (e))*).(CI)

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

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

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

3.3.4.2. *Unless program security requirements prohibit*, once the package is determined complete and compliant, the ACO shall consult with a member of the Contractor Purchasing System Review (CPSR) Group to determine whether the proposed subcontract is appropriate for the risks involved and is consistent with current policy and sound business judgment. *Contact the CPSR group by email at consenttosubcontract@dcma.mil. CPSR responsibilities are located at DCMA-INST 109, "Contractor Purchasing System Reviews" (Reference (k)). (CI)*

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

3.4. CONSENT.

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

3.4.2. Consent Under an Approved Purchasing System. FAR 44.201-1 (a), Consent requirements (Reference (*d*)) provides that even if the contractor has an approved purchasing system, consent is required for subcontracts specifically identified by the PCO in the subcontracts clause of the contract. In practice, the ACO would find the requirement for consent included in FAR 52.244-2(d), Subcontracts (Reference (*j*)), or as a special contract provision.

Therefore, a complete review of the contract is necessary, especially for prime contracts with subcontracts for critical systems, subsystems, components, or services. *(CI)*

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

Table 1. Consent Requirements

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

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

3.4.5. ACOs shall enter into *agreements* with their contractor specifying the length of time required for processing requests for consent and include a provision for the processing of urgent requirements. Agreements should also outline information (if any) not supplied in the *advance* notification, but essential to the consent considerations in paragraph 3.4.5.1. below. Agreements must be reviewed by the *contract management office* (CMO) *contracts director*. (CI)

3.4.5.1. Prior to consenting to subcontract, the ACO must enlist support from the DCMA CPSR Group (consenttosubcontract@dcma.mil) to determine the impact of any negative or unfavorable input in response to questions *at FAR 44.202-2, Considerations* (Reference (l)). (CI)

3.4.5.2. Subcontract awards subject to CAS require the same type of CAS coverage as would prime contracts awarded to the same business unit. In measuring total CAS-covered awards for a year, a transfer by one segment to another shall be deemed to be a subcontract award by the transferor (*part 99-3.201-2 of Title 48 Code of Federal Regulations, Types of Cost Accounting Standards (CAS) Coverage* (Reference (m))). (CI)

3.4.6. *See FAR 44.203, Consent Limitations* (Reference (n)) *for situations where the ACO shall not grant consent.* (CI)

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

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

3.4.8. Neither the ACO's *review and approval of* consent to subcontract, nor approval of the contractor's purchasing system constitutes a determination as to the acceptability of the

subcontract terms, price, or allowability of costs, unless a consent or approval action specifies otherwise. (CI)

3.4.9. Denial of Consent. The ACO's decision to refuse consent must be in writing, signed, dated and include a specific justification for the refusal. (CI)

3.4.10. Use the Advance Notification/Consent to Subcontract Checklist (Reference (f)) to document the findings. (CI)

3.5. NONCOMPLIANCE.

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

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

3.6. RECORDS *MANAGEMENT*. (CI)

3.6.1. The ACO should have a method for retrieving information regarding *advance notification* and/or *consent* actions to facilitate *the* post-award review during CPSRs or other internal or external review activities. This record should also serve as the basis for determining adherence to the consent processing cycle time identified in the *agreement* required by paragraph 3.4.5. It is recommended that the ACO create a document at the *contract* level in EDW with a title of "Advance Notification/Consent to Subcontract." (CI)

3.6.2. *DCMA-INST 809, "Records Management" (Reference (o)), provides for an orderly system of organizing records for filing, reference, and eventual disposition. Maintenance of historical documentation relating to consent to subcontract is the responsibility of the office executing the process. (CI)*

3.6.3. *FAR 4.8, Government Contract files (Reference (p)) prescribes requirements for establishing, maintaining and disposing of contract files (CI).*

GLOSSARY

DEFINITIONS

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

Consent to subcontract. This is the contracting officer's written consent for the contractor to enter into a particular subcontract (FAR 52.244-2, Subcontracts, (Reference (j))). (CI)

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

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

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

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

Subcontractor. A subcontractor is any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime contractor or another subcontractor (FAR 44.101, Definitions, (Reference (q))). (CI)

ACRONYMS

ACO	<i>administrative contracting officer</i>
CAS	<i>cost accounting standards</i>
CMO	<i>contract management office</i>
CPSR	<i>contractor purchasing system review</i>
<i>CUI</i>	<i>controlled unclassified information</i>
DCMA-INST	DCMA Instruction
EDW	<i>electronic document workflow</i>
FAR	Federal Acquisition Regulation
NASA	National Aeronautics and Space Administration
PCO	<i>procuring contracting officer</i>
PLAS	Performance Labor Accounting System
SAT	<i>simplified acquisition threshold</i>
UCA	<i>undefinitized contract action</i>