



DEPARTMENT OF THE NAVY
COMMANDER, REGIONAL MAINTENANCE CENTERS
9170 SECOND STREET, SUITE 245
NORFOLK, VA 23511-2393

CRMCINST 4200.1
Code 400
28 JUL 2008

From: Commander, Regional Maintenance Centers

Subj: SUBCONTRACT ADVANCE NOTIFICATION AND CONSENT REQUIREMENTS UNDER PRIME CONTRACTS

Ref: (a) Federal Acquisition Regulation (FAR Part 1)
(b) Joint Fleet Maintenance Manual (JFMM) Volume VII
(c) FAR Sections 44.000 through 44.403
(d) FAR 2-101 Commercial Item
(e) FAR 52.244-2 Subcontracts
(f) FAR 52.244-5 Competition in Subcontracting

Encl: (1) CRMC 4200/1 (New 1/08); Advance Notification, Request for Subcontract Consent Or Ratification Cover Sheet And Checklist
(2) CRMC 4200/2 (New 1/08); Subcontract Consent Log
(3) CRMC 4200/3 (New 1/08); Subcontract Consent Review Sheet
(4) CRMC 4200/4 (New 1/08); Urgent Request for Subcontract Consent

1. Purpose. To establish common policies and procedures and to assign responsibilities within the Regional Maintenance Center's (RMC) Contracting Department for the review and evaluation of:

- a. Advance notification to subcontract award;
- b. Request for subcontract consent; or
- c. Ratification of a subcontract.

These policies and procedures and responsibilities will be carried out and discharged in a manner consistent with the guidelines in references (a) and (b) and as provided for in reference (c).

2. Information. This is a new instruction. The individual RMCs will ensure their local subcontract advance notification and consent instructions are consistent with this instruction.

3. Definitions

a. Advance Notification - Notification of a proposed subcontract by the prime contractor in advance of subcontract award.

b. Affiliate - Business or individual concerns are affiliates of each other if, directly or indirectly, either one controls or has the power to control the other, or another concern controls or has the power to control both.

c. Approved purchasing system - A contractor's purchasing system that has been reviewed and approved according to FAR Subpart 44.3.

d. Commercial Item - See reference (d) for complete definition.

e. Consent - The contracting officer's written permission for the prime contractor to enter into a particular subcontract.

f. Contractor Teaming Arrangement - An arrangement in which:

(1) Two or more companies form a partnership or joint venture to act as a potential prime contractor; or

(2) A potential prime contractor agrees with one or more other companies to act as its subcontractors under a specified Government contract.

g. Multi-Ship/Multi-Option (MS/MO) Contract. Contract awarded to a contractor (referred to as the MS/MO contractor) that extends over several years and includes options or Contract Line Item Numbers (CLINs) for numerous CNO availabilities, Continuous Maintenance (CM) and Emergent Maintenance (EM) on several different ships. May be characterized by teaming arrangements with partners who have workload sharing arrangements under cost reimbursement subcontracts.

h. Subcontract. Any contract, as defined in FAR Subpart 2.1, entered into by a subcontractor to furnish supplies or services for performance of the prime contract or a subcontract. It includes, but is not limited to, purchase orders, and changes and modifications to purchase orders. It also includes a transfer of commercial items between divisions, subsidiaries, and affiliates of the contractor or subcontractor at any tier.

4. Background. Recent changes in government contracting strategies have resulted in more complex relationships among contractors, as well as an increase in the value, numbers, complexity and types of subcontract actions. These changes have required that the individual RMC Contracting Departments develop common policies and procedures, consistent with references (a) through (c), for the submission and processing of advance notifications, requests for subcontract consent, and ratifications. Enclosures (1) through (4) are provided as examples that the individual RMCs can modify as appropriate to reflect local conditions and more efficiently process these documents.

5. Policy. It is the policy of this command that a complete, thorough, and timely evaluation and review, as described in this instruction, will be made of all proposed subcontracts forwarded for consent or as a result of advance notification requirements. Pricing, contractual, and technical considerations shall be reviewed in accordance with this instruction prior to granting consent. In performing this review, the Contracts Department may obtain technical assistance from the program management team, quality assurance, cost/price analysts, Defense Contract Audit Agency (DCAA) and other sources as necessary. Each RMC Contracts Department will ensure the government's contractual rights to require advance notification and subcontract consent are identified and enforced.

6. RMC Procuring Contracting Officer (PCO) Guidance. When a significant portion of the prime contract is to be performed by subcontractors, it is important to fully assess and understand the nature and extent of the subcontracting arrangement's potential impact on the contract. Particular attention is required when proposed teaming arrangements or subcontracting strategies result in other than competitively-awarded, fixed-price contracts. The following guidance will be followed to ensure the contract contains appropriate provisions that assist the government in managing potential risk in contract cost, schedule or performance.

a. FAR Subpart 44.204 specifies that solicitations and contracts of the following types shall contain FAR 52.244-2 Subcontracts:

- (1) Cost reimbursement;
- (2) Unpriced actions under fixed-price contracts exceeding the simplified acquisition threshold; and
- (3) Letter, time and material, and labor-hour contracts that exceed the simplified acquisition threshold.

b. Government prime contracts for commercial items are exempt from the provisions of reference (c).

c. As specified in FAR 44.204(c), when contracting by negotiation, FAR 52.244-5 Competition in Subcontracting, is required in solicitations and contracts in excess of the Simplified Acquisition Threshold unless:

- (1) A firm-fixed-price contract, awarded on the basis of adequate price competition or whose prices are set by law or regulation, is contemplated; or
- (2) A time-and-materials, labor-hour, or architect-engineer contract is contemplated.

d. In addition, FAR Subpart 44.403 requires that FAR 52.244-6 Subcontracts for Commercial Items be included in all solicitations and contracts for other than commercial items.

e. PCOs must review proposed subcontracting arrangements and, as appropriate, identify specific subcontracts to be either exempt from or subject to the contract's consent requirements. In addition to the status of the prime contractor's purchasing system, the risk factors identified in FAR 44.202-2(b) must be considered.

f. PCOs must also ensure that any unique or particular subcontracting arrangements or teaming arrangements are thoroughly discussed and understood by the Administrative Contracting Officer (ACO) during the turnover of the contract to the ACO.

7. Advance Notification. Under cost reimbursement contracts and unless the contractor maintains an approved purchasing system, and consent is not otherwise required, FAR 44.201-2 requires the contractor to notify the Contracting Officer reasonably in advance of awarding any cost plus fixed-fee or a fixed-price subcontract if the subcontract will exceed the greater of either the simplified acquisition threshold or 5% of the total estimated cost of the contract. The advance notification package must be completed and submitted per using the guidelines contained in paragraph 8c below.

8. Subcontract Consent. FAR 44.201 and reference (e) provide the requirements for subcontract consent as follows:

a. For a contractor with an approved purchasing system, consent is required for subcontracts that are specifically identified by either the PCO or ACO. This identification is made by either listing the subcontracts in paragraph (e) of FAR 52.244-2 or by identifying specific consent requirements in the government letter approving a contractor's purchasing system as a result of a Contractor's Purchasing System Review (CPSR.) Requiring consent allows the government to manage a real or perceived increase in prime contract risk due to the nature and extent of subcontracting.

b. For a prime contractor without an approved purchasing system, subcontract consent is required as follows:

(1) For unpriced purchase orders (including unpriced modifications and unpriced delivery orders) under a firm fixed price contract;

(2) For cost-reimbursement, time-and-materials, or labor-hour subcontracts; or

(3) For fixed-price subcontracts that exceed the greater of the simplified acquisition threshold or 5% of the total estimated cost of the contract.

c. Advance Notification and Request for Subcontract Consent Package Contents for other than MS/MO subcontracts. The contractor's advance notification or request for subcontract consent shall include the following items:

(1) A description of the supplies or services to be subcontracted;

(2) Identification of the type of subcontract to be used;

(3) Identification of the proposed subcontractor;

(4) The proposed subcontract price;

(5) The subcontractor's current, complete, and accurate cost or pricing data and Certificate of Current Cost or Pricing Data, if required by other contract provisions;

(6) The contractor's Disclosure Statement or Certificate relating to Cost Accounting Standards when such data are required by other provisions of this contract (or have available as per local instruction);

(7) A copy of the proposed subcontract, including all terms and conditions and clause flow-down provisions; and

(8) A Price Negotiation Memorandum (PNM) containing:

(a) If other than firm-fixed-price, the justification of the sub-contract type selected, consistent with the criteria in FAR Section 16.104;

(b) The most significant considerations controlling establishment of initial or revised prices;

(c) The reason cost or pricing data were or were not required; deviations will be explained;

(d) The extent, if any, to which the contractor did not rely on the subcontractor's cost or pricing data in determining the price objective and in negotiating the final price;

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

(f) The reasons for any significant difference between the Contractor's price objective and the price negotiated;

(g) The basis for the contractor's fair and reasonableness determination; and

(h) When applicable, a complete explanation of the incentive fee or profit plan as specified in reference (e).

d. For subcontracts awarded under MS/MO contracts, in addition to the requirements of paragraph 8c above, and per references (a) and (e), the consent package must address the following:

(1) A memorandum fully describing the prime contractor's sound business judgment and rationale in determining that awarding the subcontract is in the best interest of the government. Provide a description of the subcontractor's demonstrated value or contribution to the prime's goal of providing the best combination of performance, cost and delivery for maintenance and modernization services to the Navy. This description shall address the following:

(a) Price evaluation. To prevent redundant information, all relevant price information should be included in this paragraph instead of in paragraph 8c(8) above. The proposed price is a critical factor that must be part of any valid business decision and/or exercise of business judgment. Although a detailed cost analysis will be performed by the government on many of the teaming subcontractor's proposals, a price evaluation of the subcontractor's proposed price is required prior to the proposal being submitted to the government, the existence of teaming agreements notwithstanding. This fair and reasonable determination is particularly important given the inherent lack of competition in the subcontracting teaming arrangements.

(b) There are other important MS/MO contract goals and benefits that also must be addressed to demonstrate why the selection of this subcontractor is in the best interests of the government, such as:

1. Description of subcontractor's recent past performance in similar work for the prime contractor: (i.e., technical performance, cost savings/avoidance or other efficiencies);

2. Learning achieved based upon increased familiarity with work to be performed;

3. Areas or work items where cost reduction goals will be attempted or an explanation of why there are no cost reduction goals;

4. Assisting the prime contractor in achieving overall contractual goals (small business subcontracting goals, workforce stabilization, reduction in or prevention of increases in prime's own direct or indirect costs, risk management);

5. If problems (such as cost or schedule) have been experienced with this subcontractor, explain what actions have been taken to avoid their recurrence;

6. Include any other examples of benefits or considerations that demonstrate the value of this subcontractor to the prime and the Government.

9. Ratification request. Although the Contracting Officer may ratify a subcontract originally placed without the required prior consent, ratification will be rarely granted and then only in very exceptional cases. The ratification request must be signed by an officer of the Corporation. A contractor's ratification request must contain all of the elements identified in either paragraph 8c or 8d above, as well as the following:

a. Detailed explanation of why there was a failure to obtain consent - i.e., who, what, when, why;

b. Detailed procedures that have been instituted by the contractor to prevent similar incidents in the future;

c. Detailed explanation as to why it is clearly in the government's best interest to approve the ratification;

10. Processing. Contractors are responsible for submitting complete notification and consent packages sufficiently in advance of desired award date to allow for thorough government review and consideration as specified in FAR 44.202-2. Normal turn-around time should be three to five business days, but may take longer, depending on the nature, completeness and complexity of the request. However, failure for the government to provide consent is not an excusable delay for the contractor.

Notification and Consent packages for MS/MO teaming subcontracts, as well as for non-teaming subcontracts for which the source is known, should be submitted at the same time as the prime's proposal for the 80% package. Changes to consent requests due to subsequent changes to the package can be submitted with the final proposal. It is expected that the government review and consent decision will be made prior to or at the time of definitization, provided that the consent request package is provided in a timely, logical and complete fashion.

a. The contractor will submit the Advance Notification and Request for Subcontract Consent, per enclosure (1) with required documentation attached as a complete and cohesive package. The package must be sent to the RMC Contracts Department designated representative for subcontract consent.

b. Receipt of the advance notification or subcontract consent package will be documented by the designated representative. This requirement can be met either by using the format and information in enclosure (2) or maintained electronically. Each RMC can determine what information is required and in what format, provided the basic minimum information per enclosure (2) is captured.

c. The designated representative will review and evaluate the package in accordance with the guidelines specified in FAR 44.202-2, using enclosure (3). The contractor should be notified as soon as possible with regard to any incomplete or deficient packages. Detailed evaluations of the following areas are particularly important and are included for emphasis:

(1) Has the contractor fulfilled its' responsibilities for competitive subcontracting per FAR 52.244-5 Competition in Subcontracting and FAR 9.604?

(2) If applicable, has the contractor made a price reasonableness determination and have price negotiations been held, were they effective and are they fully documented to show how the price was determined?

(3) If other than firm fixed price, has justification for proposed subcontract type been provided and is it consistent with the criteria of FAR 16.104?

(4) Particularly careful and thorough consideration is necessary when:

(a) The prime contractor's purchasing system or performance is inadequate;

(b) Close working relationships or ownership affiliations between the prime and subcontractor may preclude free and open competition or result in higher prices;

(c) Subcontracts are proposed for award on a non-competitive basis, at prices that appear unreasonable, or at prices higher than those offered to the government in comparable circumstances; or

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

11. Urgent consent requirements. In the case of genuine urgency, a Conditional Consent to Subcontract can be granted based upon submission of a Request for Urgent Consent (enclosure (4)). This must be submitted by the prime's Subcontract Manager or other person as designated by the prime contractor. The person designated must be in a position equivalent to or higher than the Subcontracts Manager. Consent will not be granted until the government is convinced that the expedited consent is in the government's best interest. The procedures are as follows:

a. During normal business hours:

(1) Submit the urgent request form, via email or fax, completely filled out and containing a clear and factual explanation for the urgency.

(2) Follow up by calling the designated representative to confirm receipt and if necessary discuss the situation further.

b. Outside of normal business hours and in the case of a genuine emergency only:

(1) Notify the designated representative of the emergency situation. The requester should be prepared to address all areas on the request form.

(2) Submit the request, via email or fax, completely filled out and containing a clear and factual explanation for the urgency. This form must be received by close of business on the first normal business day following the request.

c. Consents received via this process will be conditional. Consent will be revoked if a complete consent package, as described in paragraph 8c or 8d above, is not received within 10 business days after consent is provided. Contractors should provide names and contact information of people designated to submit urgent consent requests to the designated representative.

12. Disclaimer. Neither consent nor ratification by the Contracting Officer to any subcontract nor approval of the Contractor's purchasing system shall constitute a determination:

- a. Of the acceptability of any subcontract terms or conditions;
- b. Of the allowability of any cost under any contract; or
- c. To relieve the Contractor of any responsibility for performing any contract.

13. Responsibilities and Action

a. The RMC Contracts Department has primary responsibility to ensure proper action on advance notification, ratification and subcontract consent packages submitted.

b. Once the review is completed, the designated representative shall complete the Subcontract Consent Checklist ((enclosure (3)) and file it with the request for consent package. Ultimately, all advance notification and subcontract consent documentation must be filed with the applicable contract files.

c. Approval. The designated representative will approve or disapprove the request and sign the Advance Notification or Request for Consent cover sheet (enclosure (1)) and return a copy to the contractor. The reasons for denial of a consent or ratification request will be included under the enclosure (1) "Remarks" section. The original signed cover sheet will be retained with the consent package.

14. Forms. CRMC 4200/1 (New 1/08) through CRMC 4200/4 (New 1/08) is available on MARMC's Intranet.



J. C. ORZALLI

Dist:

- MARMC (Code 100, 300, 100PI, 400, 1200)
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Copy to:
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ADVANCE NOTIFICATION, REQUEST FOR SUBCONTRACT CONSENT OR
RATIFICATION COVER SHEET AND CHECKLIST

DATE: _____	
FROM: _____ _____	TO: RMC _____ _____
PURPOSE: <input type="checkbox"/> Advance Notification <input type="checkbox"/> Subcontract Consent <input type="checkbox"/> Ratification	

THE FOLLOWING INFORMATION IS PROVIDED:

CONTRACTOR'S SERIAL NUMBER:	PURCHASE ORDER NUMBER:
PRIME CONTRACT NUMBER:	VESSEL NAME:
DESCRIPTION OF THE SUPPLIES OR SERVICES TO BE SUBCONTRACTED:	
TYPE OF SUBCONTRACT PROPOSED AND JUSTIFICATION IF OTHER THAN FFP:	
NAME OF PROPOSED SUBCONTRACTOR:	
PROPOSED SUBCONTRACT PRICE:	
PROPOSED VENDOR: <input type="checkbox"/> IS / <input type="checkbox"/> IS NOT ON LIST OF PARTIES EXCLUDED FROM FEDERAL PROCUREMENT	
SIZE AND TYPE OF BUSINESS (I.E., SMALL, HUBZONE, 8(A), WOMEN OR VETERAN OWNED, ETC.):	

COPIES OF THE FOLLOWING DOCUMENTATION ARE INCLUDED AS INDICATED BELOW:

COPY OF CERTIFICATE OF CURRENT COST OR PRICING DATA, IF REQUIRED? <input type="checkbox"/> YES <input type="checkbox"/> NO
-Reason not included: _____
COPY OF SUBCONTRACTOR'S DISCLOSURE STATEMENT OR CERTIFICATE RELATING TO COST ACCOUNTING STANDARDS, IF REQUIRED? <input type="checkbox"/> YES <input type="checkbox"/> NO
-Reason not included: _____
COPY OF SOURCE SELECTION JUSTIFICATION? <input type="checkbox"/> YES <input type="checkbox"/> NO
-Reason not included: _____

CRMC 4200/1 (New 1/08)

COPY OF PRICE NEGOTIATION MEMORANDUM, ADDRESSING ALL CONSIDERATIONS IDENTIFIED IN FAR 52.244-2 SUBCONTRACTS AND PRICE REASONABLENESS? YES NO

-Reason not included: _____

COMPLETE EXPLANATION OF THE INCENTIVE FEE OR PROFIT PLAN, IF APPLICABLE?
 YES NO

-Reason not included: _____

COPY OF THE PROPOSED SUBCONTRACT, INCLUDING ALL TERMS AND CONDITIONS AND CLAUSE FLOW DOWN PROVISIONS? YES NO

-Reason not included: _____

SUBMITTED BY:

SIGNATURE:	TITLE:	DATE:
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ACTION BY GOVERNMENT:

This action does not constitute a determination:

1. of the acceptability of the subcontract terms or conditions;
2. of the allowability of any cost under this contract; or
3. to relieve the contractor of any responsibility for performing this contract.

Consent: GRANTED NOT GRANTED

DESIGNATED REPRESENTATIVE:	TITLE:	DATE:
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Remarks:

SUBCONTRACT CONSENT REVIEW SHEET

MEMORANDUM FOR FILE

DATE: _____

PRIME CONTRACTOR:	
PRIME CONTRACT NO. / JOB ORDER NO.:	
PROPOSED SUBCONTRACTOR:	
SUBCONTRACTOR SIZE AND TYPE (SMALL, WOMEN OWNED, HUBZONE, 8(a), ETC.):	
TYPE OF SUBCONTRACT:	
PURCHASE ORDER NO.:	AMOUNT OF PURCHASE ORDER:

STATUS OF PRIME CONTRACTOR'S PURCHASING SYSTEM

- APPROVED NOT APPROVED
 CONSENT ADVANCE NOTIFICATION RATIFICATION

SUBCONTRACTOR SELECTION AND RESPONSIBILITY

1. Is the decision to subcontract consistent with the contractor's approved make or buy program or teaming agreement? YES NO
2. Is the subcontractor an affiliate or subsidiary of the prime? YES NO
 If YES, has proper consideration been given to pricing, competition, and type of contract? YES NO

Comments: _____

3. Is the proposed subcontract type appropriate for the risks involved and consistent with current policy? YES NO
4. Do the terms and conditions of the subcontract appear reasonable and in the best interest of the government? YES NO
5. Are all required or appropriate clauses from the prime contract flowed down to the subcontractor? YES NO
6. Is the basis for selecting the subcontractor and determining responsibility legitimate? YES NO
7. Is subcontractor debarred, ineligible, or suspended? YES NO
8. Is subcontractor EEO compliant? YES NO
9. Has the contractor complied with prime contract requirements regarding: Small business subcontracting, including, if applicable, its plan for subcontracting with small, veteran-owned, service-disabled veteran-owned, HUB Zone, small disadvantaged and women-owned small business concerns (see FAR Part 19); and YES NO

(a) Purchase from nonprofit agencies designated by the Committee for Purchase From People Who Are Blind or Severely Disabled (Javits-Wagner-O'Day Act (JWOD) (41 U.S.C. 48)) (see FAR Part 8)?

Comments: _____

TECHNIQUES OF COST AND PRICE ANALYSIS

10. Was adequate price competition obtained or its absence properly justified? YES NO

11. Price analysis:

Competitive award to lowest bidder YES NO

Comparison with independent estimate YES NO

Comparison with prior purchases YES NO

Comparison with catalog prices YES NO

If teaming/resource partner, were current DCAA or teaming agreement rates used? YES NO

12. Cost Analysis:

DCAA Audit Report YES NO

Technical Evaluation YES NO

Certificate of Current Cost and Pricing Information YES NO

Memorandum of cost and price analysis YES NO

13. Are cost accounting standards applicable to the prime contract? YES NO
If YES:

Is CAS applicable to the subcontract YES NO

Has contractor obtained required CAS certificates? YES NO

Has CAS delegation YES NO letter been prepared?

OTHER CONSIDERATIONS

14. Government Furnished Facilities:

Special tools, facilities, patterns etc. required? YES NO

Authorization for their use obtained? YES NO

15. Incentive Subcontracts:

Incentive/award fee or profit plan: YES NO

Critical performance elements: YES NO

Reason for incentives: _____

16. Overall, does this subcontract, as presented, offer the best value to the government?

YES NO

Comments: _____

17. Other comments: _____

Consent/Ratification of subject subcontract granted?

YES NO

All reviews have been made and are attached.

CONTRACT SPECIALIST SIGNATURE:

DATE:

URGENT REQUEST FOR SUBCONTRACT CONSENT

DATE _____

EMAIL TO:	CELL PHONE:	FAX:
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PRIME CONTRACTOR:

PRIME CONTRACT NO. / JOB ORDER NO.:

PROPOSED SUBCONTRACTOR:

ESTIMATED SUBCONTRACT PRICE:

SUBCONTRACT TYPE: (*Explain basis for selection if other than Firm Fixed Price*)

SCOPE OF WORK: EXISTING NEW WORK GROWTH WORK

IS THIS WORK A CONTROLLING ITEM: YES NO

DESCRIPTION OF WORK AND JUSTIFICATION OR URGENCY:

WHAT IS BASIS FOR SUBCONTRACTOR SELECTION? IF NOT COMPETITION AND PRICE, JUSTIFY WHY EXPEDITED AWARD TO THIS SUBCONTRACTOR AT THE QUOTED PRICE IS IN THE BEST INTEREST OF THE GOVERNMENT.

I AGREE TO SUBMIT THE FULL CONSENT PACKAGE, INCLUDING DOCUMENTATION AS NECESSARY TO JUSTIFY THE URGENCY, WITHIN 10 BUSINESS DAYS OF THIS DATE. I ALSO CERTIFY THAT NONE OF THE TERMS AND CONDITIONS OF THIS SUBCONTRACT WILL CONTAIN THE PROHIBITIONS TO CONSENT IDENTIFIED IN FAR 44.203 (b).

SIGNATURE: _____ TITLE: _____

CONDITIONAL CONSENT: GRANTED NOT GRANTED DATE: _____

SIGNATURE: _____ TITLE: _____

CAUTION: THIS CONSENT DOES NOT MODIFY THE CONTRACT OR AUTHORIZE WORK NOT PREVIOUSLY IN THE CONTRACT