

UNIT 55: PERFORMANCE MANAGEMENT

October 2003

Overall Duty	Monitor contract performance and take any necessary action related to delays in contract performance or the need to stop work under the contract.
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Overall Conditions	Given a contract, the contract administration plan, and any available information related to contract performance.
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Overall Standards	Identify the performance-related terms and conditions of the contract, including the statement of work and/or other requirements documents, packaging and marking terms and conditions, inspection and acceptance terms and conditions, delivery or performance schedules, contract administration data requirements, and any other special contract requirements. Monitor contract performance and acceptance and resolve any identified problems.
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Part A: Performance Monitoring and Acceptance

Sub-Duty	Enforce contractor and Government compliance with contract requirements.
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Sub-Duty Standard	Monitor contractor and Government compliance with contract requirements. Identify, document, assess, and resolve problems, where possible, without resorting to formal contractual remedies.
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Part B: Delays

Sub-Duty Identify any delays in contract performance and modify the contract as necessary to mitigate the effect of an excusable delay.

Additional Conditions Given evidence of performance delays.

Sub-Duty Standard Identify delays and determine whether they are excusable, nonexcusable, or commingled. When appropriate, negotiate an equitable adjustment for excusable delays.

Part C: Stop Work

Sub-Duty Stop contract work when such action is in the Government's interest.

Additional Conditions Given a contract with a stop work clause and evidence of a need to stop work.

Sub-Duty Standard Stop work when the benefits of such action outweigh the related costs. When appropriate, make an equitable adjustment in contract schedule and/or price to compensate the contractor for the effects of the work stoppage.

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Policies

<i>FAR</i>	<i>Agency Suppl.</i>	<i>Subject</i>
1.602-3		Ratification of unauthorized commitments.
4.7		Contractor records retention.
8.405-3		Inspection and acceptance of items acquired through the Federal Supply Schedule program.
8.605(c)		Disputes regarding price, quality, character, or suitability of supplies produced by Federal Prison Industries, Inc.
8.7		Acquisition from nonprofit agencies employing people who are blind or severely disabled.
9.307		Government administration procedures in first article testing and approval.
12.208		Contract quality assurance for commercial item acquisition.
12.402		Acceptance for commercial item acquisition.
12.403(c)		Termination for cause and requirement for commercial item contractors to notify the Government of excusable delays.
13.101(a)(3)		Providing for the inspection of supplies or services as prescribed in 46.404.
22.101-2(b)		When a labor work stoppage can be considered an excusable delay.
33.213		Obligation to continue performance – even when the contractor has filed a claim.
42.4		Correspondence and visits with the contractor.
42.11		Production surveillance and reporting.
42.1303		Stop-work orders.
42.1304		Government delay of work.
42.16		Small business contract administration.
43.102		Policy.
43.104		Notification of contract changes.
46.1		General policies and responsibilities for inspection and acceptance.
46.401		Government contract quality assurance general policy.
45.404 46.404		Rent-free use.
46.5		Acceptance.
46.6		Material inspection and receiving reports.
49.401(b)		No termination for default if the delay was excusable.
52.209-3		First article approval – contractor testing.
52.209-4		First article approval – Government testing.
52.211-5		Material requirements.
52.211-8		Time of delivery.
52.211-9		Desired and required time of delivery.

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<i>FAR</i>	<i>Agency Suppl.</i>	<i>Subject</i>
52.211-16		Variation in quantity.
52.211-17		Delivery of excess quantities.
52.211-18		Variation in estimated quantity.
52.212-4(a)		Inspection/acceptance for commercial items.
52.212-4(f)		Excusable delay for commercial items.
52.212-4 (n)		Title for commercial items.
52.213-4(e)		Excusable delay for simplified acquisitions other than commercial items.
52.222-2		Payment for overtime premiums.
52.242-2		Production progress reports.
52.242-12		Report of shipment.
52.242-15		Stop-work order.
52.242-17		Government delay of work.
52.246-1		Contractor inspection requirements.
52.246-2		Inspection of supplies – fixed-price.
52.246-3		Inspection of supplies – cost-reimbursement.
52.246-4		Inspection of services – fixed-price.
52.246-5		Inspection of services – cost-reimbursement.
52.246-6		Inspection – time-and-material and labor-hour.
52.246-7		Inspection of research and development – fixed-price.
52.246-8		Inspection of research and development – cost-reimbursement.
52.246-9		Inspection of research and development (short form).
52.246-11		Higher-level contract quality requirement.
52.246-15		Certificates of conformance.
52.246-16		Responsibility for supplies.
52.247-29		F.o.b. origin.
52.247-30		F.o.b. origin, contractor's facility.
52.247-31		F.o.b. origin, freight allowed.
52.247-32		F.o.b. origin, freight prepaid.
52.247-33		F.o.b. origin, with differentials.
52.247-34		F.o.b. destination.
52.247-35		F.o.b. destination, within consignee's premises.
52.247-36		F.a.s. vessel, port of shipment.
52.247-37		F.o.b. vessel, port of shipment.
52.247-38		F.o.b. inland carrier, point of exportation.
52.247-39		F.o.b. inland carrier, country of importation.
52.247-40		Ex dock, pier, or warehouse, port of importation.
52.247-41		C & f. destination.
52.247-42		C.i.f. destination.

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<i>FAR</i>	<i>Agency Suppl.</i>	<i>Subject</i>
52.247-43		F.o.b. designated air carrier's terminal, point of exportation.
52.247-44		F.o.b. designated air carrier's terminal, point of importation.
52.247-48		F.o.b. destination – evidence of shipment.
52.247-58		Loading, blocking, and bracing of freight car shipments.
52.247-59		F.o.b. origin – carload and truckload shipments.
52.247-61		F.o.b. origin – minimum size of shipments.
52.247-62		Specific quantities unknown.
52.247-63		Preference for U.S.-flag air carriers.
52.247-64		Preference for privately owned U.S.-flag commercial vessels.
52.249-8		Default (fixed-price supply and service).
52.249-9		Default (fixed-price research and development).
52.249-14		Excusable delays.

Other KSAs

1. Knowledge of contract terms and conditions that involve inspection, acceptance, or other aspects of contract performance (including any special contractual remedies provided in the clause for breach of that clause), such as:

- Supplies or services and prices (Uniform Contract Format (UCF) Section B);
- Descriptions/specifications (UCF Section C);
- Packaging and marking (UCF Section D);
- Inspection and acceptance (UCF Section E) and related FAR clauses;
- Deliveries or performance (UCF Section F) and related FAR clauses;
- Contract administration data (UCF Section G);
- Special contract administration requirements (UCF Section H); and
- Contract clauses (UCF Section I).

2. Knowledge of criteria and conditions for distinguishing excusable delay from a delay that cannot be excused.

3. Knowledge of typical examples of excusable delays (e.g., acts of God or the public enemy; acts of the Government in either its sovereign or contractual capacity, fire, floods, epidemics, quarantine restrictions, strikes (but see FAR 22.101-2(b)), freight embargoes, unusually severe weather, and defaults by subcontractors when supplies or services in question could not have been obtained from other sources in sufficient time to meet the required delivery schedule).

4. Knowledge of what damages are recoverable (Government negligence or fault) and not recoverable (neither party at fault).

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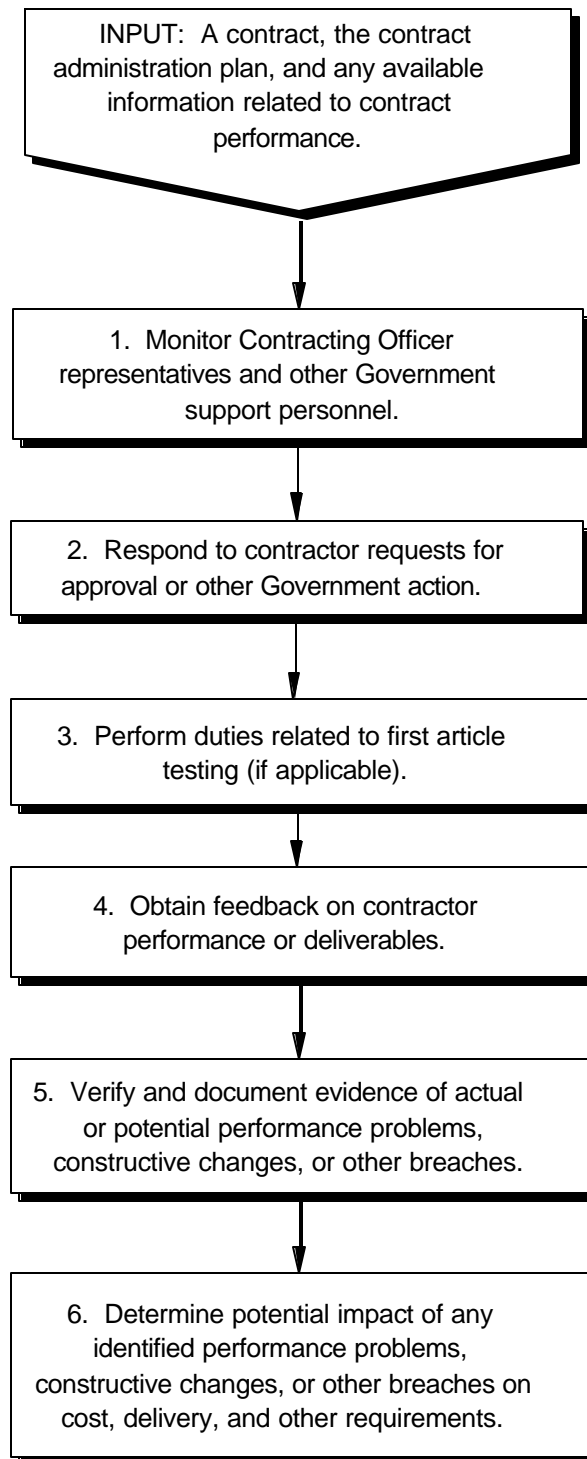
5. Knowledge of benefits to a contractor from complying with an oral stop work order even though such orders, given orally, have no legal standing.
6. Knowledge of typical reasons for using a stop work order.
7. Knowledge of legal consideration.
8. Skill at building working partnerships with contractors in accomplishing common goals.
9. Skill at making the contractor whole for any loss incurred from stoppage – whether or not a legal remedy or duty exists.
10. Ability to deal effectively and calmly with high stress situations.
11. Ability to work with Government and contractor personnel to achieve goals related to contract performance.
12. Ability to identify problems, determine the accuracy and relevance of related information and use sound judgment to generate viable alternatives.
13. Ability to make sound well-informed and objective decisions related to contract performance.
14. Ability to maintain the honesty and integrity of the acquisition process.

Other Policies and References (Annotate As Necessary):

UNIT 55: PERFORMANCE MANAGEMENT

Part A: Performance Monitoring and Acceptance

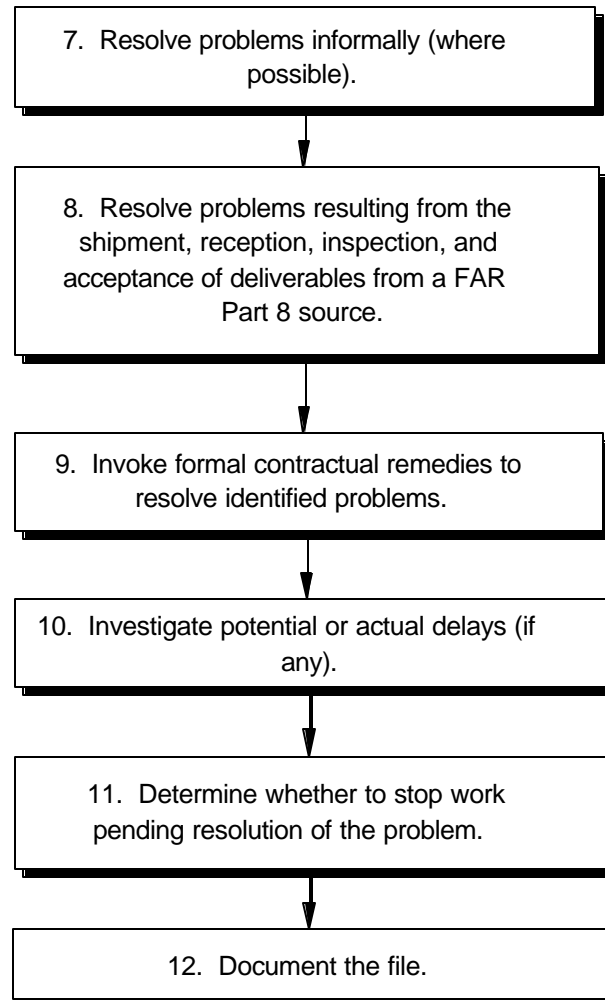
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Part A: Performance Monitoring and Acceptance

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UNIT 55: PERFORMANCE MANAGEMENT

Part A: Performance Monitoring and Acceptance

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Tasks

Related Standards

<p>1. Monitor Contracting Officer representatives and other Government support personnel.</p>	<p>Contact Contracting Officer representatives (CORs) and other support personnel at least as often as scheduled in the contract administration plan.</p> <ul style="list-style-type: none">• Obtain any required reports.• Obtain information on their contacts with the contractor, including copies of any written correspondence.• Advise them to report any verbal exchange with the contractor that involves performance, price, or other substantive contract requirements.• Identify and, where possible, forestall constructive changes.• Ensure that the CORs properly carry out their roles and responsibilities:<ul style="list-style-type: none">– Within the limits of their authority;– Within time limits established in the contract; and– Avoiding any action that may:<ul style="list-style-type: none">? Be inconsistent with any contract requirement; or? Result in claims or waivers, of changes, or of other contract modifications. (See 43.102(a)) <p>Instruct contractors to submit notices of potential constructive changes per FAR 43.104.</p> <p>Identify other evidence of constructive changes (e.g., through site visits, requests for change orders from the contractor, invoice items, or amounts not contemplated in contract).</p>
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Part A: Performance Monitoring and Acceptance

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Tasks

Related Standards

<p>2. Respond to contractor requests for approval or other Government action.</p>	<p>Correctly identify the contract clause (if any) that matches the request. Resolve the request as provided in the clause.</p> <p>Examples include requests for approval to:</p> <ul style="list-style-type: none">• Pay overtime in accordance with the Payment for Overtime Premiums clause (FAR 52.222-2); and• Substitute used or surplus materials for new materials in accordance with the Material Requirements clause (FAR 52.211-5).
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Part A: Performance Monitoring and Acceptance

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Tasks	Related Standards
<p>3. Perform duties related to first article testing (if applicable).</p>	<p>Before the contractor ships the first article, or the first article test report, to the Government laboratory or other activity responsible for approval at the address specified in the contract, provide that activity with as much advance notification as is feasible of the forthcoming shipment, and:</p> <ul style="list-style-type: none">• Advise that activity of the contractual requirements for testing and approval, or evaluation, as appropriate;• Call attention to the notice requirement in the appropriate first article approval clause (FAR 52.209-3 or 52.209-4); and• Request that the activity inform the contract administration office of the date when testing or evaluation will be completed. <p>When informed by the Government laboratory or other activity responsible for first article testing or evaluation whether to approve, conditionally approve, or disapprove the first article, notify the contractor of the action taken and furnish a copy of the notice to the contract administration office. The notice must include the:</p> <ul style="list-style-type: none">• First article shipment number (when available); and• Applicable contract line item number. <p>Any changes in the drawings, designs, or specifications determined necessary must be made under the Changes clause and not by the notice of approval, conditional approval, or disapproval furnished the contractor.</p>

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Part A: Performance Monitoring and Acceptance

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Tasks	Related Standards
4. Obtain feedback on contractor performance or deliverables.	<p>Conduct monitoring, data collection, inspection, and acceptance as provided in the contract and the contract administration plan.</p> <ul style="list-style-type: none">• Obtain sufficient data to verify satisfactory performance.• Recognize any evidence of potential performance problems or other breach by either contractor or Government personnel.• Handle correspondence with the contractor and visits to the contractor as prescribed in FAR 42.4. <p>Sources of information include:</p> <ul style="list-style-type: none">• COR reports and informal feedback;• Inspection and acceptance reports;• Requiring activities and/or end users;• Personal site visits/observation of work (scheduled and unscheduled);• Contractor reports (e.g., production progress reports, shop plans, shop travelers, blueprints, stick drawings, wiring diagrams, PERT charts, and subcontract orders); and• Subcontractor complaints.

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Part A: Performance Monitoring and Acceptance

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Tasks	Related Standards
<p>5. Verify and document evidence of actual or potential performance problems, constructive changes, or other breaches.</p>	<p>When there is evidence of an actual or potential performance problem, constructive change, or other breach, identify the terms and conditions at issue (if any).</p> <p>Potential sources of information for verification and documentation include:</p> <ul style="list-style-type: none"> • Personal observation; • The contractor; • COR; • Auditor; • Quality assurance personnel; and • Requiring activity and end users. <p>Contact only those individuals necessary to verify evidence. Data should be sufficient to identify both the symptoms and causes of any potential problems. Identify and obtain corrections to any Government report (e.g., inspection). Inform the requiring activity (when appropriate).</p>
<p>6. Determine potential impact of any identified performance problems, constructive changes, or other breaches on cost, delivery, and other requirements.</p>	<p>Establish what cost, delivery, and other requirements were before the performance problem, constructive change, or other breach and what they were or would be after.</p>
<p>7. Resolve problems informally (where possible).</p>	<p>Attempt to reach informal resolutions prior to invoking a formal remedy. Alternatives to a formal contractual remedy, include the following:</p> <ul style="list-style-type: none"> • Informal agreement on corrective step. • Memorandum of concern to request a written plan from the contractor for correcting performance, including: <ul style="list-style-type: none"> – Statement of the problem; – Need for corrective action; – Response time; and – Place for contractor to sign acknowledging receipt. • Contract modification.

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Part A: Performance Monitoring and Acceptance

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Tasks	Related Standards
8. Resolve problems resulting from the shipment, reception, inspection, and acceptance of deliverables from a FAR Part 8 source.	FAR Part 8 sources include: <ul style="list-style-type: none">• Federal Supply Schedule contractors;• Federal Prison Industries, Inc; and• Javits-Wagner-O'Day Act (JWOD) participating nonprofit agencies. Resolve problems following the procedures in FAR Part 8, including: <ul style="list-style-type: none">• Federal Supply Schedule item Inspection and acceptance (FAR 8.405-3);• Disputes regarding price, quality, character, or suitability of supplies produced by Federal Prison Industries, Inc. (FAR 8.605(c);• JWOD agency compliance with orders (FAR 8.705-4);• JWOD agency shipping (FAR 8.708);• JWOD agency quality of merchandise (FAR 8.710);• Quality complaints about JWOD supplies or services (FAR 8.711);• Specification changes for JWOD items (FAR 8.712); and• JWOD agency addresses (FAR 8.714).
9. Invoke formal contractual remedies to resolve identified problems.	If the contractor is unwilling or unable to resolve a problem with its performance, invoke a formal contractual remedy (e.g., a cure notice).

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Part A: Performance Monitoring and Acceptance

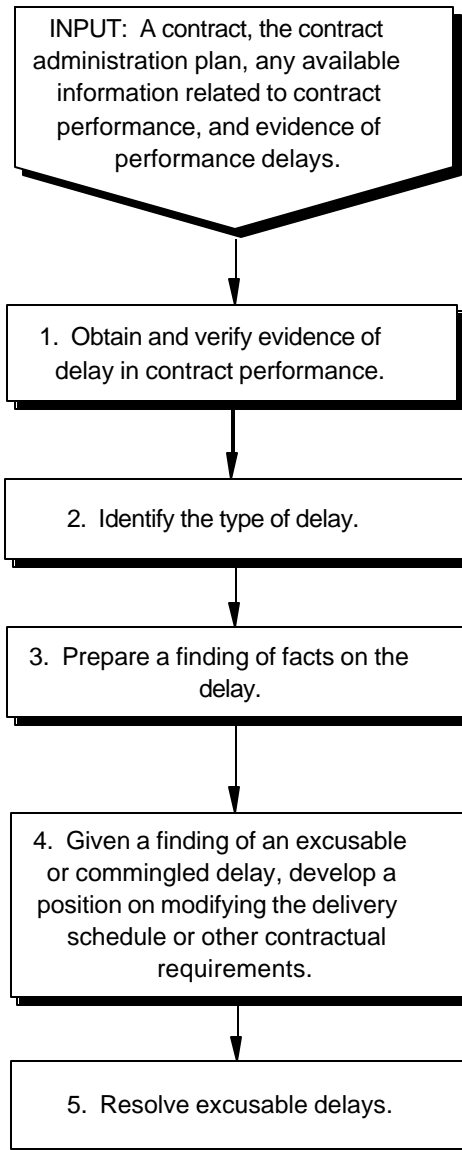
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Tasks	Related Standards
10. Investigate potential or actual delays (if any).	<p>If the contractor claims that a pending or actual delay is excusable, investigate and resolve the issue of whether the delay is excusable under the applicable contract clause.</p> <p>For example, for a commercial item under FAR 52.212-4(n), the contractor is not responsible for delays caused by an occurrence beyond its reasonable control, such as:</p> <ul style="list-style-type: none">• Acts of God or the public enemy;• Acts of the Government in either its sovereign or contractual capacity;• Fires;• Floods;• Epidemics;• Quarantine restrictions;• Strikes;• Unusually severe weather; and• Delays of common carriers.
11. Determine whether to stop work pending resolution of the problem.	If there is a need to stop work while the problem is being resolved, follow the procedures for stop-work orders.
12. Document the file.	Document the contract file concerning: <ul style="list-style-type: none">• Monitoring activities;• Evidence of actual or potential performance problems, constructive changes, or other breaches; and• Any actions taken to resolve potential performance problems, constructive changes, or other breaches.

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Part B: Delays

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UNIT 55: PERFORMANCE MANAGEMENT

Part B: Delays

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Tasks	Related Standards
1. Obtain and verify evidence of delay in contract performance.	Obtain and verify evidence of delay based on: <ul style="list-style-type: none">• Feedback from monitoring, inspection and acceptance;• Notice from the contractor under:<ul style="list-style-type: none">– Contract Terms and Conditions – Commercial Items, Excusable Delays (FAR 52.212-4(f)); or– Terms and Conditions – Simplified Acquisitions (Other Than Commercial Items), Excusable Delays (FAR 52.213-4(e)); or• A contractor's claim under the Government Delay of Work clause (FAR 52.242-17).

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Part B: Delays

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Tasks	Related Standards
2. Identify the type of delay.	<p>Correctly distinguish delays that are:</p> <ul style="list-style-type: none">• Excusable, because they were caused by an occurrence beyond the reasonable control of the contractor;• Nonexcusable, because they were caused by an occurrence within the reasonable control of the contractor; or• Commingled, because delay results from both excusable and nonexcusable causes. <p>In determining whether a delay is excusable, refer to the appropriate contract clause:</p> <ul style="list-style-type: none">• Contract Terms and Conditions – Commercial Items, Excusable Delays (FAR 52.212-4(f));• Terms and Conditions – Simplified Acquisitions (Other Than Commercial Items), Excusable Delays (FAR 52.213-4(e));• Default (Fixed-Price Supply and Service) (FAR 52.249-8);• Default (Fixed-Price Research and Development) (FAR 52.249-9); or• Excusable Delays (FAR 52.249-14). <p>If the contract includes the Government Delay of Work clause (FAR 52.242-17), identify delays that are the result of:</p> <ul style="list-style-type: none">• An act of the Contracting Officer in contract administration that was not authorized by the contract; or• A failure of the Contracting Officer to act within the time specified in the contract, or within a reasonable time if none is specified in the contract.

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Part B: Delays

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Tasks	Related Standards
3. Prepare a finding of facts on the delay.	<p>Accurately document the facts related to the delay, including:</p> <ul style="list-style-type: none">• A description of the delay;• A list of persons with factual knowledge of the delay;• Relevant statements or evidential facts relating to the occurrence that caused the delay and how that occurrence affected contract performance;• Related information on contract performance, such as:<ul style="list-style-type: none">– The date work under the contract began;– Whether work was on schedule when the delay occurred;– Contract progress made to date;– The contractor’s remaining obligations under the contract; and– Contractor and Government expectations regarding contract completion;• Reasons for believing that all or part of the delay is excusable; and• Extent to which the Government might be liable for an equitable adjustment or claim (e.g., under the Government Delay of Work clause (FAR 52.242-17)) associated with the delay.

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Part B: Delays

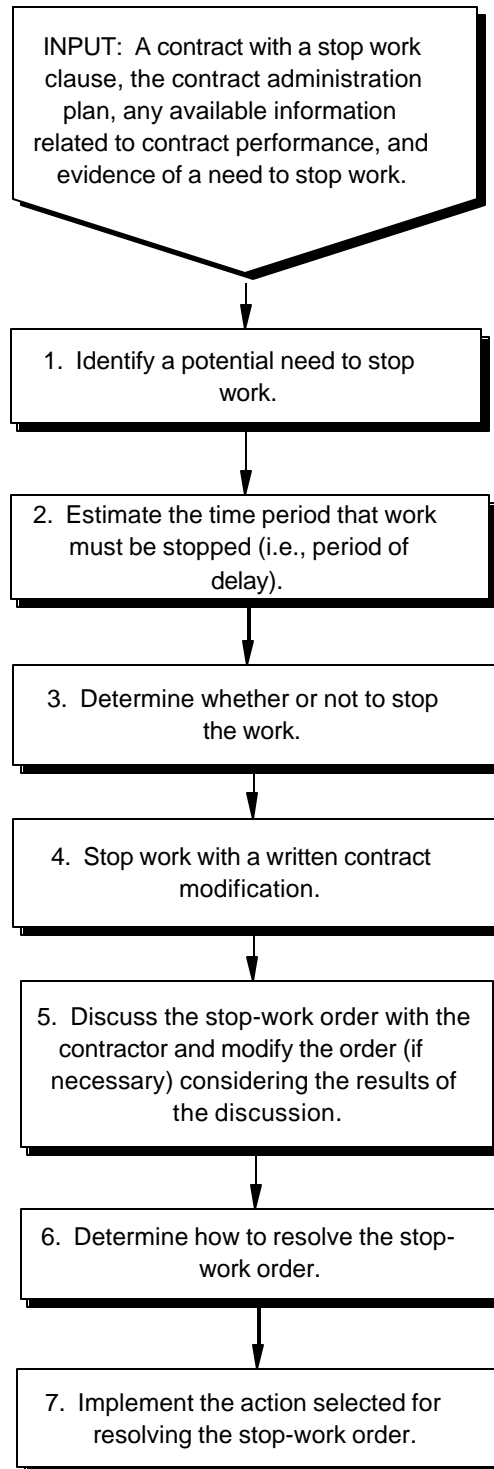
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Tasks	Related Standards
<p>4. Given a finding of an excusable or commingled delay, develop a position on modifying the delivery schedule or other contractual requirements.</p>	<p>With other members of the Government acquisition team:</p> <ul style="list-style-type: none"> • Estimate a reasonable period of additional time to perform (if applicable). • Identify potential alternatives for modifying the requirements at issue. • Consider the pros and cons of each such alternative (e.g., need for a bilateral modification and any likely equitable adjustment in price to implement the alternative). • Estimate the length of time that the excusable cause can reasonably be expected to delay performance, given current contract requirements. • When appropriate, identify alternatives to extending the delivery period, such as: <ul style="list-style-type: none"> – Employment by the contractor of additional shifts, personnel, or other resources; – Change in method of shipment (e.g., use of express mail); – Change in the requirement (e.g., deletion of a low priority task from the statement of work, if such deletion would shorten the time required for contract completion); or – Termination for convenience.
<p>5. Resolve excusable delays.</p>	<p>Negotiate a bilateral contract modification to the delivery schedule or other contractual requirements.</p> <p>If the contract includes the Government Delay of Work clause (FAR 52.242-17), respond to any claims for recoverable damages based on assertions that the excusable delay resulted from:</p> <ul style="list-style-type: none"> • An act of the Contracting Officer in the administration of the contract that was not expressly or implicitly authorized by the contract; or • A failure of the Contracting Officer to act within the time specified in the contract, or within a reasonable time if not specified.

UNIT 55: PERFORMANCE MANAGEMENT

Part C: Stop Work

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UNIT 55: PERFORMANCE MANAGEMENT

Part C: Stop Work

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Tasks	Related Standards
1. Identify a potential need to stop work.	<p>Correctly recognize conditions under which a stop work order might be in the Government's interest, for example when the Government needs time to:</p> <ul style="list-style-type: none">• Make a decision on the need to modify contract requirements or terminate the contract;• Furnish property or services that cannot be furnished as required by the contract schedule; or• Consider a contractor value engineering change proposal. <p>The Contracting Officer can only issue a unilateral stop-work order when the contract includes the Stop-Work Order clause (FAR 52.242-15) or similar clause.</p> <p>Only issue stop work orders if there is such a clause in the contract and if it is advisable to suspend work pending a decision by the Government and a supplemental agreement providing for the suspension is not feasible.</p>
2. Estimate the time period that work must be stopped (i.e., period of delay).	<p>The maximum time period for unilateral stop-work orders under FAR 52.242-15 is 90 days. Any longer work stoppage must be made using a bilateral contract modification (i.e., a supplemental agreement).</p> <p>If the contract does not include FAR 52.242-15 or a similar clause, any stop-work must be accomplished using a bilateral contract modification.</p>

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Part C: Stop Work

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Tasks	Related Standards
3. Determine whether or not to stop the work.	<p>Document the determination, including the related costs and benefits, as well as alternatives.</p> <ul style="list-style-type: none">• The costs of stopping contract work may include the need for an equitable adjustment in contract:<ul style="list-style-type: none">– Delivery schedule or performance period related to the delay in meeting contract requirements; or– Price, because of factors such as:<ul style="list-style-type: none">? Labor cost (e.g., pay for idle time or increased wage rates related to a later period of performance);? Damage to perishable goods; or? Overhead (e.g., inventory, indirect labor, or standby equipment costs).• The benefits of stopping contract work may include savings to the Government (e.g., eliminating the need to later compensate the contractor for work completed following existing contract requirements after the Government recognized the need to change those requirements).• A variety of alternatives may be available, including:<ul style="list-style-type: none">– Contract termination. (A stop-work order must not be used in place of a termination notice after a decision to terminate has been made.); or– A work stoppage limited to one part of the contract, while work on the rest continues.

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Part C: Stop Work

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Tasks	Related Standards
4. Stop work with a written contract modification.	<p>Even if the contract includes FAR 52.242-15 or a similar contract clause that permits the Contracting Officer to unilaterally stop work, use a bilateral agreement to stop work whenever practicable.</p> <p>Use of a stop-work order under FAR 52.242-15 must be approved at a level higher than the Contracting Officer. The stop-work order should include:</p> <ul style="list-style-type: none">• A description of the work to be suspended;• Instructions concerning the contractor's issuance of further orders for materials or services;• Guidance to the contractor on action to be taken on any subcontracts; and• Other suggestions to the contractor for minimizing costs. <p>Oral instructions to stop work are not binding until the contractor receives a written contract modification.</p>
5. Discuss the stop-work order with the contractor and modify the order (if necessary) considering the results of the discussion.	<p>Promptly discuss the stop-work order with the contractor, including:</p> <ul style="list-style-type: none">• The reason for the stop-work order;• Estimated labor and other costs expected as a result of the stoppage;• Alternatives considered by Government and obtain the contractor's feedback;• Alternatives suggested by the contractor;• Additional alternatives and additional data bearing on those alternatives;• The probable period of the work stoppage; and• Costs the contractor is entitled to recover for the stoppage. <p>Modify the contract when necessary to implement the results of the discussions. For example, a written bilateral agreement is required to extend a stop-work order.</p>

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Part C: Stop Work

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Tasks	Related Standards
6. Determine how to resolve the stop-work order.	<p>With other members of the Government acquisition team, determine how to resolve the stop-work order as soon as feasible but before its expiration. Alternatives typically include:</p> <ul style="list-style-type: none">• Modifying the contract to:<ul style="list-style-type: none">– Cancel the stop-work order (any cancellation is subject to the same approvals required to issue the stop-work order); and– Make any other required contract modifications necessary to alleviate the situation that resulted in the stop-work order;• Allowing the stop-work order, or any extension thereof, to expire and permitting the contractor to resume work;• Terminating the contract for convenience; or• Terminating the contract for default.

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Part C: Stop Work

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Tasks	Related Standards
<p>7. Implement the action selected for resolving the stop-work order.</p>	<p>If a stop-work order issued under FAR 52.242-15 is canceled or the period of the order or any extension thereof expires, make an equitable adjustment in the delivery schedule or contract price, if:</p> <ul style="list-style-type: none">• The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and• The contractor asserts its right to the adjustment within 30 days after the end of the period of work stoppage. However, if the facts justify the action, the Contracting Officer may receive and act upon a claim submitted at any time before final payment under the contract. <p>If the stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.</p> <p>If a stop-work order is not canceled and the work covered by the order is terminated for default, allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.</p>