United States Department of Agriculture

Office of the Assistant Secretary for Departmental Management

Management Services

Procurement Operations Division

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ACQUISITION OPERATING PROCEDURE (AOP)

FROM: Shawn E. Kerkes
Head of Contracting Activity Designee

NOV 13 2012

SUBJECT: AOP No. 13: Delegation of Contracting Officer Representatives

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◆ **PURPOSE:** The purpose of this Acquisition Operating Procedure (AOP) is to provide consistency in issuance of the delegation memorandum (memo) to individuals serving as Contracting Officer Representatives (CORs) and Alternate CORs on contracts.

◆ **AUTHORITIES:** Federal Acquisition Regulation 1.602-2, Office of Federal Procurement Policy memo, Revisions to the FAC-COR, dated September 6, 2011; and the Agriculture Acquisition Regulation Number 85, Acquisition Workforce Training, Delegation and Tracking System, dated May 9, 2008.

◆ **APPLICABILITY:**

The COR delegations is applicable for all contracts and orders, except those that are other than firm-fixed-price, and for firm-fixed-price contracts and orders, and simplified acquisitions, as the Contracting Officer deems appropriate.

◆ **CONTRACTING OFFICER (CO) RESPONSIBILITY**

a. Unless the CO retains the COR responsibilities for a contract, the CO shall issue, in writing, the "*Delegation of COR*" memo to the individual that will serve as the COR on the contract(s). The "*Delegation of COR*" memo authorizes the individual to serve as the COR to work on a particular contract and will outline the roles and responsibilities of the COR to monitor the contractor's performance; contract surveillance; perform inspections to ensure compliance with the contract terms, conditions, and specifications; perform acceptance; make technical changes to the contract requirement, however the changes must be formalized by the contracting office by issuing a modification to the contract; recommend contract payment, etc.

b. Issue the "*Delegation of COR*" memo to those individuals with an active Federal Acquisition Certification-COR (FAC-COR) in the Federal Acquisition Institute Training Application System (FAITAS) at the appropriate level of the FAC-COR requirements who will perform COR duties on an active contract. The FAC-COR Certification is an assurance that the individual has the experience, education and training plus personal factors such as business acumen, judgment, character, reputation, and ethics to perform selected COR duties.

c. Contact the FAITAS Bureau Career Manager of the Procurement Operations Division to obtain verification of an active certification of the COR.

d. **Alternate COR**. Issue a "*Delegation of Alternate COR*" memo to an individual to serve as an alternate COR.

1) The primary COR will provide to the contracting officer the responsibilities that the contracting officer will delegate to an alternate COR.

2) The alternate COR must comply with the experience and/or training of the appropriate level of the FAC-COR requirements. Depending on the specific task(s) performed, an Alternate COR may only need the FAC-COR Level I certification to fulfill the responsibilities related the delegation, which the contracting officer will confirm.

3) An Alternative Delegation may be issued to:

a) An individual to serve as an alternate COR in the absence of the primary COR or to serve as an alternate for very a specific task (e.g., on-site performance monitoring, inspection/acceptance) to support the responsibilities of the primary COR.

b) The alternate serving in the absence of the primary COR may have the same responsibilities as the primary COR and/or additional limitations.

e. Use the sample "*Delegation of COR*" memo shown in attachment 1.

1) The memo may be modified to cover the specific the responsibilities required in the contract.

2) The subject line of the delegation memo will read as follows:

SUBJECT: Delegation of Contracting Officer Representative *or* Delegation of Alternate Contracting Officer Representative
(*List the applicable contract(s) and program title/description*)

f. Send a copy of the "*Delegation of COR*" memo to the contractor and COR, and place a signed copy in the contract file.

g. May request replacement of, or request additional training for the designated COR; if after issuing the delegation, the contracting officer determined that the COR does not have the experience or technical competencies to perform the critical technical functions to help manage the contract. Discussions to resolve any issues may be held with the appropriate Contracting Branch Chief and the COR's supervisor.

◆ COR RESPONSIBILITY:

a. Read and enforce the contract and comply with the responsibilities stated in the "*Delegation of COR*" memo.

b. Ensure continuous learning (training) is completed to retain an active FAC-COR Certification throughout the life of the contract.

c. Complete the necessary requirements to be reinstated as COR, if the delegation is terminated or became inactive.

◆ TERMINATION OF THE COR DELEGATION MEMO:

The contracting officer may terminate the "*Delegation of COR,*" in writing, on a case-by-case basis and assign a replacement COR.

◆ SUPERVISOR OF THE COR

a. Ensure designated individuals have the technical responsibilities and duties for their program areas are fully trained and qualified per the FAC-COR Certification to help alleviate possible delays in carrying out the contractual requirements. By designating an individual to be a COR, the supervisor is confirming the qualifications of the individual.

b. Designate individuals with adequate technical and management experience to accommodate the complexities or visibility of the contract.

c. Assess the COR experience as it relates to the type of contract the COR will be managing to determine if additional training is needed, e.g., performance-based acquisition, earned value management, incentive contracts, and green purchasing.

Attachment 1

INTEROFFICE MEMORANDUM

TO: {*Name and Office of Delegated COR*}

FROM: {*Name of Contracting Officer*}

DATE: {*Self-explanatory*}

SUBJECT: Delegation of Contracting Officer Representative
(*List applicable contract(s)/Program title*)
Contract Expiration Date: {*Self-explanatory*}

I. Pursuant to and in accordance the Federal Acquisition Regulation (FAR) Subpart 1.602-2 (d), Responsibilities," you are hereby designated to act as the Contracting Officer Representative (COR) in relation to the supplies/services to be provided under the subject contract. FAR Subpart 1.202(d)(6)(iv), states that the individual may not be re-delegate to others.

II. Pursuant to FAR Subpart 42.15, Contractor Past Performance Information, you are hereby designated as the Assessing Official Representative (AOR) for the subject contract to complete the contractor's performance evaluation in the Contractor Performance Assessment Reporting System (CPARS). Reference paragraph III, section G for further information relating to the CPARS requirements.

III. A copy of the contract, and any other appropriate documents will be provided by the contracting officer to the individual delegated these responsibilities after issuance of the contract.

IV. Most importantly, "**Read the Contract**" and contact with the contracting officers if you have any questions about the contract requirements, terms and conditions

V. Your specific responsibilities are as follows:

a. Training Certification. You have completed and provided to the contracting officer the requirements of the FAC-COR. You are also responsible for completing the continuous learning (training) every two (2) years to retain an active FAC-COR Certification during the life of the contract. You must complete continuous learning (training) to keep current on the latest changes in the field of federal acquisition that may affect your performance under this contract. The continuous learning must be reported in the Federal Acquisition Training Institute Application System found at www.fai.gov. Also, reference the Acquisition Operating Procedure (AOP) Number (No.) 2, FAC-COR, for information relating to requesting the certification and training recommendations.

b. OGE Form 450, Confidential Financial Disclosure Report. CORs should complete and submit the OGE Form 450, Confidential Financial Disclosure Report, as appropriate. The COR should consult with the applicable Human Resource office for guidance on submission of the report.

c. Monitor Technical Progress. Systematically monitor the contract's efforts to ensure the contractor meets the technical requirements of the contract in accordance with the required schedule for the products or services. Ensure the contractor complies with all technical requirements of the work defined in the scope of work, either included in or attached to the contract (e.g. Statement of Work (SOW), Statement of Objectives (SOO), Performance Work Statement (PWS), including technical and monthly status reports, documentation, data, and any other pertinent information. In this responsibility, **you must**:

1) Inform the contracting officer in writing of any actual or imminent performance failures by the contractor.

2) Inform the contracting officer if you foresee the contract will not be completed according to schedule.

3) Ensure the Government meets its contractual obligations to the contractor. This includes, but is not limited to, Government-Furnished Property (GFP) Government Furnished Equipment (GFE), or Government Furnished Information (GFI), services called for in the contract, and timely Government comments on or approval of draft contract deliverables as required by the contract. This includes proper performance of Government property management, accountability, and reporting in accordance with the FAR Subpart 45, Government Property requirements, if applicable. The COR must be familiar with all of the provisions of the clauses to ensure the contractor is meeting obligations, including the return or disposition of the property upon completion of the contract.

4) Conduct inspections and acceptance of supplies and/or services specified in the contract. This includes data items that you may require to review, evaluate, or approve and accept. Approval and disapproval must be in accordance with the contract.

5) Review invoices, vouchers, and receiving reports for acceptability to include verifying that the products and/or services indicated, hours listed, and any explanation of other direct costs that define what was received.

6) Provide guidance with regard to administrative contractual issues. Any disagreements between the COR and the contractor must be elevated to the contracting officer for resolution.

7) Promptly reject, in writing, through the contracting officer all work that does not comply with the contract requirements. Documentation submitted to the contracting officer should include the deficiencies in the deliverable in comparison to the contract requirements. The contracting officer will notify contractor of the deficiencies in writing, and the COR will ensure that the contractor take appropriate corrective actions, as determined and communicated by the contracting officer to resolve the discrepancies.

8) Immediately notify the contracting officer if it appears the contractor is increasing the scope of the contract or delivery schedules and thereby obligating the Government to defray unanticipated costs.

9) Inform the contracting officer, in writing, of any changes needed in the narrative scope of work described in the contract, either those required by the COR or by the contractor. A funded IAS requisition, including at a minimum, the Independent Government Cost Estimate (IGCE), and a revised SOW, PWS, SOO should be initiated by the COR and submitted to the contracting officer so the contract can be modified, if appropriate, prior to the work beginning.

10) Upon request by the contracting officer, assist in conducting meetings, visits, or telephone calls with the contractor. Each meeting, visit or telephone call with the contractor should begin with a disclaimer statement similar to the following:

"**DISCLAIMER:** *Anything said during the meeting, visit, or telephone call shall not be construed as a change to the contract. Nothing I say or do shall be construed as a change to the contract. Only, the Contracting Officer can make changes to the contract. Contractors are reminded to promptly notify the Contracting Officer of any conduct that may be regarded as a change to the contract in accordance with FAR 52.243-7, Notification of Changes.*"

a) Prepare a "*Memo for File*" of the trips, visits and telephones conversations relating to the contract.

b) Each "*Memo for File*," and other correspondence, must cite the contract number.

c) Forward to the contracting officer all questions, comments, requests for additional information on contract content, deliverables, etc. The contracting officer is the only person authorized to correspond with the contractor in matters imposing further costs or changes to the contract and/or deliverables.

11) Upon request, review the contractor's proposal(s) and advise the contracting officer about the reasonableness of work estimated and ensure that there is no duplication of work or cost.

12) Maintain proper Government-Contractor relations. Ensure the contract is **NOT** administered in a manner that makes it a personal services contract. A personal services contract is administered in a manner that makes contractor personnel appear, in effect, to be Government employees, with relatively continuous supervision and control by the Government employee. Reference 5 U.S.C. §3109 and FAR Subpart 37.1, Service Contracts - General.

d. Monitor Administrative and Cost Aspects. Understand the financial aspects and requirements, including the development, processing, and approval of IAS requisitions. Inform the contracting officer if you foresee that the contractor will not be able to complete the required work within the estimated cost or the Not-To-Exceed limit under the contract.

In cost contracts:

1) Report, to the contracting officer, any indication of costs being incurred that are not appropriately chargeable to the contract, especially with respect to other direct costs (ODCs) and/or labor hours of on-site contractor personnel doing severable support services.

2) Obtain the Contracting Officer's approval for any proposed travel related costs, necessity and prudence of the costs.

3) Review and coordinate with the contracting officer, any request for substitution of key personnel based on the direction in the basic contract.

e. Resolve Technical Differences. The COR may resolve technical differences, or clarify technical requirements if no additional costs or scope changes are incurred.

The COR will report, in writing, to the contracting officer all technical questions arising out of the contract that cannot be resolved without additional cost, any proposed alteration or change to the contract scope or unresolved differences to the contract scope, and all unresolved difference will be reported in writing to the contracting officer.

The report will include:

1) Contract number and contractor's name.

2) Facts and recommendations pertinent to the differences in context of the contract.

f. Initiate the Performance Assessment Record. Initiate the assessment that evaluates the contractor's performance by using CPARS as required by FAR Subpart 42.15, Contractor Performance Information and the Agriculture Acquisition Regulation Advisory (AGAR) Number 96. CPARS is a web-enabled application used to assess and provide a record of the contractor's performance during a specific contract period. The CPAR application, training and user guides are found at https://www.cpars.csd.disa.mil/index.htm.

g. Monitor Options Extension and Renewals Periods: The COR must monitor the contract option and renewal periods and notify the contracting officers, in writing, at least (***Enter the Number of Days***)-days prior to the current contract option or renewal expiration date. The contracting officer must give the contractor a preliminary written notice of the Government's intent to extend or issue a renewal of the contract.

h. Assist in Contract Closeout. Upon completion of the contract, the COR must forward to the CO:

1) A statement that the contract is satisfactorily completed.

2) Records and documents pertinent to the administration of the contract retained during the contract period of performance.

3) Verification that any classified material received or generated by the contractor has been destroyed or returned to the Government in accordance with applicable laws.

4) Approvals for requests to retain classified material or transfer of any classified material to a follow-on contract.

i. Maintain a Working file. Maintain records sufficiently documenting contractor performance in accordance with FAR Subpart 4.802, Contract Files and Subpart 4.803, Contents of Contract Files. At a minimum, your working file must contain copies of the following documents:

1) Delegation of COR memo.

2) IAS Requisition, IGCE, Justifications and approvals, determinations and findings, and associated documents.

3) Contract and all subsequent modifications.

4) All pertinent correspondence between COR and the contractor.

5) Memos to the File. These should record in detail significant communications between the COR and the contractor. (For example, records of all meetings, trips, and telephone conversations relating to the contract). Each Memo to the File, or other similar records, and all correspondence relating to the contract shall cite the contract number. A copy of all actions or correspondence will be furnished to the contracting officer and all other interested parties; considerations must be given to restrictions regarding proprietary data, as well as, classified and business-sensitive information.

6) Invoices (e.g. payment tracking sheets, logs or records).

7) Contractor's Performance Assessment/Evaluation records.

VI. **Limitations.** Government officials other than the Contracting Officer may not take action affecting the contractual relationship between the Government and the contractor or take any action that may imply a position contrary to that of the contracting officer. Specifically, a COR may not take any action which (1) interprets the terms and conditions of the contract, or (2) results in a change to the terms and conditions of the contract, or (3) results in a determination and findings from which the contractor may appeal under the FAR clause 52.233-1, Disputes. In connection with the performance of all the above responsibilities, as COR you are:

1) **NOT** authorized to negotiate terms or make any agreements or commitments/promises with the contractor involving a change in unit price, total contract price, quantity, quality, place of performance or effort, supplies or services that may modify the terms and conditions or the scope of the work contained in the contract.

2) **NOT** authorized to discuss procurement plans, or any information in advance of a source selection that might provide preferential treatment to one firm over another.

3) **NOT** authorized, regardless of position, to direct contract action (only the contracting officer may do this) including allowing the contractor's performance of work after the contract performance period has ended. Such a violation is an ***Unauthorized Commitment*** as prescribed in FAR Subpart 1.602-3. An Unauthorized Commitment is an agreement that is not binding solely because the Government official who made it lacked the authority to enter into that agreement on behalf of the Government. Reference AOP No. 4, "*Ratification of an Unauthorized Commitment*," for the review process of such actions.

4) **NOT** authorized to solicit proposals.

5) **NOT** authorized to approve costs not specifically authorized by the contract.

6) **NOT** authorized to perform any other activities prohibited in FAR, AGAR, or by other applicable statutes or regulations.

VII. Business Practices and Personal Conflict of Interest. In connection with the responsibilities of the contract, you are directed to comply with FAR Subpart 3. (e.g., standard of conduct, procurement integrity). While serving as COR under the contract, under applicable laws and regulations, you are cautioned that if you violate any specified statutory or regulatory sanctions, you may be held personally liable for the actions.

VIII. Termination of Delegation. At least 30 days prior to the effective date of a change in duty assignment, office station, or leaving the Government, advise the contracting officer, in writing, about the upcoming change, and include the name of an individual with an active FAC-COR Certification to serve as a replacement.

IX. Delegation Effective Date. This Delegation will remain in effect throughout the life of the contract, unless circumstances dictate an earlier termination of the Delegation.

Should you have any questions regarding this delegation or any other arising matters concerning your responsibilities as a COR under the contract, please contact the undersigned contracting officer. In addition, if you fully understand and agree with the responsibilities and limitations outlined in this delegation, sign and request your supervisor countersign the attached "*Acknowledgement of Delegation*" and return the a *Acknowledgement of Delegation* page to the undersigned CO.

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{*Print Name of the Contracting Officer*}
Contracting Officer
{*Enter Contracting Branch*}

ACKNOWLEDGEMENT OF DELEGATION OF COR MEMO

FROM: {*Contracting Officer*}
DATE: {*Self-explanatory*}
EMAIL: {*Self-explanatory*}

SUBJECT: Delegation of Contracting Officer Representative
(*List the applicable contract(s) and program title/description*)

COR CERTIFICATION

I, {*Print Name of the Dsignated COR*}, have read the above *Delegation of COR*" memo for the applicable subject contract(s) and fully understand my responsibilities and limitations of this delegation. I further understand that my performance as a COR may be evaluated by the supervisor, with input from the contracting officer, which may affect my ability to serve as COR under the contract. I certify that I hold an active Federal Acquisition Certification for Contracting Officer Representative (FAC-COR) in the Federal Acquisition Institute Training Application System at www.fai.gov. In addition, I certify that I will complete the required continuous learning (training) every two (2) years to retain an active FAC-COR Certification throughout the life of the contract.

_____ _____
Signature of COR Date

Print Name: _____ Email: _____ Phone: (____)_____

COR's SUPERVISOR CERTIFICATION

I, {*Print Name of the COR's Supervisor*}, have read the above "*Delegation of COR*" memo and fully understand, support, and approve the employee's responsibilities and limitations as a COR under the above references contract(s). I further acknowledge that I am a key partner, along with the employee and the contracting officer in improving the quality of USDA contract administration through qualified CORs, and the successful COR performance. I acknowledge the commitment to provide access and funding for the requirements of the FAC-COR Certification and continuous learning (training) to the employee serving as COR.

_____ _____ _____
Signature of Supervisor Print Title Date

Print Name: _____