



Department of Transportation
Office of the Senior Procurement Executive

No. APL-2009-04
Date: 09/24/09

DOT ACQUISITION POLICY LETTER

This Acquisition Policy Letter is issued under the authority of the Senior Procurement Executive of the Department of Transportation.

Subject: Contract Closeout

References:

FAR 1.602-2	CO Responsibilities
FAR 42.9	Bankruptcy
FAR 33.206	Disputes and Appeals

When is this Acquisition Policy Letter (APL) Effective?

This APL supersedes APL-2009-03 dated 5/1/09. On page 2, item 7 has been corrected. All else remains the same. This APL is effective upon issuance.

When Does This APL Expire?

This APL remains in effect until the resulting policy is incorporated into the Transportation Acquisition Manual (TAM).

Who is the Point of Contact?

Contact Dorothy Y. Beard, Office of the Senior Procurement Executive on (202) 366-5149 or by email at dorothy.beard@dot.gov.

Visit our website at <http://www.dot.gov/ost/m60> for additional information on DOT Acquisition Policy Letters and other policy issues.

What is the Purpose of this Acquisition Policy Letter?

The purpose of this Acquisition Policy Letter (APL) is to provide guidance for handling complex contract closeouts.

What is the Background?

Closeout procedures cover not only paying the final invoice but also ensuring that all contract requirements, such as the disposition of government property, have been met. Timely closeout can mean dollar savings to the taxpayer. While the formal closeout process begins when all deliveries and services are accepted by the Government, contract closeout planning should begin early in the acquisition phase.

How well it is managed in the early acquisition stages can make a significant difference in the ability to easily close the contract when the time comes. Proactively planning ahead for the tasks and documentation that will be a part of the closure process can pay big dividends at the end.

It is also particularly urgent to close out contracts funded with funds that will be cancelled (not just expired) at the end of a fiscal year. Annual and multi-year funds are cancelled five years after they expire. For example, FY 2009 annual appropriations are available for obligations during FY 2009. They are available for upward adjustments for five additional years, at which point they are cancelled and returned to Treasury.

What is the Guidance?

In resolving the myriad of potential issues surrounding the complex closeout, the CO should be guided by FAR 1.602-2, which is set out below in full text:

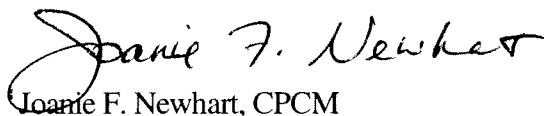
Contracting Officers are responsible for ensuring performance of all necessary actions for effective contracting, ensuring compliance with the terms of the contract, and safeguarding the interests of the United States in its contractual relationships. In order to perform these responsibilities, contracting officers should be allowed wide latitude to exercise business judgment.

Contracting officers shall-

- (a) ensure that the requirements of 1.602-1(b) have been met, and that sufficient funds are available for obligation;
- (b) ensure that contractors receive impartial, fair, and equitable treatment; and
- (c) request and consider the advice of specialists in audit, law, engineering, information security, transportation, and other fields, as appropriate.

The above provision can be cited to support those actions that are in the best interests of the government and lead to the desired result of closing a contract without running afoul of existing policy or law.

Attached on the following pages are scenarios addressing “problem closures” that may be encountered. A “problem closure” is a contract that has unusual circumstances barring the use of traditional closeout methods.



Joanie F. Newhart, CPCU
Senior Procurement Executive

Attachment

PROBLEM CLOSEOUTS

1. WHAT DO YOU DO WHEN THE CONTRACTING OFFICER, PROGRAM OFFICE, AND FINANCIAL OFFICE DO NOT HAVE ANY CONTRACT FILES?

DOT shall make every effort to reconstruct the file by contacting the vendor for invoices, etc. Once information is received, compare contract amounts from both the accounting system and the procurement system. Send closeout letter to the COTR verifying receipt of services (See Attachment A). Once verification is received from COTR, send letter and Unilateral Modification via Certified Return Receipt to vendor (See Attachment B). File is documented and completion statement is forwarded to CO for closeout signature.

2. WHAT DO YOU DO IF CONTRACT IS FOR \$500 OR LESS, THE PERIOD OF PERFORMANCE EXPIRES BEFORE 2003, AND NO RESPONSE IS RECEIVED FROM COTR OR THE COTR IS UNAVAILABLE?

At this point, a unilateral modification (See Attachment B) is sent via Certified Receipt to the vendor. The file is documented. Completion statement is forwarded to the CO for closeout signature.

3. WHAT DO YOU DO IF THE CONTRACT IS FOR MORE THAN \$500 AND NOTHING IS RECEIVED FROM THE COTR OR THE COTR IS NOT AVAILABLE?

At this point, send letter and two copies Bi-lateral Modification via Certified Return Receipt to vendor (See Attachment C). Vendor has 30 days to sign and return the two copies. If no response from vendor, use UPS tracking number to verify receipt. Place receipt in contract file for documentation. Forward closeout package to CO for signature.

4. WHAT DO YOU DO IF THE CONTRACT FILE HAS BEEN SENT TO THE NATIONAL ARCHIVES AND RECORDS ADMINISTRATION (NARA) AND CLOSED IN THE PROCUREMENT SYSTEM?

If contract file has been sent to NARA and closed in the Procurement System, it's no longer a closeout issue. It's an accounting reconciliation issue. File is closed and should not be reopened. Obtain accounting documentation stating that there is a remaining obligation. Print modification from Procurement System and attach to the accounting documentation. CO comment on this is that file is closed all monies have been deobligated per closeout CO. This can be written on the accounting document and returned to accounting after CO signs. This may be done for purchase orders, delivery orders, and contracts. (See Attachment D)

5. WHAT DO YOU DO IF CONTRACT FILE HAS BEEN SENT TO NARA AND NOT CLOSED IN THE PROCUREMENT SYSTEM?

If contract file has been sent to NARA and not closed in the Procurement System. Then contract file needs to be closed in the Procurement System. Obtain accounting

documentation stating that there is a remaining obligation. Print modification from the Procurement System and attach to the accounting documentation. CO comment on this is that file is closed all monies have been deobligated per closeout. This can be written on the accounting document and returned to accounting after CO signs. (See Attachment D)

6. WHAT DO YOU DO IF THERE IS NO EXISTING CONTRACT FILE AND NO RECORD IN THE PROCUREMENT SYSTEM AND NO RECORD IN THE PROGRAM OFFICE?

When there is no existing contract file and no record in the Procurement System, and no record in the Program Office, it is assumed that the file has been closed and archived. Obtain accounting documentation stating that there is a remaining obligation. Print mod from Procurement System and attach to the accounting documentation. CO response to this is that file is closed and all monies have been deobligated per closeout. This can be written on the accounting document and returned to accounting after CO signs. (See Attachment D)

7. WHAT IS THE DOLLAR THRESHHOLD FOR QUICK CLOSEOUT?

According to FAR 42.708, quick closeout applies when the amount of unsettled indirect cost is relatively insignificant and does not exceed \$1,000,000.

8. WHAT DO YOU DO WHEN THE CONTRACTOR IS NO LONGER IN BUSINESS?

DOT shall take every reasonable measure to locate the company and/or its principals. The Contracting Officer (CO) shall:

- Attempt to contact company/company officials by telephone (using "directory assistance" to verify that the company hasn't simply relocated).
- Attempt to locate company in writing, via certified mail, return receipt requested.
- Contact or inquire about company's status from other Government officials
- Check to see if the company has filed for bankruptcy by contacting the Bankruptcy Court of the state in which the company is located.

If all the above efforts fail, the CO may consider an Administrative Unilateral Closeout (AUC). An AUC should begin with a thorough review of the contract file including the following:

- Is the contract physically complete and has Government acceptance of goods/services been received?
- Was the contractor previously paid any funds?
- Have there been any recent claims?
- What is the status of indirect cost rate settlement? (for cost reimbursement contracts)
- Have all reasonable measures been taken to locate the company and documented in the contract file?
- Has the contract been terminated for convenience or default?

- Review file and consider any other pertinent information relative to the contractor or performance of the contract.
- Notify the Contracting Officer of intent to perform Administrative Unilateral Closeout. Be sure to obtain Contracting Officer concurrence prior to issuing an Administrative Closeout modification. (See response to Question 1.)
- Establish the final contract price at the amount previously paid to the contract and any excess funds deobligated.

9. WHAT DO YOU DO IF THE CONTRACTOR IS BANKRUPT?

The Contracting Officer should coordinate with Counsel on any closeout action where the contractor is bankrupt. No contract closeout action should be taken prior to contacting the Office of General Counsel. The final contract price should be established at the amount previously paid to the contractor and any excess funds deobligated.

Two types of Bankruptcy, which might be encountered, are:

- Chapter 7- liquidation - non-exempt items sold by trustee: proceeds distributed to creditors or
- Chapter 11 - corporate debt reorganization in which reorganization plan must be approved by a majority of creditors.

In accordance with FAR 42.9, when notified of bankruptcy proceedings, contracting officers must, at a minimum-

- Furnish the notice of bankruptcy to the legal office and other appropriate agency offices (e.g. contracting, financing, property) and affected buying activities;
- Determine the amount of the government's potential claim against the contractor;
- Take actions necessary to protect the Government's financial interests and safeguard Government property; and
- Furnish pertinent contract information to the Office of General Counsel representing the Government.

This is necessary because once a bankruptcy petition is filed, an automatic stay goes into effect. This stay generally precludes any action to collect from the debtor or that would interfere with the debtor's property interests. Contract closeout actions could interfere with this property interest and violate the stay. Consequently, contract closeout actions should generally not be done without relief from the stay. Violation of the stay can subject responsible parties to contempt citations.

Another reason for immediate coordination with the legal office is that any claim against the contractor must be filed with the court in the form of a Proof of Claim. With the filing of a bankruptcy petition, the court will set a date by which the Proof of Claim must be filed. Potential claims against the contractor must be compiled and analyzed to determine whether a Proof of Claim must be filed (the Bar Date). If so, that information must be provided to the Office of General Counsel. The Office of General Counsel has the responsibility for preparing the Proof of Claim and providing it to the cognizant U.S. Attorney for filing with the bankruptcy court. It's important for the government to file a timely proof of claim.

While routine closeout procedures are followed in relation to contractors who are in bankruptcy, every step of the closeout process must be coordinated with the agency's legal counsel to ensure that the government does not violate the rights of the contractor or other participants to the bankruptcy proceedings. The final disposition of monies owed the government or due the contractor will be approved by the bankruptcy court.

10. WHAT DO YOU DO IF THE CONTRACTOR IS UNABLE TO SUBMIT SUPPORTING INDIRECT COST DATA FOR SUBMISSION OF FINAL VOUCHERS?

On rare occasions, contractors are unable to provide final vouchers because they have not retained their financial records for a fiscal year. When this happens, the contractor does not have the ability to support an audit of the incurred indirect costs billed on contracts. In these cases, the Administrative Unilateral Closeout (AUC) is used.

11. WHAT DO YOU DO IF FIRM-FIXED PRICE CONTRACTOR FAILS TO SUBMIT A FINAL INVOICE?

Sometimes, contractors complete performance but fail to submit a final invoice on firm-fixed price contracts. After making a reasonable number of requests to the contractor, the CO should verify that all shipments/performance have been accepted by the government and send the contractor a certified letter asking if payment is complete or when a final invoice will be submitted. Also, include a release form for the contractor to sign. If the contractor fails to respond, the CO should notify the contractor of the government's intent to administratively closeout the contract. Note that if the contract was awarded after October 1, 1995, the contractor still may submit a claim to the contracting officer within six years after accrual per FAR 33.206.

12. WHAT DO YOU DO IF COST REIMBURSABLE CONTRACTOR FAILS TO SUBMIT FINAL VOUCHER?

The contractor is required to submit final vouchers or invoices after settlement of final indirect cost rates. As soon as rates are settled and the contractor has signed an indirect cost rate agreement, the CO should request that final vouchers be submitted.

The CO should pursue a unilateral determination of final contract price when the contractor is non-responsive or has not provided a reasonable explanation for not submitting a final voucher. In these cases, the CO should:

- determine the total allowable costs;
- determine the total previous payments made to the contractor;
- serve written notice (via certified letter) on the contractor to unilaterally determine the final contract price if the final vouchers are not received within 30 days;
- calculate the final contract price; and
- issue a unilateral contract modification.

The CO may want to consider an accelerated final voucher preparation and review process when the contractor may be able to prepare the final voucher but it will take an unreasonable amount of effort and expenditure to complete it.

The procedure is applied on a fiscal basis and may include all contracts or only some contracts. The CO should:

- conduct a risk analysis to determine if it is appropriate to use this procedure, considering the accuracy and adequacy of the contractor's accounting and billing systems, variances between proposed and settled rates for previous fiscal years, and total amounts remaining to be disbursed;
- request a cumulative cost sampling for the contracts to determine the accuracy of the recorded costs;
- agree to a final contract price with the contractor; and
- secure the contractor's agreement to submit a non-detailed final voucher for each contract.

13. HOW DO YOU HANDLE UNRECONCILABLE CONTRACTS?

Sometimes there are instances where the government and contractor agree that contract performance is complete and all items have been shipped and accepted, but the contractor has not received final payment because the contract has been determined to be unreconcilable based on payment discrepancies. A contract is also considered to be unreconcilable when adequate documentation required to support contract disbursement is not available or the normal reconciliation process would result in an unreasonable effort and expenditure to close the contract under traditional methods. There are several factors that lead to issues involving reconciliation including multiple payment offices during the life of the contract, contractor mergers or reorganizations, loss of key players, and old contracts with many modifications.

The CO should review the obligated and unobligated balances at both the total contract level and lower levels to determine if the contract is unreconcilable. If there is a positive or zero balance at the total contract level but a negative balance at the lower levels, the paying office may be able to perform disbursement adjustments to avoid an unreconcilable contract. If a negative or positive unliquidated obligation exists at the total contract level, an unreconcilable contract may result if there is insufficient documentation to support reconciliation.

In these instances, a negotiated settlement may be the best solution. A negotiated solution will support an orderly and economical process for closing contracts with little financial risk to the government and will ensure that the government is made whole at the total contract level.

Negotiated Settlement Process-

- Agreement should be obtained concerning using the negotiated procedure for closing the contract.
- Agree that the amount owed (either the contractor or the government) is in question.
- Make a decision to use negotiated settlement with the contractor and coordinate this decision with accounting personnel.

- CO must include a statement in the contract file which states, "To the best of my knowledge, the contract requirements have been fully satisfied, therefore it is my determination to proceed with a negotiated closeout."
- Meet with all responsible/affected government parties to develop a plan of action.
- CO will assess government data and establish an initial government negotiating position for administrative closeout.
- If required, CO will initiate a DCAA or other audit to assist in establishing a final negotiating position based on the best available records, including contractor records.
- CO will negotiate a settlement with the contractor.
- CO will coordinate with finance prior to issuance of modification to verify that the contract can be adjusted and closed.
- CO will issue a bilateral modification. The final document should cite any payment amount due to the contractor. If there are funds still on the contract, the CO will determine if the funds are "remaining funds" or "excess funds." File should be documented appropriately and if funds are excess, the bilateral modification should administratively remove the excess funds.
- The modification should also state that the contract performance by the Contractor has been completed and accepted by the Government, and that all obligations of the Contractor under this contract have been satisfied.
- CO should document the contract file to include the efforts made by the CO team to obtain the necessary closeout data.



**U.S. Department of
Transportation**
Office of the Secretary of Transportation

1200 New Jersey Avenue, S.E.
Washington, DC 20590

Memorandum to Project Officer to Confirm Contract Completion

FROM: Ms. Closeout
Contract Administrator, OST, M-63

TO: (Name, Route System)

SUBJECT: Closeout of Contract Number DTOS59-

Contracting office records indicate that the subject purchase order is physically complete. To facilitate formal closeout, please answer the following question and return this form to the above Contract Administrator.

Has the contractor fully complied with all the applicable terms and conditions of the subject order including the deliverables of all required goods, services or reports hereunder? Has the final invoice been received and paid?

☐ Yes - If yes, and your records indicate a remaining balance, please forward a Procurement Request (PR) indicating the de-obligation amount.

☐ No - If no, cite the items that have not been received below.

Project Officer

Date

If you have any questions concerning this matter, please contact the Contract Specialist on (202) 366-2200. Thank you for your help in closing out this contract.

Sincerely,
Molly Johnson
Contracting Officer



**U.S. Department of
Transportation**
Office of the Secretary of Transportation

1200 New Jersey Avenue, S.E.
Washington, DC 20590

March 30, 2008

Mr. XXXXXXXXX
Attn: Government Representative
407 6th Street, SW
Washington, DC 20024

Dear Government Representative:

We are in the process of reviewing completed purchase orders that are not properly closed. Per Federal Acquisition Regulations (FAR), Part 4, Section 804-1(a)(1), file for contracts using simplified acquisition procedures should be considered closed when the contracting officer receives evidence of receipt of the property and final payment. Blanket Purchase Agreement (BPA) DTTS59-97-A-00784, 2002-Z-002 meets the FAR requirements. Our records indicate obligations totaling \$100,000.00 to this call order number. The total amount liquidated for this account is \$83,038.81.

Attached you will find the Modifications of Contract Form to unilaterally de-obligate the remaining funds.

If there are any reasons why we should not close out the BPA or if you have any questions, please contact the undersigned by telephone at (202) 366-2200 or in writing at the address shown below:

U.S. Department of Transportation/OST
Acquisition Services, M-63
Attn: Ms. Closeout
1200 New Jersey Avenue, SE, W83-504
Washington, DC 20590

Sincerely,

Molly Johnson
Contracting Officer

January 4, 2008

Mr. XXXXXXXX
7501 Greenway Street
Conway, Md. 20770-3513

Dear Mr. XXXXXXXX:

We are in the process of reviewing completed purchase orders that are not presently closed. Per Federal Acquisition Regulation (FAR), Part 4, Section 804-1 (a) (1), file for contracts using simplified acquisition procedures should be considered closed when the contracting officer receives evidence of receipt of property and final payment. Task Order DTT59-02-F-10322 meets the FAR requirements. Our records indicate obligations totaling \$246,656.58 for this order and the issuance of payments totaling \$227,188.58. Please submit any remaining invoices for payment or a refund check for any overpayments, to the appropriate billing office.

Please sign and return two (2) copies of the attached Modification of Contract (SF-30) to the below address if your records are in agreement. Unless the Department of Transportation/OST is in receipt of the necessary invoices or the attached signed Modification of Contract within thirty (30) days from date of this letter, the remaining obligated funds will be de-obligated from the government's accounts, the task order shall be considered complete, and no further payments shall be made. If there are any reasons why we should not close out the task order or if you have any questions, please contact the undersigned by telephone at (202) 366-1723 or in writing at the address shown below:

U.S. Department of Transportation/OST
Acquisition Services, M-63
Attn: Ms. Closeout
1200 New Jersey Avenue, SE, W83-504
Washington, D.C. 20590

Sincerely,

Molly Johnson
Contracting Officer

DE-OBLIGATION STATUS REQUEST

RE: Request for Contract Status

This serves as acquisition review and completion of the final un-disbursed amount for the following transaction. The underlying Delphi account has a balance as indicated. The open balance is de-obligated based on age and account inactivity. The contract shall be considered complete, and no further payments shall be made.

Delphi No:

PO Number / Contract No.: _____

Supplier:

Obligation Amount:

As Shown in Delphi:

Delphi Open Balance:

Program Office Status: Open: _____ Closed: _____ Unknown: _____

Procurement Office Status: Open: _____ Closed: _____ Unknown: _____

Remarks: _____

Program Office Concurrence:

Procurement Concurrence:

Signature: _____

Organization: _____

Title: _____

Telephone: _____

E-Mail Address: _____

Date: _____

Office of Financial Management Concurrence:

Signature: _____

Organization: _____

Title: _____

Telephone: _____

E-Mail Address: _____

Date: _____