استراتژی مدیریت قرارداد

پیکره دانش مدیریت قرارداد (Contract Management Body of Knowledge)

بخش هشتم: فاز Post-Award از چرخه حیات مدیریت قرارداد

ارائه دهنده:

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What we will learn?

- Post-Award
  - Administer contract
  - Ensure quality
  - Manage subcontracts
  - Manage changes
  - Close out contract

The CMBOK structure

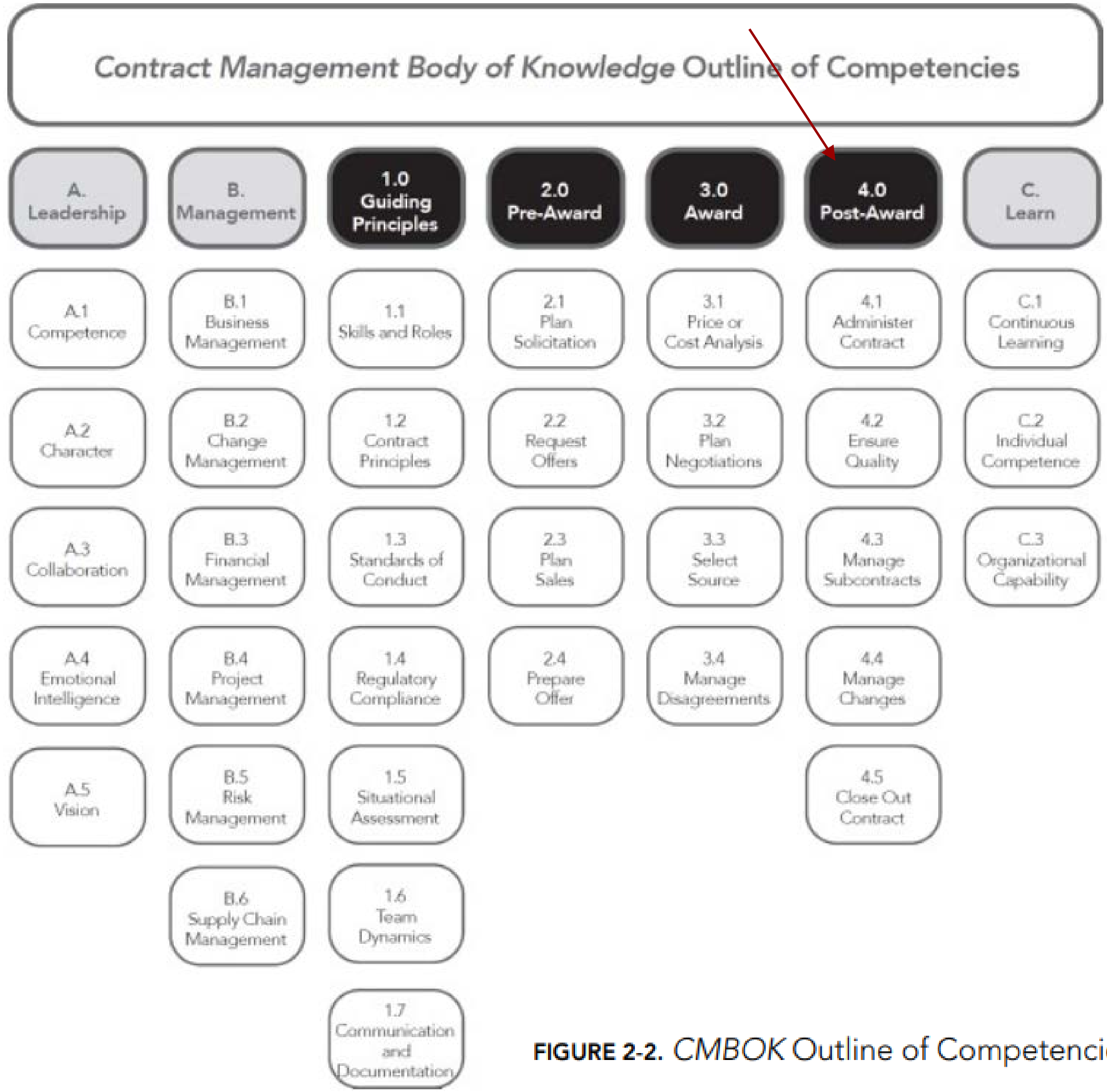
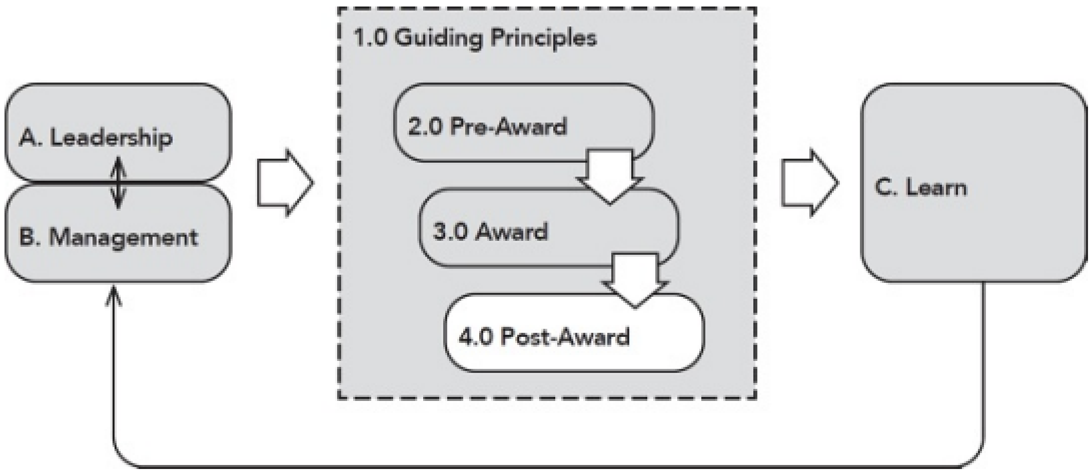


FIGURE 2-2. *CMBOK* Outline of Competencies

Introduction

FIGURE 8-1. The *CMBOK* Competency System



Contract interpretation and disputes

- Topics covered in this section include:

1. **Government contract interpretation**
2. **Commercial contract disputes**
3. Government contract disputes
4. Alternative dispute resolution
5. Best practices to mitigate contract interpretation issues

Contract interpretation and disputes – Commercial contract disputes

- In the **case of commercial contracts**, questions involving the legality or interpretation are generally **governed by the law of the state** where the **contract was made**.

- Questions related to contract performance are generally governed by the law of the state where such performance occurs.

Contract interpretation and disputes – Commercial contract disputes

The UCC is a collection of proposed model laws, drafted by the American Law Institute and the National Conference of Commissioners on Uniform State Laws, that are meant to serve as a guide for state legislatures when they draft statutes involving commercial contracts and related dealings. Azar 28, 1401 AP

Library of Congress (.gov)
https://guides.loc.gov › contract-law › uniform-commer...

The Uniform Commercial Code (UCC) - Contract Law

The **Uniform Commercial Code** (**UCC**), first published in 1952, is one of a number of uniform acts that have been established as law with the goal of harmonizing the laws of sales and other commercial transactions across the United States through UCC adoption by all 50 states, the District of Columbia, and the Territories of the United States.

Contract interpretation and disputes – Commercial contract disputes

- The **Uniform Commercial Code** provides **several remedies** that may result after a dispute (these remedies **typically occur for breach of contract**):
  1. **Reliance damages**—**Monetary damages**, such as compensation for expenses or losses, that place the aggrieved party in the same position it was in before signing the contract.
  2. **Restitution**—The **defendant** must repay the **monetary value they received** from the aggrieved party for **partial contract performance**.
  3. **Stipulated damages**—This is a **fixed sum or formula** that the contract provides as a remedy for partial or full breach of the contract.

     Stipulated damages are also called **"liquidated damages."**

Contract interpretation and disputes – Commercial contract disputes

- The **Uniform Commercial Code** provides **several remedies** that may result after a dispute (these remedies **typically occur for breach of contract**):

  4. **Interest**—This may be calculated **in addition to any damages** awarded.
  5. **Punitive damages**—These are designed to **punish the guilty party** and are applicable only if the defendant is guilty of fraud, malice, or oppression.

     Punitive damages **may not be applicable** in breach of contract cases.
  6. **Specific enforcement**—Also called "specific performance," the court requires the party that **breached the contract** to complete contract performance.

Contract interpretation and disputes

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Contract interpretation and disputes – Government contract disputes

- The disputes process in federal government contracts is governed by the **Contract Disputes Act and is set forth in FAR 33.2, "Disputes and Appeals."**
- A <u>contract dispute</u> is a **post-award disagreement** <u>when it is first recognized</u> that the government and a contractor have **conflicting points of view.**
- A **dispute becomes** a <u>claim</u> when the **contractor submits a written demand** to the government, as a matter of right, to pay a <u>specific amount of money or provide other specified relief.</u>
- An **appeal occurs** when the contractor files for consideration with a court or board of contract appeals **after the contracting officer** <u>denies</u> the contractor's claim.

Contract interpretation and disputes – Government contract disputes

- To be valid, a claim must:
  1. Be in writing,
  2. Be addressed to the contracting officer,
  3. Identify a specific sum of money if monetary compensation is demanded, and
  4. Be certified (if the claim is over a certain dollar threshold).

Contract interpretation and disputes

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1. **Government contract interpretation**
2. **Commercial contract disputes**
3. **Government contract disputes**
4. **Alternative dispute resolution**
5. Best practices to mitigate contract interpretation issues

Contract interpretation and disputes – Alternative dispute resolution (ADR)

- ADR is a procedure or combination of procedures **voluntarily used to resolve "issues in controversy"** without the need to resort to **litigation**.
- **Regardless of whether** the contract manager is operating in the government or commercial arena,

  the **prompt and efficient** resolution of all disputes,

  at the lowest organizational level possible, should always be the **goal**.

  - Resolution of issues and disputes promptly and at lower levels enables both parties to

    1. **Focus on other aspects of contract performance** (or other demands of their jobs) **without the distraction** of the dispute,
    2. While **saving resources** for both parties.

Contract interpretation and disputes

- Topics covered in this section include:

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2. **Commercial contract disputes**
3. **Government contract disputes**
4. **Alternative dispute resolution**
5. **Best practices to mitigate contract interpretation issues**

Contract interpretation and disputes – Best practices to mitigate contract interpretation issues

- **Well-written contracts** that are easily understood, effectively managed, and successfully executed do **not occur by accident**.

- The following best practices can be applied to government and commercial contracts to **mitigate contract interpretation** issues.
  1. Selecting and Defining Key Words and Terms
  2. Tailoring Terms and Conditions to the Situation
  3. Reviews Before Execution
  4. Post-Award Review

Manage changes

1. **Contract interpretation and disputes**
2. **Bilateral and unilateral changes**
3. Uniform commercial code (UCC) contract modifications
4. Federal acquisition regulation (FAR) contract modifications
5. Contract changes management process
6. Contract termination

Bilateral and unilateral changes

- Contract changes may be **bilateral or unilateral**.
- A **bilateral change** is a contract modification that is agreed to by both parties.
- **Bilateral modifications are used for the following (FAR 43.103):**
  1. Making negotiated equitable adjustments resulting from the issuance of a change order,
  2. Definitizing letter contracts, and
  3. Reflecting other agreements of the parties modifying the terms of contracts.

Bilateral and unilateral changes

- A **unilateral change** is directed by one party (typically the buyer) made **without the agreement** of the other party (typically the contractor).

- Unilateral modifications are used for the following (FAR 43.103):
  1. Making administrative changes;
  2. Issuing change orders;
  3. Making changes authorized by clauses other than the Changes clause (e.g., "Options" clause, "Property" clause, etc.); and
  4. Issuing termination notices.

Manage changes

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Uniform commercial code (UCC) contract modifications

- In **commercial contracts**, there are three types of modifications:

1. **Explicit**
   - An explicit change is a change to the contract in which there is **no doubt** that a change has occurred; **nothing is implied**.
2. **Mutual assent**
   - Mutual assent modifications are **bilateral**, meaning both parties agree to the change, and are typically done in advance of the change occurring.
3. **Conduct of the parties**
   - **Conduct of the parties** may unintentionally result in a contract change.

(White and Summers 2009).

Manage changes

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Federal acquisition regulation (FAR) contract modifications

- Similar to commercial contracts, there are three types of changes:
  1. Directed changes,
  2. Constructive changes, and
  3. Cardinal changes.

Federal acquisition regulation (FAR) contract modifications

- Most contracts contain a Changes clause that gives the **buyer the right to direct changes** during contract performance.
  - The clause describes
  - What type of changes the buyer can direct,
  - Procedure for ordering the change, and
  - A provision for equitable adjustment to the contract amount or contract's period of performance (POP) if there is a resultant change in cost or schedule.

directed change

Most contracts contain a "changes" clause that gives the buyer the right to direct changes during contract performance. The clause describes what type of changes the buyer can direct, the procedure for ordering the change, and a provision for equitable adjustment to the contract amount or period of performance if there is a resultant change in cost or schedule. A directed change usually must be within the original scope of the contract.

Federal acquisition regulation (FAR) contract modifications

- ***A directed change usually must be within the original scope of the contract.***

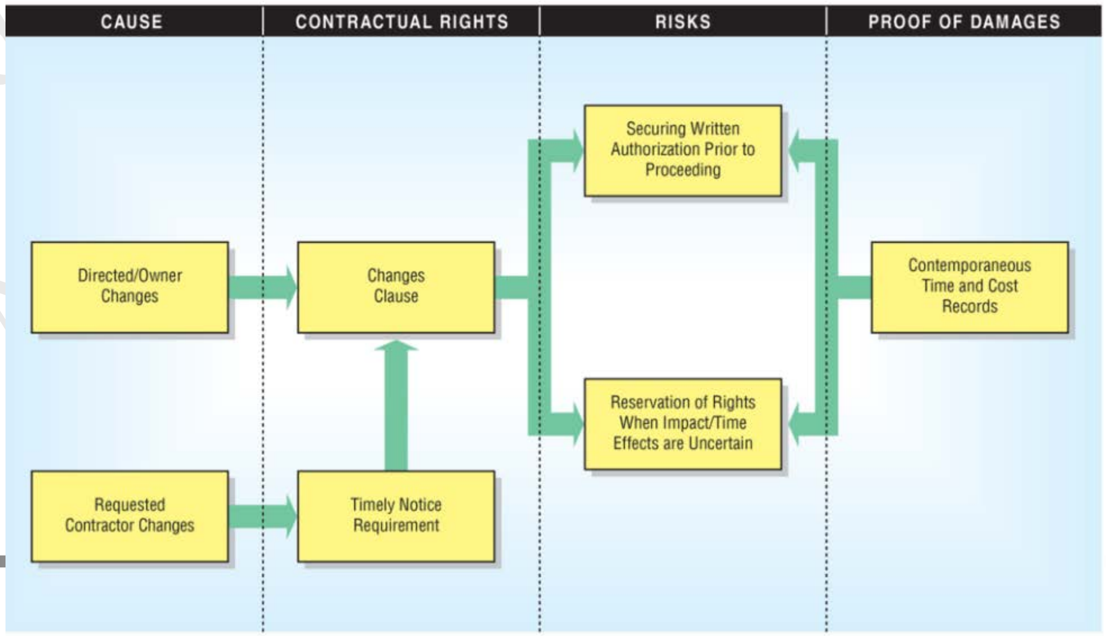
- **Federal government contracts** require that a directed change must be within the **scope of the original contract**.

- Changes are subject to an equitable adjustment, but may be **directed in**:
  1. Drawings, designs, or specifications;
  2. Methods of shipping or packing; or
  3. Place of delivery.

Federal acquisition regulation (FAR) contract modifications

Directing performance of extra work on a construction project was once little more than a rudimentary task for the architect or resident engineer. Unfortunately, such simplicity is no longer the order of the day. Contractors and subcontractors alike are becoming increasingly reluctant to proceed with extra work without complete assurance that all direct and impact costs will be paid. Absent such assurance, they are insisting that the extra work proceed with the right to reimbursement for additional time and costs if warranted. Conversely, owners and architect/engineers are equally reluctant to direct additional work if the time and financial aspects are not firmly established. With such an atmosphere, the extra work/change order process in construction has become ripe for controversy. Figure 1 illustrates the directed change process.

Figure 1: Directed Change Process



Federal acquisition regulation (FAR) contract modifications

- A constructive change is a change resulting from
  1. The government's actions or
  2. Directives

  that **influences** the cost or schedule for performance that is construed to have the **same effect** as a formal change order.
- A **constructive change** generally occurs when

  a **government employee** other than the contracting officer

  implies or expressly orders the contractor to perform work that is **not in the contract**.
- In government contracting, equitable adjustment is granted for constructive changes **only if the change** caused the contractor injury or liability.

Federal acquisition regulation (FAR) contract modifications

Constructive changes are owner-caused or owner-responsible changes but not acknowledged as such. A prime contractor's unacknowledged changes can create a subcontractor's constructive change claim.

If the owner or prime contractor's actions or inactions require the contractor or subcontractor to implement changes, the owner or prime contractor may be obligated to pay for those changes even though the changes were not formally directed. If events during the project have the same effect as a formal written change order, a constructive change may have occurred.

Key terms often associated with constructive changes include "unwritten order," "additional work or services," "extra work," "overly rigid inspection," "improper rejection," "errors and omissions," "ambiguous plans and specifications," "incorrect interpretation of plans and specifications," "changing work methods," "changes in sequencing of work," "acceleration," "failure to disclose important information," "extreme difficulty in performance," "very excessive cost," and "defective design."

Federal acquisition regulation (FAR) contract modifications

A typical changes clause outlines the concept of a constructive change as follows:

> *Any written order or an oral order (which includes direction, instruction, interpretation, or determination) that causes a change shall be treated as a change order under this clause; provided that the contractor gives written notice stating (1) the date, circumstance, and source of the order and (2) that the contractor regards the order as a change order.*

Federal acquisition regulation (FAR) contract modifications

- Cardinal changes are changes
  1. Beyond the contract scope and
  2. That materially alter the nature of the contract that the parties entered.
- **These changes** could be considered as a breach of contract and may be the subject of a dispute.

cardinal change

An out-of-scope change. Examples include:

- A change to a contract that is made outside the scope of the contract and is, therefore, unenforceable by the buyer.
- Having the effect of making the work as performed not essentially the same work as the parties bargained for when the contract was awarded, and thus constituting a breach of contract by the buyer.

The U.S. Court of Claims has defined "cardinal change" as a change or series of changes that are beyond the scope of the contract and are a breach of contract.[1] The Supreme Court has defined work within the general scope as work that "*should be regarded as fairly and reasonably within the contemplation of the parties when the contract was entered into.*"[2]

The state of being considered or planned.

Manage changes

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6. Contract termination

Contract changes management process

- (Garrett and Rendon, 2012) Managing and controlling contract changes is a **major challenge of post-award** contract management, requiring

  extensive process integration and communication

  among the **project management and supply chain** management team members

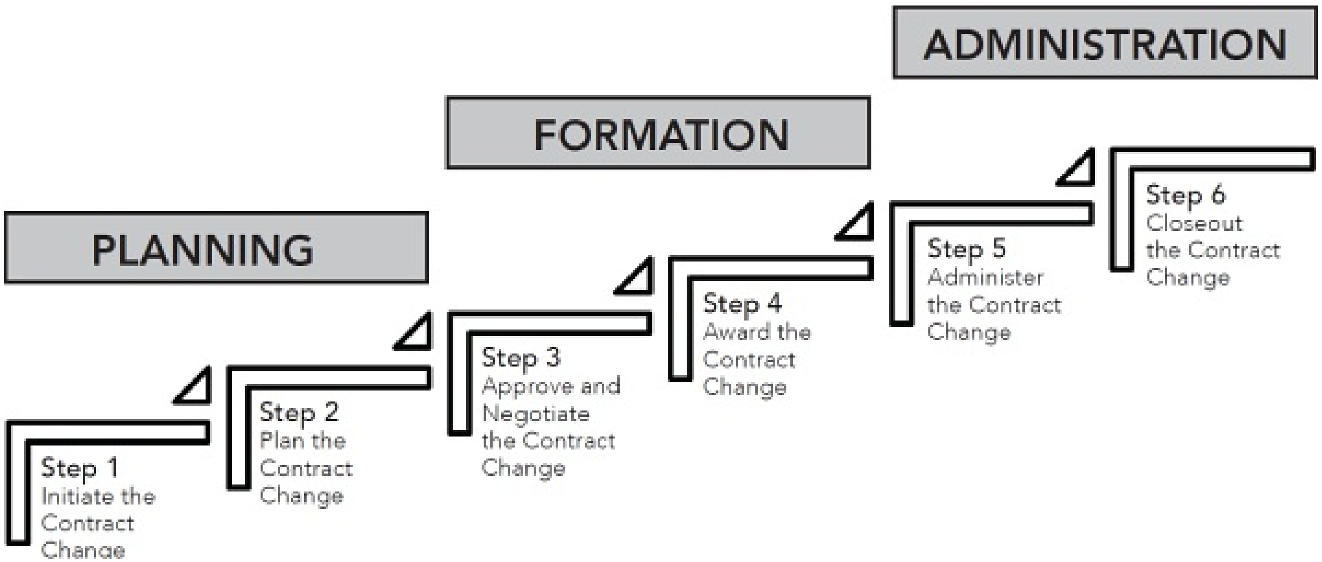
Contract changes management process

- A six-step contract change management process will be presented that can be effectively applied and tailored for
  the **joint use** of government agencies, government prime contractors, and subcontractors.

Contract changes management process – Six-Step Contract Changes Management Process

- The six steps of the contract changes management process are presented in FIGURE 8-13 and outlined as follows.

FIGURE 8-13. Six-Step Contract Changes Management Process



Contract changes management process – Six-Step Contract Changes Management Process

Step 1: Initiate the Contract Change

- For the contract changes management process, the first step occurs when the **need for a contract change is identified**.
- This need may arise from
  1. **Discovery** of a defective specification,
  2. A **buyer-requested change** to the performance requirements of the supply or service being procured,
  3. A **need to accelerate** the project schedule, or
  4. A **reduction** in the project **budget**, to name just a few reasons.
- Thus, the first step of the contract changes management process **identifies the need** for the contract change(s) and decides how to accomplish the change(s).

Contract changes management process – Six-Step Contract Changes Management Process

Step 2: Plan the Contract Change

- Planning is the **process of preparing** the documents needed to **support the change.**
- This process involves
  1. **Documenting** program, project, and contract requirements and
  2. **Identifying** potential sources.
- These documents **may include**
  1. Revised specifications,
  2. Performance work statements,
  3. Statements of work, or
  4. Revised product/service descriptions.

Contract changes management process – Six-Step Contract Changes Management Process

Step 2: Plan the Contract Change

- Contract changes planning includes **developing** the **documents** that relate to
    1. New or revised contract clauses,
    2. Incentives, or
    3. Even contract line items.
- Because changes to the contract may be **initiated by either party**, some of these documents may be developed by **either the buyer or the seller**.

Contract changes management process – Six-Step Contract Changes Management Process

Step 3: Approve and Negotiate the Contract Change

- For contract changes purposes, **approval** involves **communicating the revised** contract requirements, to the **seller for the purpose** of incorporating the changed work into the project effort.
- For **proposed contract changes** that will result in a change to contract cost, the **third step directs** the contractor to **prepare a proposal** for negotiating the cost of the changes into the contract.
- After **review** of the contractor's change proposal and appropriate fact-finding discussions, the **buyer will negotiate** the contract change as required with the contractor.

Contract changes management process – Six-Step Contract Changes Management Process

Step 4: Award the Contract Change

- After the **completion of contract negotiation** between the parties, the **buyer is typically responsible** for documenting and formally awarding a properly executed **bilateral contract modification**.
  - However, in the case of unilateral contract changes, **Step 3** is typically accomplished later in the process, and the **award of the contract change order** is completed **more rapidly** and **only executed** by the buyer.

Contract changes management process – Six-Step Contract Changes Management Process

Step 5: Administer the Contract Change

- Activities include **monitoring** the **contractor's performance** and ensuring that it **complies** with the contractual technical and quality requirements.

- Contract changes could result in
  1. Deletion of work,
  2. Incorporation of additional work, or
  3. Modification of work currently on contract.

Contract changes management process – Six-Step Contract Changes Management Process

Step 6: Closeout Contract Change

- This process includes activities such as
  1. Disposition of owner-furnished property,
  2. Final acceptance of products or services,
  3. Final contractor payments, and
  4. Documentation of the contractor's final past performance report.

- The **contract closeout process** for the **basic contract** is the **same** as for the work resulting from the **contract change**.

Manage changes

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Contract termination

- Contract termination topics discussed in this section include:

1. **Termination for default**
2. Commercial contract termination
3. FAR contract termination
4. Excusable delay/force majeure
5. Contract cancellation

Contract termination – Termination for default

- Termination for default, or termination for cause,

  is normally a **right of law** and a **right vested** as the result of including appropriate terms and conditions in the contract.

- Termination for default can result from one party's failure to

  perform one or more **actions required by the contract**.

Contract termination – Termination for default

- Typical reasons to terminate for default include the following:
  - **Failure to perform:**
    - ✓ The seller's **failure to provide** the goods or services contracted for is a valid reason to terminate for default.

Contract termination – Termination for default

- Typical reasons to terminate for default include the following:
  - **Failure to adhere to schedule:**
    - ✓ If a seller **fails to completely perform** during the specified Period of Performance (POP),

      that **failure may be justification** for a termination for default.
    - ✓ The **buyer** should exercise good business judgment in this situation to **determine if the failure is significant enough** to justify the termination.

Contract termination – Termination for default

- Typical reasons to terminate for default include the following:
  - **Failure to comply with other terms and conditions:**
    - ✓ This is another area in which the buyer should exercise sound business judgment and good faith in determining

      if the **seller's failures** are damaging enough to warrant termination.

Contract termination – Termination for default

- Typical reasons to terminate for default include the following:
  - **Repudiation:**
    - A contract may be terminated for default if either the **buyer or seller clearly indicates** to the other party, by word or deed, that **it cannot** or **will not perform**.

Contract termination

- Contract termination topics discussed in this section include:

1. **Termination for default**
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Contract termination – Commercial contract termination

- Section 2-309 of the UCC states the following rules for contract termination.
  - Where the contract provides for successive performances but is indefinite in duration,

    it is **valid for a reasonable time** but unless otherwise agreed may be terminated at any time by **either party**.
  - Termination of a contract by one party, **except** on the happening of an agreed event,

    requires that **reasonable notification be received** by the other party and

    an **agreement dispensing with notification** is invalid if its operation would be unconscionable.

(UCC 2-309, "Notice of Termination.")

Contract termination – Commercial contract termination

- **Termination by mutual consent** is a **bilateral agreement** indicating that the **parties no longer wish** to be bound by the contract and **terminating both parties**’ respective rights and obligations.

- “Termination by Mutual Consent” clauses are sometimes included in the basic contract, though they **can also be** negotiated and executed during the POP.

Contract termination

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1. **Termination for default**
2. **Commercial contract termination**
3. **FAR contract termination**
4. Excusable delay/force majeure
5. Contract cancellation

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Contract termination – FAR contract termination

- **FAR Part 49**, **"Termination of Contracts,"** describes the **government's procedures for** all types of government terminations,

  except commercial products and commercial services subject to FAR Part 12.

- The two principal approaches to government are termination for convenience and termination for default

  1. Termination for convenience
  2. Termination for default

Contract termination

- Contract termination topics discussed in this section include:

1. **Termination for default**
2. **Commercial contract termination**
3. **FAR contract termination**
4. **Excusable delay/force majeure**
5. Contract cancellation

Contract termination – Excusable delay/force majeure

- An **excusable delay** is a contractual provision designed to protect the contractor from sanctions for **late performance**.

- To the extent that it has been excusably delayed, the **contractor is protected** from
  1. Default termination,
  2. Liquidated damages, or
  3. Excess costs of reprocurement or completion.

- Excusable delays also may lead to **recovery of additional compensation** if the **government constructively accelerates** performance.

Contract termination – Excusable delay/force majeure

- A **similar clause commonly** used in **commercial contracts** is the “Force Majeure” clause,

  which contains excusable conditions for nonperformance; e.g., strikes, acts of God, etc.

- Force majeure is a **French term** meaning **“superior force”** that

  refers to an **unexpected or uncontrollable** event that upsets the plan or releases one from obligation.

Contract termination

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1. **Termination for default**
2. **Commercial contract termination**
3. **FAR contract termination**
4. **Excusable delay/force majeure**
5. **Contract cancellation**

Contract termination – Contract cancellation

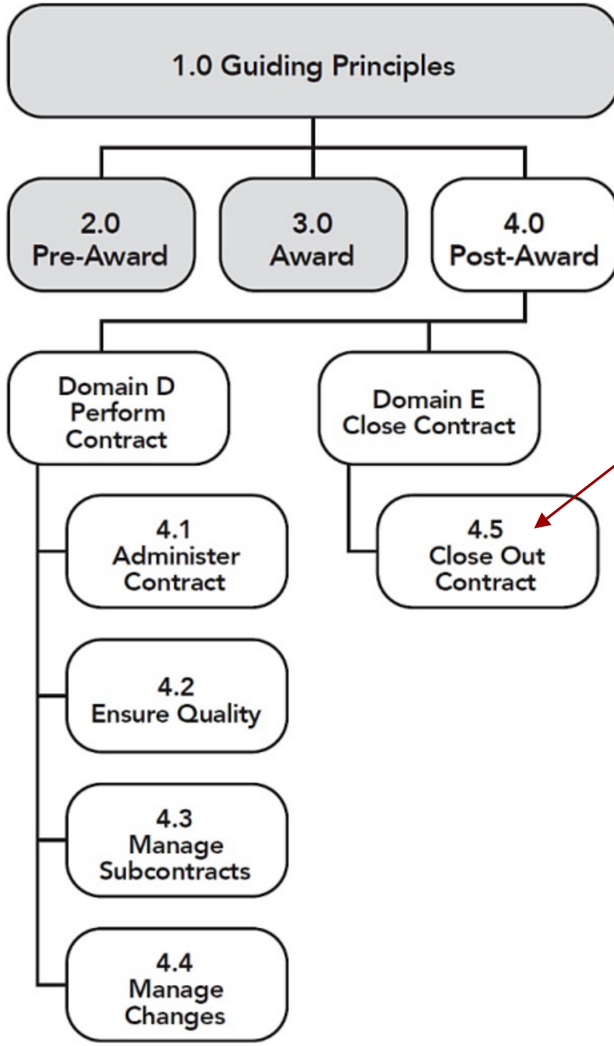
- A **no-cost cancellation** is a type of quasi-termination
  that usually occurs shortly after contract execution,
  often because the **seller realizes** that it will be **unable to perform**.

- If **both parties agree**, no debts or obligations are due, and
  if the **buyer can obtain performance** from other sources,
  a **no-cost cancellation** can be a **quick and efficient** way to sever a contractual relationship.

DOMAIN E: CLOSE CONTRACT

(CLOSE OUT CONTRACT)

Close contract



Close contract

The *Close Contract* domain is the domain of both the buyer and seller. It involves the process of verifying all the requirements of the contract are satisfied, settling unresolved matters, and reconciling the contract to make final payment.

The value added by this process is in determining that the buyer and seller contract obligations have all been satisfied.

Close out contract

Close Out Contract is the process of ensuring all performance has been accomplished, final contractor performance has been evaluated, final payment has been made, and the contract has been reconciled.

This process involves the completion, delivery, and acceptance of the contract requirement(s) in accordance with the terms and conditions of the contract.

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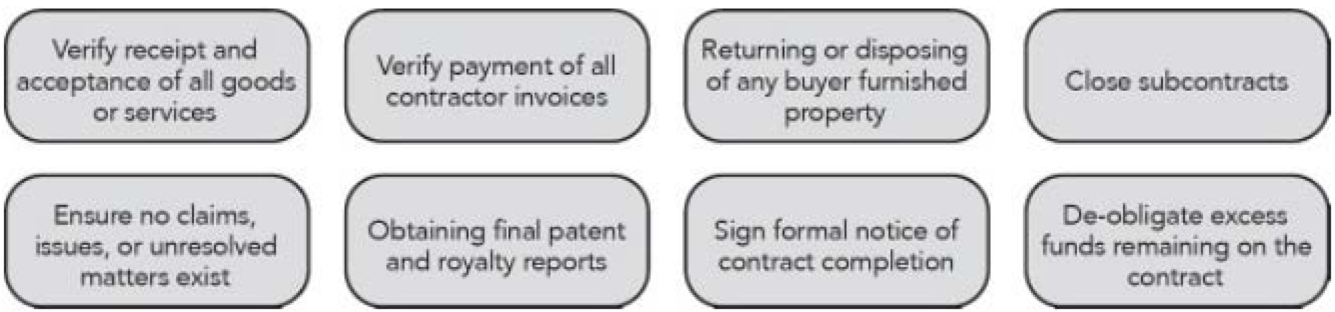
Close out contract

- Closing out the contract consists of completing several procedural and administrative tasks to change the status of a contract from active to complete, as listed in FIGURE 8-14.

FIGURE 8-14. Close Out Contract



Close out contract

- **Government contract administrators** should ensure documentation of contractor performance—

  often called **past performance**—

  is completed on a **timely basis** and in accordance with agency procedures.

Best practices for contract closeout

1. Use Consistent Closeout Process
2. Remember Closeout Start at Contract Award
3. Ensure Consistent Filing
4. Document Thoroughly
5. Resolve Issues
6. Be Proactive
7. Begin Closeout Process Before POP Ends
8. Base Work Subcontract Closeouts on Subcontract POP
9. Tackle the Backlog
10. Be Flexible

Best practices for contract closeout

- **Base Work Subcontract Closeouts on Subcontract POP**
  - Do **not wait for a prime contract** to end **before starting subcontract closeouts**. Closing subcontracts takes time and staying on top of them is important.
  - Monitor the POP of subcontracts and close them out as they end.
  - **Send closeout paperwork** to subcontractors 30 days prior to their end date.
  - This alerts subcontractors to
    - ✓ closeout requirements,
    - ✓ starts the process, and
    - ✓ brings up any issues that may need resolved while the subcontract is still active.

Best practices for contract closeout

Be Flexible

- Ensure policy and processes are **flexible enough** to allow for **closeouts of older contracts.**
- If you are trying to close a **10-year-old contract** and the **original parties are not available**,

  current contract processes may not work to close that older contract.
- Make sure your policies are **flexible enough to allow** all contracts to be closed.

استراتژی مدیریت قرارداد

پیکره دانش مدیریت قرارداد (Contract Management Body of Knowledge)

بخش نهم: فراگیری شایستگی‌ها

ارائه دهنده:

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What we will learn?

- Learn
  - Continuous learning
  - Individual competence
  - Organizational capability

LEARN COMPETENCY

The CMBOK structure

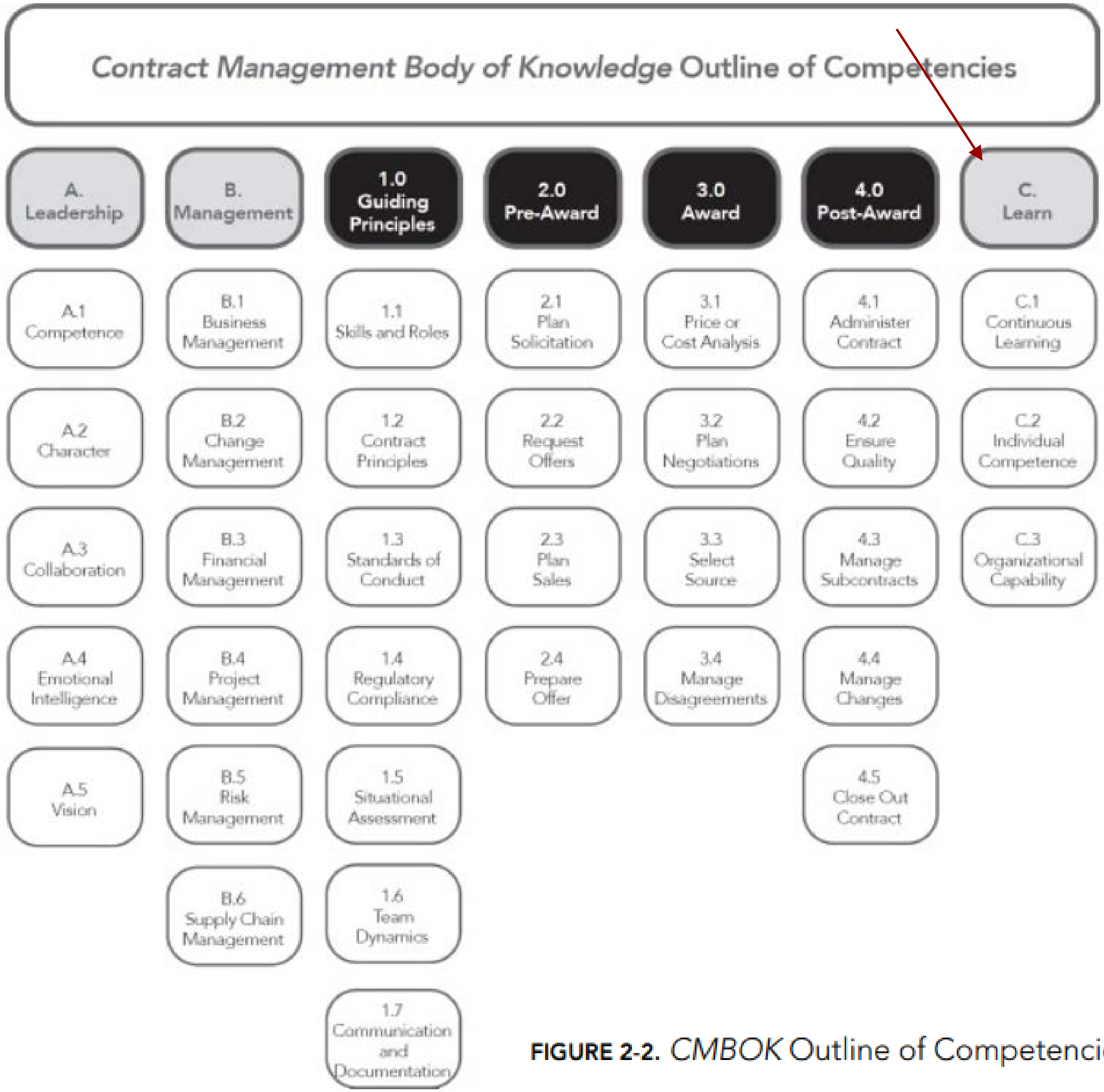
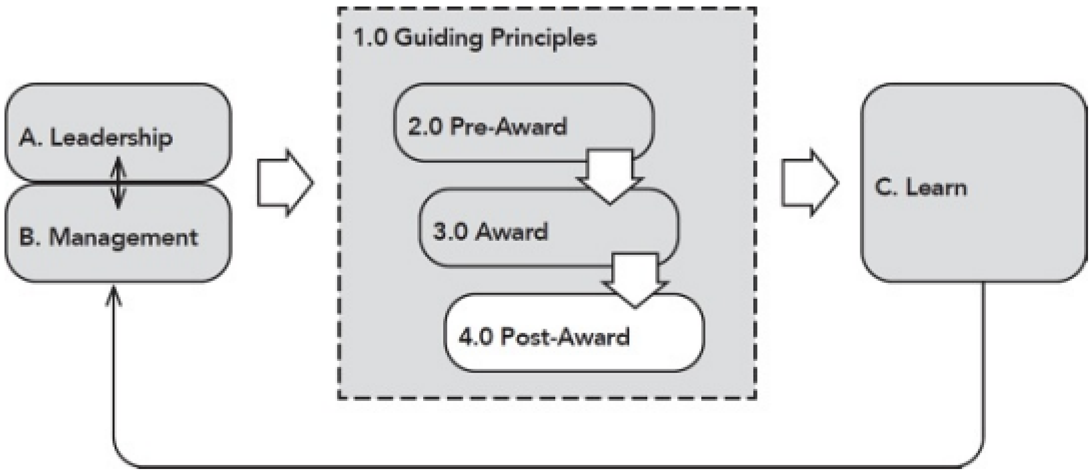


FIGURE 2-2. *CMBOK* Outline of Competencies

Introduction

FIGURE 8-1. The *CMBOK* Competency System



Learn

Successful contract management demands:

- Leadership proficiency through the cumulative effect of competence, character, collaboration, emotional intelligence, and vision;
- Specialized management skill, acumen, and judgment in such areas as business management, change management, financial management, project management, risk management, and supply chain management; and
- **Continuous, lifelong learning to advance individual competence and organizational capability.**

Learn

- The learn competency is comprised of
  1. Continuous learning
  2. Individual competence
  3. Organizational capability

Learn

(CONTINUOUS LEARNING)

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Continuous learning

- (From Joelle Jay’s article, “Become a Better Leader: Commit to Continuous Learning”)

Continuous learning

- To excel in work, life, or as a leader,

  contract managers must commit to **continuous learning.**

- **Many leaders** know this and practice it,

  but **many more miss opportunities** to increase learning that will help them achieve personal and organizational goals.

Continuous learning

- **Contract managers** are often encouraged to learn on the job, but **many either do not or cannot.**
  - This can be due to
  1. Workload,
  2. Forgetting to learn, not knowing what to learn, or
  3. Assuming that the necessary resources to learn are unavailable.
     - ✓ When this occurs, contract managers **learn by chance or by command**.

Continuous learning

1. **Learning by chance** means

   taking opportunities to learn when they appear and they are convenient,

   not necessarily when the opportunities are pursued.

2. Similarly, **learning by command** means learning when **someone else demands it.**

   Responding to a **supervisor's feedback** on one's weaknesses or **fulfilling professional requirements** are examples of learning by command.

   Contract managers must instead pursue learning by choice.

Continuous learning

- **Learning by choice** is based on the following assumptions:
  - **Learning is Leadership.**
    - ✓ Learning is an essential **part of leadership**.
    - ✓ Some experts go so far as to say that learning is **leadership—a constant quest to improve** processes, people, and results.
    - ✓ Comparing actual results with desired results should lead to opportunities to **improve processes and people.**

Continuous learning

- **Learning by choice** is based on the following assumptions:
  - **Learning is Profit and Competitive Edge.**
    - ✓ The **soul of business is innovation**;

      the **soul of personal leadership** is the innovation of the self.

      - **Contract managers** cannot have one without the other.
      - If they want to have, run, or be part of an organization that succeeds in a time of change, then **they must be willing to change** as well.

Continuous learning

- **Learning by choice** is based on the following assumptions:
  - <u>**Learning is Profit and Competitive Edge.**</u>
    - ✓ The **soul of business is innovation**;

      the **soul of personal leadership** is the <u>innovation of the self</u>.

      - If **another organization** is <u>performing better</u>,

        what can we learn to compete with it?

      - If I <u>am not selected for career</u>–enhancing opportunities,

        what do I need to learn to gain a competitive edge?

        If results are **not satisfactory**, <u>change is necessary</u>.

Continuous learning

- **Learning by choice** is based on the following assumptions:
  - **<u>Learning is Life.</u>**
    - ✓ While learning for practical and rational reasons can improve contract management performance,

      learning is a **natural component of life**.

Learning is most fulfilling when we learn something because we want to, not because we have to.

Learn

(INDIVIDUAL COMPETENCE)

Individual competence

- Individual competence is **developed by**
  1. Applying knowledge,
  2. Critical thinking, and
  3. Innovation to business problems,

  to implement the best solutions.

Individual competence

- Means of developing individual competence include professional development activities such as:
  1. **Education**
  2. Training
  3. Certification

Education

- **See Appendix 2** (Contract Management Curricula Models) for **sample curricula** for <u>BBA and MBA degrees in contract management.</u>

Appendix 2

Contract Management Curricula Models

The contract management major prepares students for careers in procurement management in the public and private sectors, focusing on the acquisition of goods and services. The purpose of this section is to present sample curricula of bachelor's and master's degrees in business administration with contract management specialization. A sample course of study for a bachelor's degree is presented in FIGURE 1. FIGURE 2 presents a sample curriculum for a master's degree.

Individual competence

- Means of developing individual competence include professional development activities such as:
  1. **Education**
  2. **Training**
  3. Certification

Training

- **Many businesses** see training as an important part of benefits package for employees which helps an organization in its **ability to recruit and retain contract management professionals.**

Training

1. **Training Needs Assessment**
2. Professional Development Goals
3. Continuing Professional Education (CPE)
4. Measuring Training Impact

Training – Training needs assessment

- A training needs assessment is the **process of identifying how training** can develop individual competence while improving **organizational capability**.

- This **preliminary assessment** ensures that the training is grounded in the **needs of the organization.**

- FIGURE 9-2 provides examples of questions to ask when performing a training needs assessment.

Training – Training needs assessment

FIGURE 9-2. Example Questions for a Training Needs Assessment

Needs	Example Questions
Business Needs	• What problem(s) must be resolved? To what measurable extent? • What opportunity/opportunities must be exploited?
Performance Needs	• What are the specific gaps between the desired and current performance? • What tools and resources do the employees need to achieve the desired performance?
Learning Needs	• What do employees know now? • What skills do the employees need to be able to do differently? How well?
Employee Needs	• What training have employees already had in this area? • What is the attitude toward the planned training program?

Training – Training needs assessment

1. I am an excellent buying or selling team leader.. ☐1 ☐2 ☐3 ☐4 ☐5
2. I confront business issues, not people, in a problem-solving environment.............................. ☐1 ☐2 ☐3 ☐4 ☐5
3. My written buying or selling communications are professional, timely, and appropriate .... ☐1 ☐2 ☐3 ☐4 ☐5
4. I am a person of integrity .... ☐1 ☐2 ☐3 ☐4 ☐5
5. I verbally communicate clearly and concisely.... ☐1 ☐2 ☐3 ☐4 ☐5
6. I am able to make calm, rational business decisions under pressure .... ☐1 ☐2 ☐3 ☐4 ☐5
7. I enjoy solving large complex problems in a buying or selling team environment .... ☐1 ☐2 ☐3 ☐4 ☐5
8. I am willing to compromise when necessary to solve organizational customer or supplier problems.. ☐1 ☐2 ☐3 ☐4 ☐5
9. I am able to consistently achieve high-performance buying or selling results in my organization... ☐1 ☐2 ☐3 ☐4 ☐5
10. I have extensive education, experience, and training in leadership.. ☐1 ☐2 ☐3 ☐4 ☐5
11. I have extensive education, experience, and training in purchasing, sales and marketing, and supply-chain management .... ☐1 ☐2 ☐3 ☐4 ☐5
12. I have extensive education, experience, and training in my organization's products, services, and business processes... ☐1 ☐2 ☐3 ☐4 ☐5
13. I am considered an expert in contract management .... ☐1 ☐2 ☐3 ☐4 ☐5
14. I get along well with all of my team members, business partners, and customers .... ☐1 ☐2 ☐3 ☐4 ☐5
15. I enjoy being responsible for making the tough business decisions (hiring, firing, source selection, and termination).................................... ☐1 ☐2 ☐3 ☐4 ☐5
16. I am highly skilled at using nonverbal communications to achieve business results....... ☐1 ☐2 ☐3 ☐4 ☐5
17. I enjoy coaching others to help them build their leadership skills... ☐1 ☐2 ☐3 ☐4 ☐5
18. I have extensive education, experience, and training inbusiness administration or law .... ☐1 ☐2 ☐3 ☐4 ☐5
19. I believe in honoring my buying or selling commitments... ☐1 ☐2 ☐3 ☐4 ☐5
20. I treat everyone with respect.............................. ☐1 ☐2 ☐3 ☐4 ☐5

Training

1. **Training Needs Assessment**
2. **Professional Development Goals**
3. Continuing Professional Education (CPE)
4. Measuring Training Impact

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Training – Professional development goals

- To **help formulate** goals and achieve expected results, the following plan is recommended.

Training – Professional development goals

- **Step 1: Goal Foundation through Self-Assessment**
  - **How will** you, your employer, and the contract management profession **benefit from** your involvement in and completion of your **goals**?

Training – Professional development goals

Step 2: Goal Development

- Based on the results of the needs assessment, develop **one to three SMART professional development goals** (Specific, Measurable, Action-oriented, Realistic, and Timely).
- A **suggested approach** is to develop one or two goals that can be easily achieved to help **build confidence**, and

  then one or two goals that could have a **significant impact** on your success.

Training – Professional development goals

- **Step 2: Goal Development**
  - **Consider these questions** as you develop your goals:
    - How will you know you are meeting your goals?
    - How often will you check to ensure you are meeting your goals?
    - How will you check?

    FIGURE 9-5 illustrates a suggested means of outlining goals.

    Certification is used as an example.

Training – Professional development goals

FIGURE 9-5. Outlining Goals

Goal: I will become certified by a third-party association by the end of the calendar year.			
Ways to get there	Beginning Date	Projected End Date	Goal Progress*
1. Determine and attain the needed training.	Jan 1	Feb 14	Green
2. Determine and attain the needed education.	Jan 1	Feb 14	Green
3. Determine and attain the needed work experience.	Jan 1	Feb 14	Green
4. Join and actively participate in a study group.	Feb 1	Mar 31	Green
5. Compile and submit application.	Mar 1	Jun 1	Green
6. Take exam.	Jul 4	Jul 4	Green
*Code: Green = On track; Yellow = Slow progress; Red = No progress			

Training – Professional development goals

- **Step 3: Goal Accountability**
  - **Follow-on goal progress** should be assessed frequently, and **not less often than every month.**
  - Since **professional development plans** may need to be adjusted due to new opportunities, organizational requirements, and risks,

    each goal should be **reassessed by revisiting** the SMART process.
  - If progress on a goal becomes **stagnant** or if you continue to **fall behind**,

    you should assess if this goal is really a priority,

    may actually be a detriment to your professional development,

    may need to be revised,

    may need to be completed at another time, or

    may need to be removed from your plan.

Training

1. **Training Needs Assessment**
2. **Professional Development Goals**
3. **Continuing Professional Education (CPE)**
4. Measuring Training Impact

Training – Continuing professional education (CPE)

- CPE is education relevant to developing **contract managers' individual competence**.

- It consists of **updated knowledge** intended to enhance performance and to provide a **broader understanding** of contract management.

- To view CPE guidance on acceptable and unacceptable topics and subjects, and on measuring CPE hours, see **Appendix 3**, Continuing Professional Education (CPE).

Training

1. **Training Needs Assessment**
2. **Professional Development Goals**
3. **Continuing Professional Education (CPE)**
4. **Measuring Training Impact**

Training – Measuring training impact

- The **Kirkpatrick Model** is one standard for **evaluating the effectiveness** of training.

- It considers the **value of any type** of training, formal or informal, across **four levels**.

Training – Measuring training impact

1. **Level 1: Reaction.**
   - ❖ The **degree** to which participants **find** the training favorable, engaging, and relevant to their jobs.
2. **Level 2: Learning.**
   - ❖ The **degree** to which participants **acquire** the intended knowledge, skills, attitude, confidence, and commitment, based on their participation in the training.
3. **Level 3: Behavior.**
   - ❖ The **degree** to which participants **apply** what they learned during training when they are back on the job.
4. **Level 4: Results.**
   - ❖ The **degree** to which **targeted outcomes** occur as a result of the training and the support and accountability package. (Kirkpatrick Partners, 2017)

Individual competence

- Means of developing individual competence include professional development activities such as:
  1. **Education**
  2. **Training**
  3. **Certification**

Certification – Professional Certification, Occupational Certification, and Certificates

- At times there is **confusion** about the differences between certifications and certificates.

- **Professional certification** is a process by which a nongovernment entity grants a time-limited recognition to an individual after
  verifying the individual has met **established criteria** for proficiency and competence, usually through an **eligibility application and assessment**.

Certification – Professional Certification, Occupational Certification, and Certificates

- Occupational certification is primarily a **training program** and may have characteristics of certification.

- It is a **requirement for employment** by the granting organization.

Certification – Professional Certification, Occupational Certification, and Certificates

- A **certificate** is issued after a course of study has been completed through a **non-degree** granting educational or training program consisting of:
  - A **learning event or series of events** designed to educate or train individuals within a defined scope, and
  - A system designed to ensure individuals receive a certificate **only after verification of successful completion** of all program requisites including but **not limited to an evaluation** of learner attainment of intended learning outcomes.

Certification – Professional Certification, Occupational Certification, and Certificates

- FIGURE 9-6 presents a comparison of professional certification, occupational certification, and certificate.

FIGURE 9-6. Comparison of Professional Certification, Occupational Certification, and Certificate

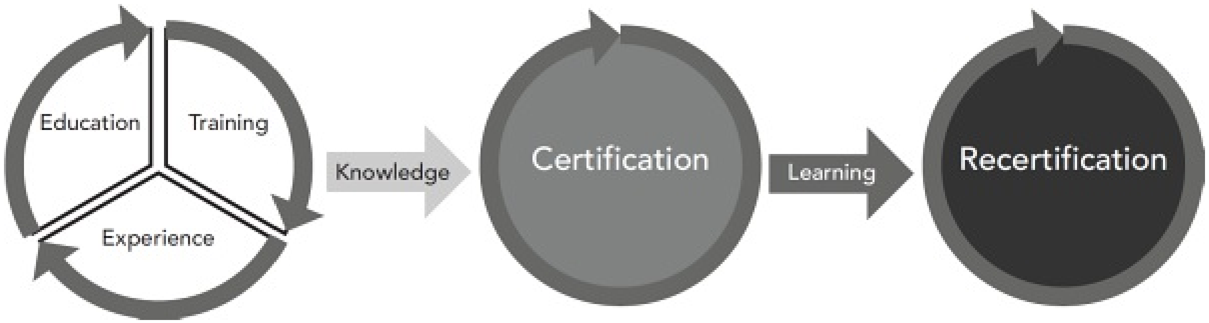
Professional Certification	Occupational Certification	Certificate
Voluntary to indicate competence and lifelong learning	Requirement of employment	Can be voluntary or mandatory
Awarded by a third party after verifying the individual has met established criteria for proficiency and competence	Awarded by the employer after the individual completes an in-house training program	Awarded by an education or training institution after the individual completes training courses or programs
Portable and can be transferred from industry to industry	Ceases to exist if the job does not require it	Continues to exist without additional requirements
Results from an assessment process	May result from an assessment or training process	Results from a training process
Indicates mastery of required competencies to practice	Indicates completion of course(s) or program	Indicates completion of course(s) or program
Standards set through a defensible, industry-wide process (job analysis) that results in an outline of required competencies	Course/program content established by faculty or committee; occasionally through a defensible analysis	Course/program content established by faculty or committee; occasionally through a defensible analysis
Typically results in a formal designation (e.g., CPCM, PMP) and can be listed on a resume as a professional credential	Listed on a resume as an occupational achievement	Listed on a resume as a training achievement
Must have recertification requirements	Typically has recertification requirements	No ongoing requirements; It is the end result
Certification is owned by the certification body and can be taken away	Certification could be owned by the certification body	Certificate is owned by the certificate holder

Certification – The value of certification

- (From John Wilkinson's article, "The Market Value of Certification")

Certification – The value of certification

FIGURE 9-7. Third-Party (NCMA) Certification Phases



PHASE 1	PHASE 2	PHASE 3	PHASE 4	PHASE 5
Contract Managers are expected to acquire contract management knowledge through education, training, and experience.	Certification candidates are assessed on their contract management knowledge through an examination.	Those who pass the examination have demonstrated an accepted level of mastery of consensus contract management competencies.	Certified contract managers are expected to engage in meaningful learning experiences.	Certified and recertified contract managers who actively engage in meaningful learning experiences are recertified.

Certification – The value of certification

A Word of Caution.

- **Even good contract managers** can lose track of time and allow other priorities to interfere with their lifelong learning.

- If **you are too busy** for <u>learning</u>, you're too busy.
  - As Arthur W. Jones once said,

    "You are perfectly aligned to receive the results you are now getting."

- This applies **both to individuals and organizations**:

  if you are not satisfied with your current results, you must change your behavior and processes.

Certification – The value of certification

- **Certification** provides only a **tendency toward**, <u>not a guarantee of, competence</u>—

  but that is **valuable in and of itself.**

- **A Word of Caution.**

  No program can guarantee the competence of individuals.

Learn

(ORGANIZATIONAL CAPABILITY)

Organizational capability

- Organizational capability is determined by the **cumulative** effect of all individuals' competence and contract management processes.

Organizational capability

1. **Continuous process improvement**
2. Mentoring for continuous improvement
3. Innovation

Continuous process improvement

- (From Landon Hill’s article, “Continuous Process Improvement: Three Tools to Enhance your Organization”)

Continuous process improvement

- **Three tools** that have been successfully used to accomplish these objectives are:

1. Using a structured approach to **identify** process **inefficiencies**
2. Benchmarking against **similar** and **dissimilar** organizations
3. Formally assessing the **maturity** of the procurement organization's **operations**

Continuous process improvement – Using a structured approach to identify process inefficiencies

- Regardless of the process **improvement methodology selected**
  - Lean (reducing waste),
  - Six Sigma (reducing variations), or
  - Theory of Constraints (managing constraints),

  the **desired outcome** remains the same:

  improving processes while reducing costs or inefficiencies.

Continuous process improvement – Benchmarking against similar and dissimilar organizations

- Benchmarking processes against other organizations is a **widely accepted practice** that can **help contribute** to continuous process improvement by
  1. **Identifying** areas for improvement,
  2. **Assessing** the strength of your processes,
  3. **Forecasting** industry trends, or
  4. **Stimulating** strategic planning.

Continuous process improvement – Formally assessing the maturity of the procurement organization's operations

- **One tool** to assess
  1. **Contract management process capability** and
  2. An organization's contract management processes

  is the **Contract Management Maturity Model (CMMM).**
- **See Appendix 5** (Organizational Capability Measurement through the Contract Management Maturity Model (CMMM))

  for more information on how to utilize the CMMM to determine an organization's maturity in its contract management processes.

Organizational capability

1. **Continuous process improvement**
2. **Mentoring for continuous improvement**
3. Innovation

Mentoring for continuous improvement

- The focus of mentoring should be on **professional development**.
- **Following are key terms and definitions** associated with a mentoring program

- **Learner**: A less experienced individual seeking guidance, support, or knowledge from a mentor.
  - A.k.a.: mentee, protégé
- **Mentor**: A more experienced individual providing some amount of guidance and support to a learner.
- **Mentoring**:
  - The relationship between at least one learner and at least one mentor.
  - Emphasis is on the "whole person" concept: Heart, mind, body, and spirit.
  - A sustained learning experience is key to achieving results.

Mentoring for continuous improvement

- The focus of mentoring should be on **professional development**.
- **Following are key terms and definitions** associated with a mentoring program

- **Mentoring Program**: A variety of structured and managed mentoring relationships within an organization.
- **Participants**: The collective members of a mentoring program.

Mentoring for continuous improvement

- To further shape the definition of mentoring, we also need to know what mentoring is not intended to do.

- Mentoring is not:
  1. Solely focused on career enhancement,
  2. Clone-making (to make an exact copy),
  3. Finding a protector or sponsor,
  4. Recruiting tool, or
  5. All cheerleading all the time.

Mentoring for continuous improvement

FIGURE 9-9. The Benefits of Mentoring

Learner Benefits	Mentor Benefits	Organizational Benefits
• Greater understanding of organizational structure and business • Professional development in key job areas • Unique opportunity for individual feedback • Broader, more strategic perspective • Increased internal networks	• Unique insight into organizational business • Leadership development • Unique opportunity for individual feedback • Broader, deeper perspective • Increased internal networks	• Retain top talent • Effectively onboard new talent • Decrease learning curve in critical areas • Build a substantial leadership pipeline • Increase employee engagement • Grow job performance and close skill gaps • Build networking and sponsorship

Mentoring for continuous improvement

FIGURE 9-10. Learner and Mentor Responsibilities

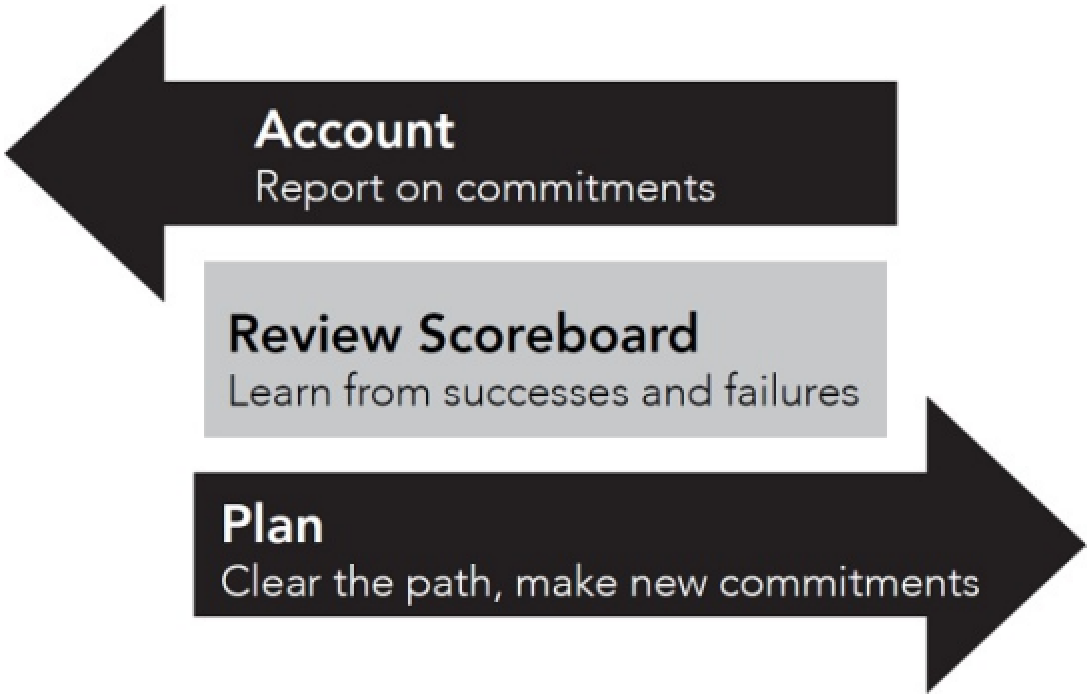
Learner Responsibilities	Mentor Responsibilities
• Take charge of his/her developmental experiences, • Take ownership over the direction and content of the mentoring relationship, • Be fully engage in the relationship, • Be open to constructive feedback, • Set meetings and agendas, • Follow up on action items, • Identify and track goals, and • Apply key lessons learned to performance.	• Assume the responsibility to sponsorcoach, and facilitate the development of assigned learners • Share their expertise, connect learners with their network, and provide guidance when possible • Meet on a regular basis, • Be available for unscheduled conversations • Give quality feedback • Provide positive facilitation and development experiences

Mentoring for continuous improvement

- Every mentoring **meeting** should have an agenda to help keep the conversation focused.
- Components of mentoring meetings are:
  1. **Account.** Looking back to **account** for commitments made.
  2. **Review Scoreboard.** Reviewing **where you are now**—are you behind, on time, or ahead?
  3. **Plan.** Plan new achievements and make new commitments. If barriers need to **be cleared**, ask the mentor for ideas. (See FIGURE 9-11.)

Mentoring for continuous improvement

FIGURE 9-11. Components of a Mentoring Meeting



Organizational capability

1. **Continuous process improvement**
2. **Mentoring for continuous improvement**
3. **Innovation**

Innovation

- In **industry** and **government**, innovation can be a chief means of
  1. Survival
  2. Growth
     - i. Creativity,
     - ii. Agility, and
     - iii. Adaptability

required to generate innovation are becoming necessary skills in industry and government **contract management organizations**.

Innovation

- **Innovation** is creating results by **doing new things**.

- The **focus** is on outcomes, **not just** new ideas or technology.

(Burrows, 2018)

APPENDICES

Appendix 1

Position Standard for Contract Managers

Contract management is a profession that requires higher education, professional training, and occupational experience. The purpose of this appendix (derived from NCMA's 2011 Position Standards for the Contract Management Professional) is to present how the position standard defines the various roles, responsibilities, and qualifications common to contract management.

Appendix 2

Appendix 2

Contract Management Curricula Models

The contract management major prepares students for careers in procurement management in the public and private sectors, focusing on the acquisition of goods and services. The purpose of this section is to present sample curricula of bachelor's and master's degrees in business administration with contract management specialization. A sample course of study for a bachelor's degree is presented in FIGURE 1. FIGURE 2 presents a sample curriculum for a master's degree.

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Appendix 3

NCMA
NATIONAL CONTRACT MANAGEMENT ASSOCIATION

Contract Management
Continuing Professional Education Guide

Last Updated August 23, 2022

Appendix 4

Appendix 4

CMBOK Competency and Knowledge Matrix

The purpose of this section is to present a matrix that aligns *CMBOK* competencies with knowledge content areas. Knowledge content areas describe the type of knowledge necessary to achieve contract management competence.

Appendix 5

Organizational Capability Measurement through the Contract Management Maturity Model (CMMM)

The purpose of this appendix (by Dr. Rene G. Rendon) is to discuss contract management process capability and how an organization's contract management processes can be assessed using the Contract Management Maturity Model (CMMM).

Appendix 6

Contract Management Organizational Capability Survey

This survey tool can be used to generate results that can provide insight on the effectiveness of an organization's buying or selling policies, procedures, and processes. The survey statements align with the job tasks, competencies, and domains presented in the *Contract Management Standard™* (CMS™) [ANSI/NCMA ASD 1-2019 (R2022)] (see Annex).

There are three parts to the survey:

- Part 1 assesses alignment with the *Guiding Principles* and is applicable to all contract managers.
- Part 2 assesses alignment with *Buyer* job tasks, competencies, and domains.
- Part 3 assesses alignment with *Seller* job tasks, competencies, and domains.

Appendix 7

Best Practices in State and Local Government Contract Management

The following recommended best practices are presented with permission of the National Association of State Procurement Officials (NASPO). (NASPO, 2019) The topics of the best practices are aligned with the competencies presented in ANSI/NCMA ASD 1-2019 (R2022) (see Annex).

Appendix 8

Uniform Commercial Code (UCC) Table of Contents

The purpose of this section is to present the Universal Commercial Code (UCC) Table of Contents. To view the most current version of the entire UCC, visit https://www.law.cornell.edu/ucc.

Appendix 9

Federal Acquisition Regulation (FAR) General Structure and Subparts

The purpose of this section is to present the FAR general structure and subparts. To view the most current version of the entire FAR and other useful information concerning federal acquisition, visit the Code of Federal Regulations.

Appendix 10

CMS-FAR Matrix

This matrix cross-references the competencies of the *Contract Management Standard™*, Third Edition [American National Standard ANSI/NCMA ASD 1-2019 (R2022)] (CMSTM) with the parts of the *Federal Acquisition Regulation (FAR)*.

Appendix 11

CMBOK Changes and Evolution

This section explains the changes made to the sixth edition of the *CMBOK* for this seventh edition, as well as the evolution of the *CMBOK* from the first edition to the present edition.

موسسه مهندسی و مدیریت ساخت علوی پور (ACEMI)

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