

44.203 Consent limitations.

(a) The *contracting officer's* consent to a subcontract or approval of the contractor's purchasing system does not constitute a determination of the acceptability of the subcontract terms or price, or of the allowability of costs, unless the consent or approval specifies otherwise.

(b) *Contracting officers shall* not consent to-

(1) Cost-reimbursement subcontracts if the fee exceeds the fee limitations of 15.404-4(c)(4)(i);

(2) Subcontracts providing for payment on a cost-plus-a-percentage-of-cost basis;

(3) Subcontracts obligating the *contracting officer* to deal directly with the subcontractor;

(4) Subcontracts that make the results of arbitration, judicial determination, or voluntary settlement between the prime contractor and subcontractor binding on the Government; or

(5) Repetitive or unduly protracted use of cost-reimbursement, time-and-materials, or labor-hour subcontracts (*contracting officers should* follow the principles of 16.103(c)).

(c) *Contracting officers should* not refuse consent to a subcontract merely because it contains a clause giving the subcontractor the right of indirect appeal to an agency board of contract appeals if the subcontractor is affected by a dispute between the Government and the prime contractor. Indirect appeal means assertion by the subcontractor of the prime contractor's right to appeal or the prosecution of an appeal by the prime contractor on the subcontractor's behalf. The clause *may* also provide that the prime contractor and subcontractor *shall* be equally bound by the *contracting officer's* or board's decision. The clause *may* not attempt to obligate the *contracting officer* or the appeals board to decide questions that do not arise between the Government and the prime contractor or that are not cognizable under the clause at 52.233-1, Disputes.

Parent topic: Subpart 44.2 - Consent to Subcontracts