



# NAVFAC

Naval Facilities Engineering Systems Command

NAVFAC SOUTHEAST

## GET'N A WIN/WIN with Causation Analysis (Key to Dispute Resolution)

Industry Day

09 Dec 2024

# BUILD AND FIGHT FOR VICTORY

- **Dispute Resolution GOAL(s):**
  - **Make the case to support or deny Subcontractor, Supplier, or Design Professional Equitable Adjustments.**
    - Point to an accurate Standard.
    - Develop a Causation Analysis.
    - Utilize Military Criteria, FAR Clauses, and Contract Terms & Conditions.

You don't lead by pointing and telling people some place to go.  
You lead by going to that place and making a case.

Ken Kesey

When construction degrades into finger pointing ...  
Point to an accurate Standard.

John E. Penn Jr.

# Partnering

By: John Philip Falter, USNR  
1943

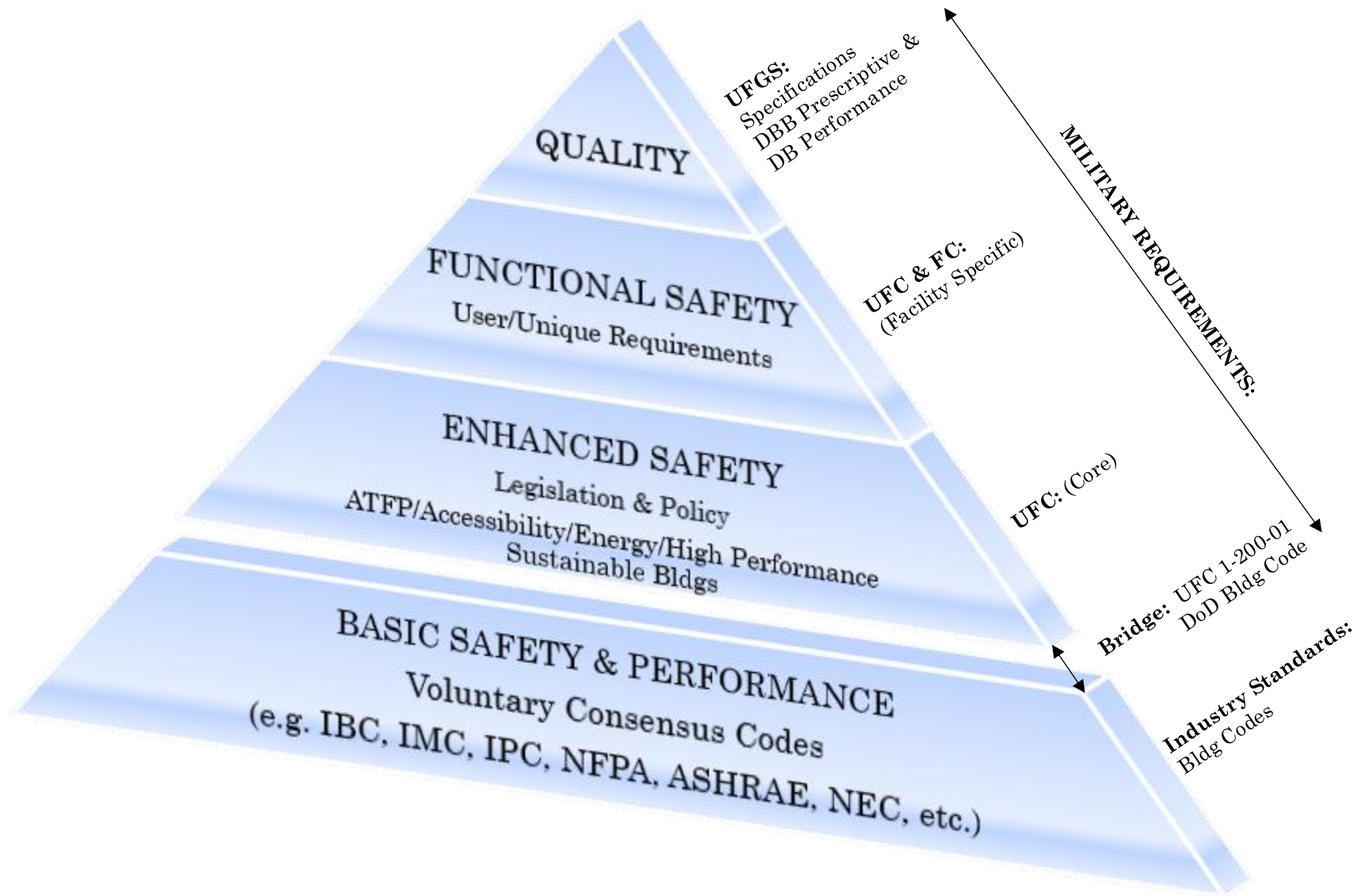


# Major Points

- **Project Foundation**
- **Criteria Triangle - Safety**
- **Unified Facilities Criteria Program**
- **Unified Facilities Guide Specification (UFGS)**
- **FAR 52.236-21 Specifications and Drawings for Construction**
- **ASBCA Case Examples**
- **Contract Design Intent**
- **DFARS 252.236-7001 Contract Drawings and Specifications**
- **Advisory Provisions**
- **Manufacturer's Installation Instructions**
- **Design-Build (DB) Design Submittal Procedures**
- **FAR 52.236-2 Differing Site Conditions (DSC)**
- **Time Impact Analysis (TIA)**
- **Force Majeure (Weather) Delays**



# CRITERIA TRIANGLE - SAFETY

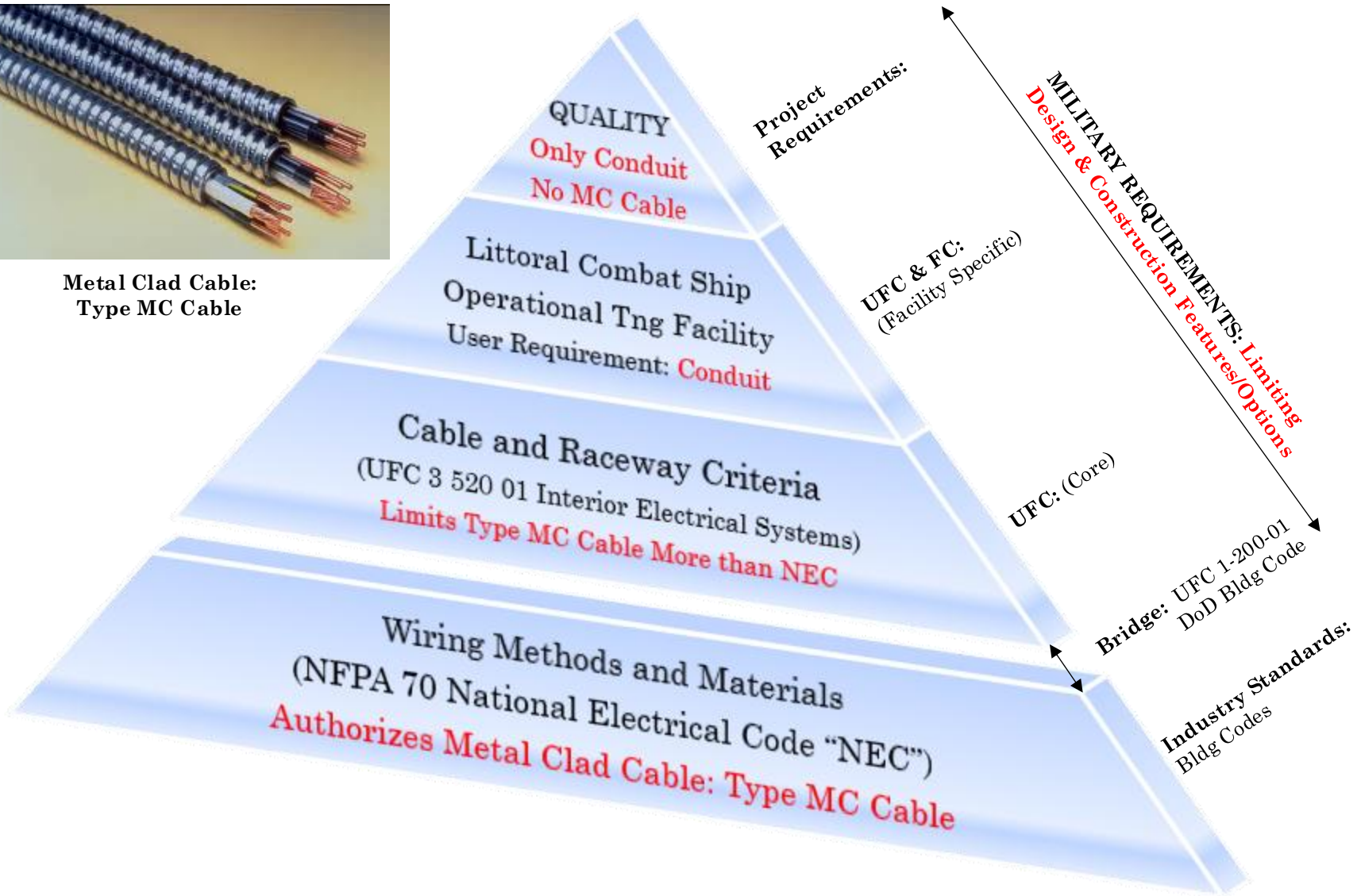




# Military Requirement Example



Metal Clad Cable:  
Type MC Cable



**Build and Fight for Victory**

# **Unified Facilities Criteria Program**



# Unified Facilities Criteria Program

- There are **363** Unified Facilities Criteria (UFC) Manuals published on the Whole Building Design Guide (WBDG).
- These UFC Manuals amend the International Building Codes and other voluntary Consensus Standards with Military Requirements.
  - 26 of those 363 UFC Manuals serve the majority of traditional building systems on DoD facility construction projects as Core UFC Manuals.

# Hierarchy vs Order of Precedence

**UFC 1-200-01 DoD Building Code**



- **Series 1 UFC's: Policy, Procedures, and Guidance**



- **Series 2 UFC's: Master Planning**



- **Series 3 UFC's: Discipline-Specific Criteria**



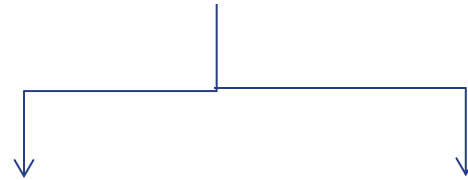
- **Series 4 UFC's: Multi-Disciplinary and Facility-Specific Design**

**Series 4 UFC's**



**UFC 3-600-01 Fire Protection Engineering for Facilities**

More Detailed



- **UFC 1-200-01 DoD Building Code**

- **Series 3: Discipline Specific Criteria**



More Detailed

**Build and Fight for Victory**

# **Unified Facilities Guide Specification (UFGS)**

**1531 Specifications**

# UFGS Version & Usage

- **Version:** Current editions are posted on the Whole Building Design Guide website.
  - Verify the latest quarterly Unified Masters Reference List (UMRL) date usage needed for the Project.
- **Usage:**
  - Design-Bid-Build Project: Use the current edition at the start of the Pre-Final (100%) A-E Design Phase.
  - Design-Build Project: Use the current edition at the time of contract award date.
    - **Note:** KTR's DOR has discretion to use a more current edition after award.
- **Editing:**
  - Use SpecsIntact Software

# UMRL DATE

- Example UFGS Header Information:

\*\*\*\*\*  
USACE / NAVFAC / AFCEC UFGS-01 35 26 (May 2024)

Preparing Activity: NAVFAC

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Superseding  
UFGS-01 35 26 (November 2020)

## UNIFIED FACILITIES GUIDE SPECIFICATIONS

References are in agreement with **UMRL dated April 2024**

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### SECTION TABLE OF CONTENTS

DIVISION 01 - GENERAL REQUIREMENTS

SECTION 01 35 26

GOVERNMENTAL SAFETY REQUIREMENTS

05/24

**Build and Fight for Victory**

**FAR 52.236-21**  
**Specifications and**  
**Drawings for Construction**  
**(Four Concepts)**

# Specifications Govern Over Conflicts

- **CFR Title 48 Federal Acquisition Regulations System FAR 52.236-21 *Specifications and Drawings for Construction*:**
  - In case of a difference between drawings and specifications, **specifications shall govern**. The rationale is specifications provide the most detailed description of work and are therefore the best indication of designer's and owner's intent for the project.
    - Example: Specifications specify 4" thick concrete sidewalk, drawings detail a 5" thick concrete sidewalk ... 4" thick concrete is the basis of the Project.
    - Example: Specifications call for 4" thick concrete sidewalk, drawings detail a 3" thick concrete side walk ... 4" thick concrete is the basis of the Project.



# Anything Mentioned Governs

- **CFR Title 48 Federal Acquisition Regulations System FAR 52.236-21 *Specifications and Drawings for Construction*:**
  - Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, **shall be of like effect as if shown or mentioned in both**. The rationale is no conflict exists between the documents and the description of work is the best indication of designer's and owner's intent for the project, regardless of the forum presented.
    - Example: Specifications silent on the compressive strength of concrete, whereas the drawings detail 3,000 psi concrete ... 3,000 psi concrete is the basis of the Project.
    - Example: Specifications specify 3,000 psi concrete, whereas the drawings do not indicate the compressive strength of concrete ... 3,000 psi concrete is the basis of the Project.

# Shop Drawing Errors or Omissions

- CFR Title 48 Federal Acquisition Regulations System FAR 52.236-21 *Specifications and Drawings for Construction*:
  - **Approval by the Contracting Officer** (duties that can be delegated to a GOV COR) **shall not relieve the Contractor from** responsibility for **any errors or omissions** in such drawings, nor from responsibility for complying with the requirements of the contract.
  - The rationale rests with the axiom **“Two Wrongs Do Not Make a Right”**.
    - Failure of Contractor’s Quality Control measures that led to an error or omission with their submittal is not waived by the failure of the Government’s Quality Assurance measures that led to approving Contractor’s defective submittal.
    - Regardless of the parties’ misguided processes, the contract work remains as bargained for and remains intact to be executed safely and correctly.

# Shop Drawing Variations

- CFR Title 48 Federal Acquisition Regulations System FAR 52.236-21 *Specifications and Drawings for Construction*:
  - KO approval of a **shop drawing variation with errors or omissions is not afforded the same unrestricted disclaimer** under non-compliant shop drawings that have KTR errors or omissions.
    - Further steps are needed to evaluate whether the matter is an error or omission relating to safety or code violation, and not simply an error or omission of judgment.
  - A variation, regardless of how minor, is outside of the originally bargained for contract agreement and **modifies the designer's and owner's design** intent for the project upon GOV approval of the variation.
    - The variation resets the minimum solicitation (RFP) standard, hence GOV approval of a variation with an error or omission of judgment (**not affecting safety or code**) would likely rest with the GOV and not the KTR.

# **Build and Fight for Victory**

## **ASBCA Case Examples:**

### **Similar Construction Terms or Methods of Construction**

# ASBCA Case Examples

- **What about similar construction terms or methods of construction in both the Specifications and Drawings?**
  - Such as two types of fabric to minimize soil erosion, such as matting made of Jute found in the Specifications but detailed as Nylon on the Drawings?
  - Or two types of roof drains, a general-purpose roof Area Drain found in the Specifications but detailed as a roof Parapet Drain on the Drawings?

# ASBCA No. 50411 Case Example

- **Shah Construction Co. Inc. vs. USACE** (March 8, 2001): **Contract specified Jute matting for Project soil erosion control in the technical specifications, while detailing Nylon matting on the drawings.**
  - **Positions:** Shah considered Nylon a **conflict** with Jute, while USACE considered Nylon not in conflict with the specifications under the proviso of not being mentioned in the specifications (**Anything Mentioned**); the GOV wanted Nylon to be used.
  - **Issue:** Whether a **“conflict”** between the Specs & Dwg existed or not?
  - **ASBCA Decision:** The Jute matting was deemed the basis of the Project, and held as a **conflict**. The Board held FAR 52.236-21 clause can be used to resolve disputes between specific terms in competing clauses of like provision (Similar Term or Method).
    - Technical Analysis: The Board found a conflict existed within the contract documents concerning specific terms (Erosion Control Matting Fabric) in competing clauses (Nylon on the drawings and Jute in the specifications) of like provision (a means to prevent erosion on slopes). The case narrative can be viewed as a math formula:

**Conflict = Specific Terms in Competing Clauses of Like Provision**

**Note: The fabric material (Jute or Nylon) did not change the design intent.**

# ASBCA No. 33792 Case Example

- **Caddell Construction Co. vs. Navy (Sept. 14, 1988):** Contract specified roof area drains as the Project default, as well as specifying different roof drain types, but not a parapet drain. One building roof detail included roof parapet drains discharging at various wall locations.
  - **Positions:** Caddell considered the roof parapet drains a **conflict** with the area drains, while the Navy considered the roof parapet not in conflict with the specifications under the proviso of not being mentioned in the specifications (**Anything Mentioned**); Navy wanted roof parapet drain to be used.
  - **Issue:** Whether a **“conflict”** between the Specs & Dwgs existed or not?
  - **ASBCA Decision:** The parapet roof drain was deemed the basis of the building, and **held as an omission** with regards to the specifications (**Anything Mentioned**). The Board held the roof general purpose drain would not fulfill the functions of a parapet roof drain as depicted in the drawings.
    - Technical Analysis: The Board interpreted the contract as a whole, giving reasonable meaning to all its parts (i.e. Specifications & Drawings) to avoid any nonessential, useless, or irrelevant matters if area drains were deemed the basis of the building.



# Design Intent

- How would this “older” Roof Drain claim be reconciled with the more recent Jute vs Nylon Board Formula decision?
  - The conflict involved specific terms (Roof Drains)
  - In competing clauses (Area drain in the specifications and Parapet drain on the drawings)
  - Of like provisions as noted by the Board (A means to discharge drainage away from the roof).
- Why wouldn't a hypothetical future Board sustain a contractor's appeal and grant an equitable adjustment for the more expensive parapet drains shown on the drawings?

Answer: **Contract Design Intent**

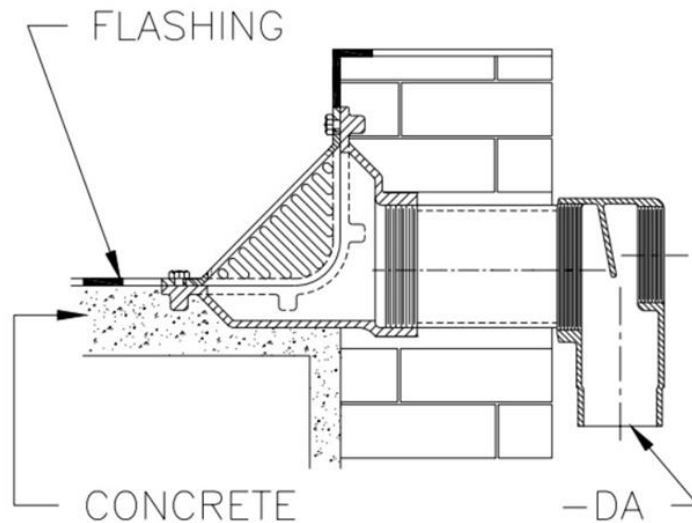
- **Omission** = Specific Terms in Competing Clauses of Like Provision that changes the Design Intent
- **Conflict** = Specific Terms in Competing Clauses of Like Provision without changing the Design Intent.

**Build and Fight for Victory**

**Contract  
Design Intent**

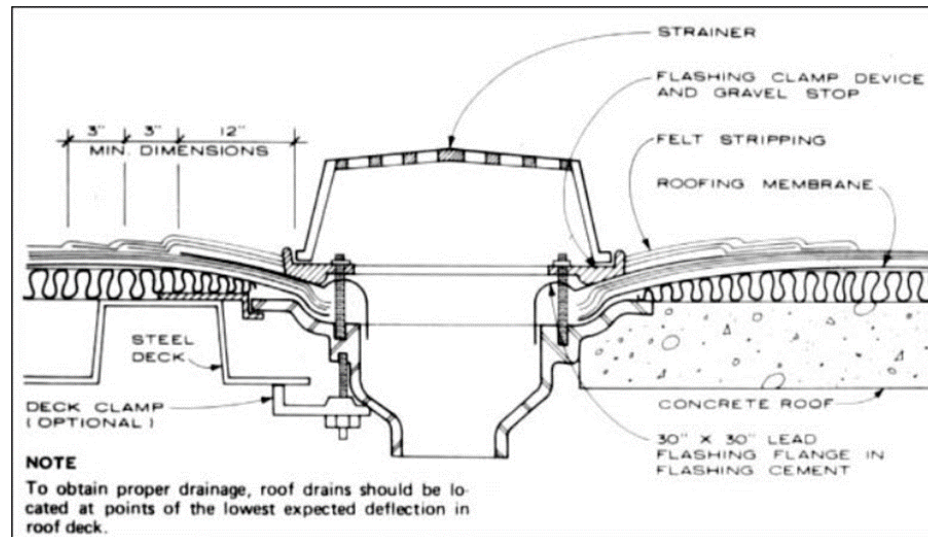
# Contract Design Intent

- Both types of roof drains discharge water from a roof.
  - A parapet roof drain (RD) has a vertical and horizontal spatial aspect, whereas an area RD only has a vertical spatial aspect.
  - A parapet RD is embedded in the wall and roof; a parapet RD keeps the leader pipe from piercing the interior building envelope (**Hence, a Lower risk of interior building leak**).



# Contract Design Intent

- An area RD embeds into the roof surface; its drain is vertical. The pipe pierces the interior building envelope (Hence, a Higher risk of interior building leak).



- An area RD's Design Intent is not equal to a parapet RD. Area RD's change the designer's and owner's intent.
- It affects construction trades, other bldg. codes, and safety rules not anticipated at the time of bidding for this Project.

# Basis of the Project

Summary													
Example		Term		Competing Clauses		Like Provision	Design Intent		Conflict	Omission	Rule		Basis of Design
		Exact	Specific	Specs	Dwgs		Same	Change					
Ex. 1a	Sidewalk Thickness	Inches	N/A	4"	5"	Yes	N/A	N/A	Yes	N/A	FAR 52.236-21	Specs Shall Govern	4" Thickness
Ex. 1b	Sidewalk Thickness	Inches	N/A	4"	3"	Yes	N/A	N/A	Yes	N/A	FAR 52.236-21	Specs Shall Govern	4" Thickness
Ex. 2a	Concrete Strength	PSI	N/A	Silent	3,000 psi	N/A	N/A	N/A	No	Yes	FAR 52.236-21	Anything Mentioned	3,000 psi
Ex. 2b	Concrete Strength	PSI	N/A	3,000 psi	Silent	N/A	N/A	N/A	No	Yes	FAR 52.236-21	Anything Mentioned	3,000 psi
ASBCA 50411	Shah Construction	N/A	Jute vs. Nylon	Jute	Nylon	Yes (Soil Erosion Prevention)	Yes	No	Yes	No	ASBCA 50411	<b>Conflict (Design Intent Not Changed)</b> = Specific Terms in Competing Clauses of Like Provision "Like - Specs Shall Govern"	Jute
ASBCA 33792	Caddell Construction	N/A	Area Drain vs. Parapet Drain	Area Drain	Parapet Drain	Yes (Drain Water Away From Roof)	No	Yes	No	Yes	ASBCA 33792	<b>Omission (Design Intent Changed)</b> = Specific Terms in Competing Clauses of Like Provision "Like - Anything Mentioned"	Parapet Drain

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**DFARS 252.236-7001**

**Contract Drawings and  
Specifications**

# Three Useful Resolution Tools

- **CFR Title 48 Defense Federal Acquisition Regulations Supplement (DFARS) 252.236-7001 *Contract drawings and specifications:***
  - **Large Scale Drawings govern over Small Scale Drawings.**
  - **Preference for Figures Marked over Scaled Measurements.**
  - **Omissions, Misdcriptions, and Work Customarily Performed.**





# Work Customarily Performed

- Omissions from drawings or specifications or misdescription of details **manifestly necessary** to carry out the **intent** of the drawings and specifications, or that are **customarily performed**, shall not relieve the contractor from performing such omitted or misdescribed details.
  - The contractor shall perform such details as if fully and correctly set forth and described in the drawings and specifications.
  - The rationale: There are construction methods and materials accepted within the industry and performed regardless of omitted references or misdescribed details, when the construction contract's **overall design intent is understood** by the parties.

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# **Advisory Provisions Specifications**

# Advisory Provisions Design-Bid-Build Specifications

- **Select UFGS Specification Sections have a Modification of References Article or Paragraph. The body of the text may state the following:**
  - *Consider the advisory or recommended provisions, of the referred references, as mandatory.*
  - *In the referenced publication(s), consider the advisory provisions to be mandatory.*
  - *Consider the advisory or recommended provisions to be mandatory, as though the word “shall” had been substituted for the words “should” or “could” or “may,” wherever they appear.*

**This is a significant transformation within Specs**  
**Advisory Provision to Code Requirement**

# Advisory Provisions Design-Build Specifications

- Design Build Standard Template Request For Proposal (RFP) Part 4 Performance Technical Specification (PTS) Section Z10 General Performance Technical Specification Article 1.2 Design Guidance states:
  - “... *advisory provisions of all referenced codes, standards, and specifications must be mandatory; substitute words such as "must", or "required" for words such as "should", "may", or "recommended," wherever they appear. The results of these wording substitutions incorporate these code and standard statements as requirements ...*”

**This is significant for KTR's Designer of Record (DOR)**  
**All Advisory Provisions to Code Requirements**

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**Manufacturer's  
Installation Instructions  
&  
Manufacturer's  
Recommendations**

# Manufacturer's Installation Instructions & Manufacturer's Recommendations

- **Core UFC 3-410-01, Heating, Ventilating, and Air Conditioning Systems** incorporated the International Mechanical Code (IMC) (2021) provisions:
  - Section 304 *Installation*: **Equipment and appliances shall be installed** as required **by the terms of their approval** [*i.e. Shop Drawings*], in accordance with the conditions of the listing [*e.g. UL, FM, other Certifications*], **the manufacturer's installation instructions** and this code.
  - **Conflicts**: Where conflicts between this code and the conditions of listing or the manufacturer's installation instructions occur, the provisions of this code shall apply.
    - Exception: **Where a code provision is less restrictive than the conditions of the listing of the equipment or appliance or the manufacturer's installation instructions**, the conditions of the listing and **the manufacturer's installation instructions shall apply**.



# Manufacturer's Installation Instructions & Manufacturer's Recommendations

- **Core UFC 3-420-01, *Plumbing Systems*** incorporates the International Plumbing Code (IPC) (2021) provision:
  - Section 301 General: 301.7 Conflicts - In instances **where conflicts occur between this code and the manufacturer's installation instructions, the more restrictive provisions shall apply.**
- **Core UFC 3-550-01, *Exterior Electrical Power Distribution*** incorporates the National Electrical Safety Code (NESC – IEEE C2) and the National Electrical Code (NEC – NFPA 70):
  - IEEE C2 and NFPA 70 include numerous references **specifying to follow Manufacturers Installation Instructions.**

# Manufacturer's Installation Instructions & Manufacturer's Recommendations

- **Core UFC 3-520-01, Interior Electrical Systems** incorporates the National Electrical Code (NEC – NFPA 70):
  - NFPA 70 includes numerous references **specifying to follow Manufacturers Installation Instructions.**
- **UFGS 01 33 00 SUBMITTAL PROCEDURES** includes Manufacturer's Instructions as a submittal requirement.

## As of the FALL 2024:

- 319 UFGS Sections had Manufacturer's Instructions clauses in Divisions 1-14, 21-23, 25-28, 31-35, 40-44, 46, and 48.
- 370 UFGS Sections had Mfg.'s Recommendation(s) clauses.

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**Design-Build (DB)  
UFGS 01 33 10.05 20**

**Design Submittal Procedures**

# Design-Build (DB) UFGS 01 33 10.05 20 Specification

- Three Powerful DB Resolution Tools:
  - Errors or Omissions with a Design-Build KTR's Proposal or Final Design versus the Solicitation
  - Design-Build Features that Exceed the Solicitation
  - Conflicts within GOV Solicitation (RFP) using an Order of Precedence

# Errors or Omissions with Design-Build KTR Proposal or Final Design

- Paragraph 3.3.2.1:

- Government review or approval of **any portion of the proposal or final design** shall not relieve the contractor from responsibility for errors or omissions with respect thereto.
- The rationale rests with the axiom **“Two Wrongs Do Not Make a Right”**.
  - Failure of Contractor’s *Quality Control measures* that led to an error or omission with their technical proposal or DOR’s final design is not waived by the failure of the Government’s *Quality Assurance measures* that led to approving Contractor’s defective RFP submittal response or Final Design.

# Design-Build Features that Exceed

- Paragraph 3.3.2 a.:

- **Any portions** of the proposal or final design\* **that exceed** the requirements of **the solicitation**.
  - Any portion of the proposal that exceeds the final design.
  - Any portion of the final design\* that exceeds the proposal.
  - Where portions within either the proposal or the final design\* conflict, the portion that most exceeds the requirements of the solicitation has precedence.

**Final design\*:** Approved by GOV and incorporated as a no cost unilateral modification into the contract per UFGS 01 33 10.05 20.

If not incorporated, KTR may reform requirement to meet the proposal or solicitation as warranted.

# GOV Solicitation (RFP) Internal Conflicts

- Paragraph 3.3.2 b.:

- The requirements of the solicitation, in descending order of precedence:

- Standard Form 1442, Price Schedule, and Davis Bacon Wage Rates.
- Part 1 – Contract Clauses.
- Part 2 – General Requirements.
- Part 3 – Project Program Requirements.

***Reversed***

- Part 6 – Attachments (e.g. As-built Dwgs, Surveys, etc. NOT Concept Dwgs).
- Part 5 – Prescriptive Specifications exclusive of performance specifications.
- Part 4 – Performance Specifications exclusive of prescriptive specifications.
- Part 6 – Attachments (Concept Drawings).

- Note how Concept Drawings are treated ... Specifications take precedence over [*Concept*] Drawings.

- This order of precedence is blind to quality and pricing provisions.

**Build and Fight for Victory**

**FAR 52.236-2**

**Differing Site Conditions (DSC)**



# Differing Site Conditions (DSC)

- **CFR Title 48 Federal Acquisition Regulations System (FAR) 52.236-2 Differing Site Conditions**

- **Two Distinct DSC Claims: Type I & Type II**

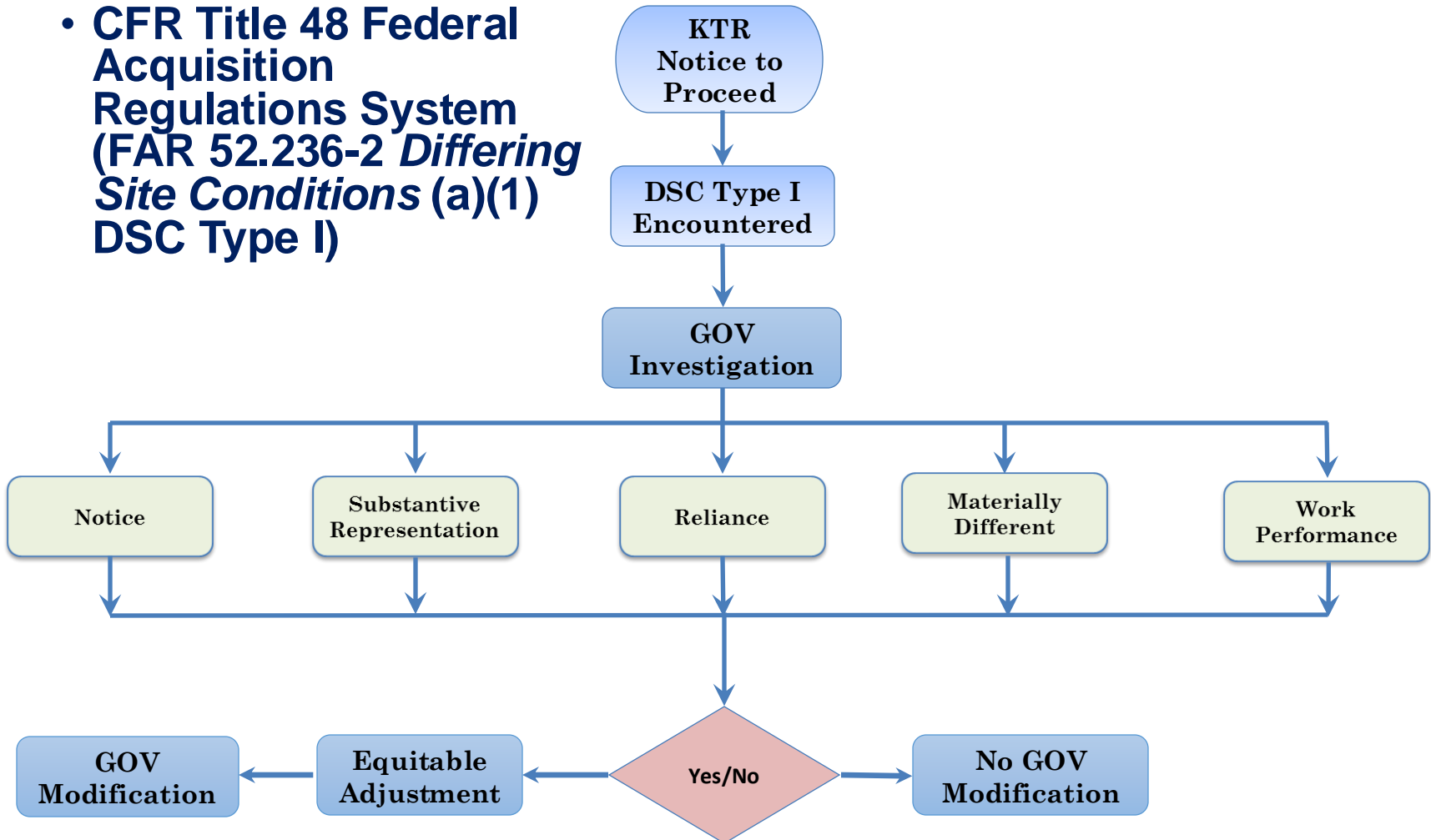
- **Fundamental difference is whether a physical condition found at the site was represented by the GOV or NOT.**

- Type I DSC: **X** marks the spot. The GOV represented the matter within the Design Documents and/or Pre-Bid Meeting.
- Type II DSC: **No GOV representation (No X marks the spot)**, here a DSC occurs when a physical condition customarily recognized to exist and considered usual is actually verified as unusual.



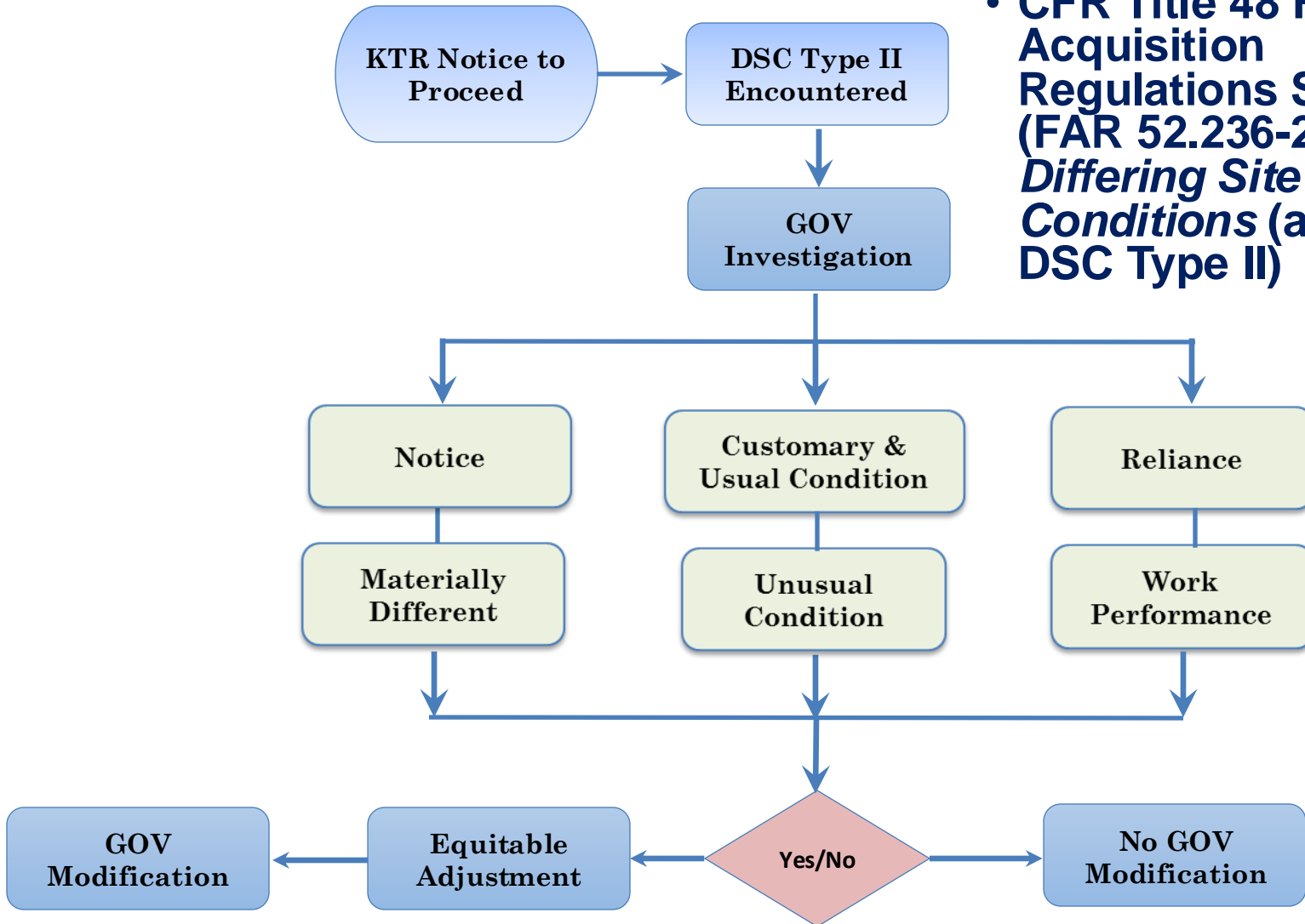
# Differing Site Condition (DSC) Type I

- CFR Title 48 Federal Acquisition Regulations System (FAR 52.236-2 Differing Site Conditions (a)(1) DSC Type I)



# Differing Site Condition (DSC) Type II

- CFR Title 48 Federal Acquisition Regulations System (FAR 52.236-2 Differing Site Conditions (a)(2) DSC Type II)



# Build and Fight for Victory

## Time Impact Analysis (TIA)

# Time Impact Analysis (TIA)

- **Presented in both Narrative and Schedule form:**
  - **Narrative: Define scope and conditions of the change.**
    - Describe how the change originated and how it impacts the schedule.
    - Determine apportionment of delay (Responsible Party).
    - Include any mitigation.
  - **Schedule: Provide Start and Finish dates of Impact.**
    - Illustrate influence to latest approved Schedule impacting the Contract Completion Date (CCD) or Milestone.
    - No Time Extension granted nor damages paid unless a delay consumes all available Project Float, impacts the longest path, and extends the CCD.
    - Project Float available in the schedule will not be for the exclusive use of either the GOV or the KTR.

# Time Impact Analysis (TIA)

- **Delay apportionment:**

- **Force Majeure Delay:** Risk not assigned solely to GOV or KTR, delay is due to unforeseeable circumstances preventing a party from fulfilling the contract. (e.g. Unusually Severe Weather)

- KTR may receive time extension if on the longest path, but time will not be compensable\*.
- See FAR 52.249-10 Default (Fixed-Price Construction) Clause for eleven unforeseeable examples.
- Classified as a Non-Compensable Event.

- **Contractor Delay:** Responsibility or risk assigned solely to KTR.

- KTR will not receive time extension.
- KTR must provide Corrective Action Plan to mitigate delay.
- Classified as a Non-Compensable Event.

- **Government Delay:** Responsibility or risk assigned solely to GOV.

- KTR will receive compensable time extension if on the longest path.
- Classified as a Compensable Event.

# Time Impact Analysis (TIA)

- **Functional Concurrency Theory:**

- **Used to analyze concurrent delays.**

- Delays need to occur within the same analysis period (i.e. same monthly schedule update).
    - The delays do not necessarily require the delay events to occur on the same days.

- **Remedy:**

- Government-delay concurrent with contractor-delay: (TIME no Money)
    - Government-delay concurrent with force majeure delay: (TIME no Money)\*
      - Exception: PFMD Event (Compensable Event)
    - Contractor-delay concurrent with force majeure delay: (TIME no Money)

# Build and Fight for Victory

## Force Majeure (Weather) Delays



# Force Majeure Weather Delays

- **Unavoidable Force Majeure Delay (UFMD):**

- An unforeseeable - unusually severe weather event not controllable by either party to avoid **(shared risk for both parties)**.
  - An UFMD represents no party liability for the delay.
  - Potential equitable extension of time.
  - Qualifies as a FAR Clause Default (Fixed-Price Construction) 52.249-10 event.

- **Avoidable Force Majeure Delay (AFMD):**

- A foreseeable - weather event within the KTR's control to avoid **(risk borne by KTR)**; due to KTR fault or negligence.
  - An AFMD represents KTR liability for the delay.
  - An AFMD qualifies as a FAR Clause Accident Prevention 52.236-13 event.

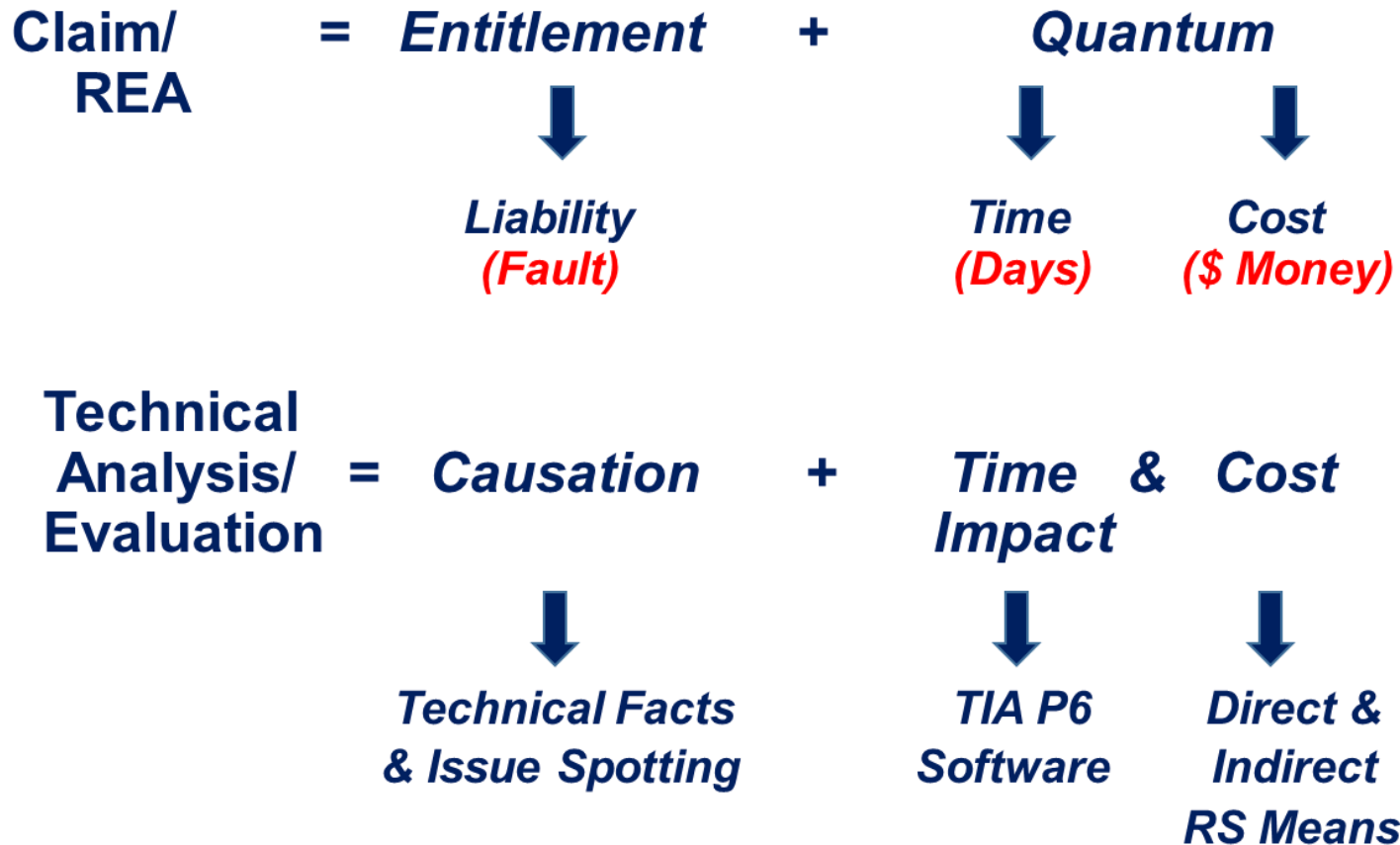
# Force Majeure Weather Delays

- **Preventable Force Majeure Delay (PFMD):**
  - An adverse weather event, brought about by a previous suspension within the GOV's control to avoid **(risk borne by GOV)**.
    - A FAR Clause Suspension of Work 52.242-14 due to non-compliant KTR action(s) (risk borne by KTR) would NOT trigger a PFMD.
  - An PFMD represents an initial delay: Such as a GOV wrongful delay (*constructive suspension*) or a GOV suspension delay (*GOV controlled suspension or an unreasonable suspension beyond a KTR driven suspension of work*) of the project **[AKA Delay D1]** that subjects KTR to either a seasonally or unusually severe weather event that was not actually anticipated or constructively held at the formation of the contract **[AKA Delay D2]**.
    - Hence GOV responsibility for time and damages.

**KTR Compensable Time & Damages = (D1 + D2) \***

**\*No KTR Fault for Either Delay**

# CLAIM ELEMENTS vs. TECHNICAL ANALYSIS



# Types of Entitlement Issues Analyzed

- **Constructive Change(s)**
- **Constructive Suspension(s)**
- **Defective Design(s)**
  - Defective Specifications
  - Defective Drawings
- **Differing Site Condition(s)**
- **Type I and Type II**
- **A/E & DOR Liability**

# Types of Delay

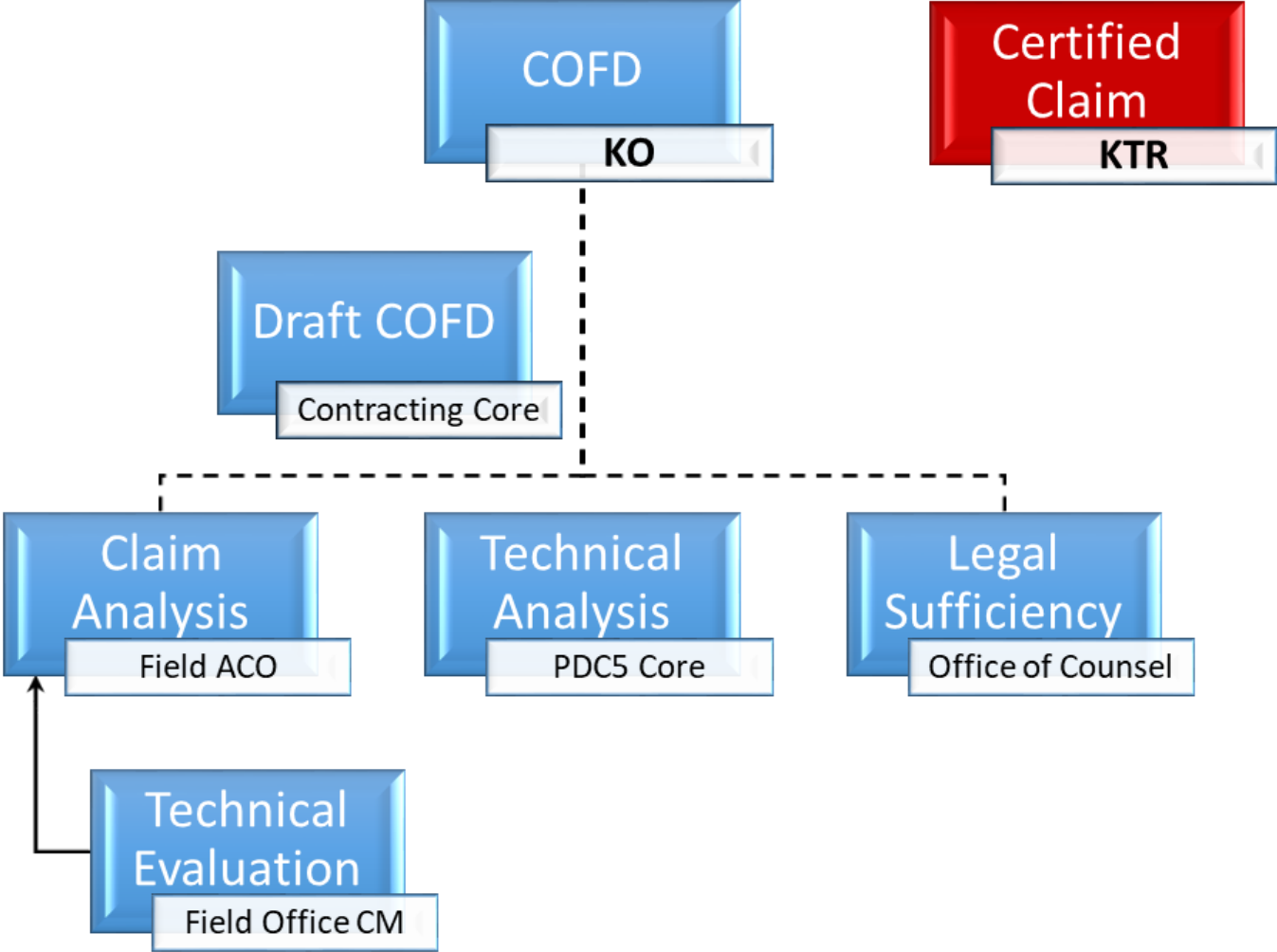
## Apportionment Issues Analyzed

- **Time-Impact Delays**
  - **KTR Delays**
  - **GOV Delays**
  - **Force Majeure Delays (Typically Unusually Severe Weather)**
    - Unavoidable
    - Avoidable
    - Preventable
  - **Concurrent Delays**
  - **Functional Concurrency Theory**

# Types of Cost Principles and Procedures Issues Analyzed

- **General Condition (GC) Daily Rates**
  - Direct & Indirect Costs
- **Overhead: Home Office Overhead (HOOH)**
  - Eichleay Formula (Extended or Unabsorbed)
- **Material Price Escalation: Direct & Indirect Costs**
- **Profit: Prime & SubKTR**
- **Insurance**
- **Bonding**

# Organization Chart



**GET'N A WIN/WIN**  
**with Causation Analysis**  
(Key to Dispute Resolution)

**Point to an accurate Standard,**

**Build and Fight For  
Compliant Actions**



# Build and Fight for Victory

# Q&A

# Vignette No. 1 Errors or Omissions with Design-Build KTR Proposal or Final Design

## GOV approves KTR Proposal and/or Final Design

- GOV RFP: Stainless Steel, 4 Inch Dia. Piping
- KTR Proposal: Galvanized Steel, 4 Inch Dia. Piping
- Final Design: Galvanized Steel, 4 Inch Dia. Piping

GOV gets: **Stainless Steel Piping**

**UFGS 01 33 10.05 20: Government review or approval of any portion of the proposal or final design shall not relieve the contractor from responsibility for errors or omissions with respect thereto.**

**KTR must meet minimum GOV solicitation (RFP) requirements; no relief is provided to KTR if the galvanized steel pipe meets minimum safety and code standards for the project.**

# Vignette No. 1

## Design-Build Feature that Exceeds

### KTR Proposal vs. GOV RFP

- GOV RFP: Asphalt Roof
- KTR Proposal: Standing Seam Metal Roof

GOV gets: **Standing Seam Metal Roof**

UFGS 01 33 10.05 20: **Any portions of the proposal or final design that exceed the requirements of the solicitation (RFP).**

# Vignette No. 2

## Design-Build Feature that Exceeds

### KTR Proposal vs. Final Design

- GOV RFP: Asphalt Shingle Roof
- KTR Proposal: Standing Seam Metal Roof
- Final Design: Asphalt Shingle Roof

GOV gets: **Standing Seam Metal Roof**

UFGS 01 33 10.05 20: **Any portion of the proposal that exceeds the final design.**

# Vignette No. 3

## Design-Build Feature that Exceeds

### KTR Final Design vs. Proposal

- GOV RFP: Asphalt Shingle Roof
- KTR Proposal: Asphalt Shingle Roof
- Final Design\* : Standing Seam Metal Roof

GOV gets: **Standing Seam Metal Roof for Final Design\***

Final design\*: Approved by GOV and incorporated as a no cost unilateral modification into the contract.

UFGS 01 33 10.05 20: **Any portion of the final design\* that exceeds the proposal.** The final design must have been incorporated into the contract by modification, otherwise KTR could reform the final design to not exceed the KTR Proposal.

# Vignette No. 4

## Design-Build Feature that Exceeds

### KTR Proposal (Internal Conflicts)

- GOV RFP: Asphalt Shingle Roof
- KTR Proposal: Arch. Sht. A-1: Asphalt Shingle Roof  
Arch. Sht. A-2: Standing Seam Metal Roof
- Final Design: Asphalt Shingle Roof

GOV gets: **Standing Seam Metal Roof**

UFGS 01 33 10.05 20: Where **portions within** either the **proposal** or the final design **conflict**, the **portion that most exceeds** the requirements of the solicitation (RFP) **has precedence.**

# Vignette No. 5

## Design-Build Feature that Exceeds

### KTR Final Design\* (Internal Conflicts)

- GOV RFP: Asphalt Shingle Roof
- KTR Proposal: Asphalt Shingle Roof
- Final Design\*:
  - Arch. Sht. A-1: Asphalt Shingle Roof
  - Arch. Sht. A-2: Standing Seam Metal Roof

GOV gets: **Standing Seam Metal Roof**

Final design\*: Approved by GOV and incorporated as a no cost unilateral modification into the contract. If not incorporated, KTR may reform requirement to meet the proposal or solicitation as warranted.

UFGS 01 33 10.05 20: Where **portions within** either the proposal or **the final design conflict, the portion that most exceeds** the requirements of the solicitation (RFP) **has precedence.**

Whom is liable to the Roofing SubKTR based on his proposal as an Asphalt Shingle Roof?

# Vignette No. 1

## GOV Solicitation (RFP) Internal Conflicts

### Conflict between Parts 3 – 6

- Part 3: Vinyl Tile Flooring
- Part 4: Vinyl Tile Flooring & Marble Flooring
- Part 5: Ceramic Tile Flooring
- Part 6: Wood Laminate Flooring (Concept Drawings)

### PPI/RFI Response?

### **Vinyl Tile Flooring**

UFGS 01 33 10.05 20: Part 3 – Project Program Requirements takes precedence



# Vignette No. 2

## GOV Solicitation (RFP) Internal Conflicts

### Conflict between Parts 3 – 6

- Part 3: Match Existing Flooring
- Part 4: Vinyl Tile Flooring & Marble Flooring
- Part 5: (No Specifications)
- Part 6: Ceramic Tile Flooring (Concept Drawings)
- Part 6: As-Built Drawing (Wood Laminate Flooring)

### PPI/RFI Response?

### **Wood Laminate Flooring**

UFGS 01 33 10.05 20: Part 3 – Project Program Requirements takes precedence, passing to Part 6 – As-built (Wood Laminate Flooring)

# Vignette No. 3

## GOV Solicitation (RFP) Internal Conflicts

### Conflict between Parts 3 – 6

- Part 3: Flooring (Unspecified Flooring Type)
- Part 4: Vinyl Tile Flooring & Marble Flooring
- Part 5: Ceramic Tile Flooring
- Part 6: Wood Laminate Flooring (Concept Drawings)

### PPI/RFI Response?

### **Ceramic Flooring**

UFGS 01 33 10.05 20: Part 5 – Prescriptive Specifications take precedence when the flooring in Part 3 is unspecified and there are no Part 6 attachments, other than Concept Drawings.

# Vignette No. 4

## GOV Solicitation (RFP) Internal Conflicts

### Conflict between Parts 3 – 6

- Part 3: Remove & Replace Flooring (Unspecified Flooring Type)
- Part 4: Vinyl Tile Flooring
- Part 5: (No Specifications)
- Part 6: Ceramic Tile Flooring (Concept Drawings)

### PPI/RFI Response?

### **Vinyl Tile Flooring**

UFGS 01 33 10.05 20: Part 3 – Project Program Requirements takes precedence, passing to Part 4 – Performance Specifications first standard of flooring material that will “replace” the flooring. There are no non-Concept Drawing Part 6 attachments and no prescriptive Part 5 specifications to take precedence over Part 4.

# Vignette No. 5

## GOV Solicitation (RFP) Internal Conflicts

### Conflict between Parts 3 – 6

- Part 3: Remove & Replace Flooring (Unspecified Flooring Type)
- Part 4: Vinyl Tile Flooring
- Part 5: (No Specifications)
- Part 6: Ceramic Tile Flooring (Concept Drawings)
- Part 6: As-Built (Wood Laminate Flooring)

### PPI/RFI Response?

### **Wood Laminate Flooring**

UFGS 01 33 10.05 20: Part 3 – Project Program Requirements takes precedence, passing to Part 6 – As-built (Wood Laminate Flooring) as the first standard of flooring material that will “replace” the flooring.

# Vignette No. 6

## GOV Solicitation (RFP) Internal Conflicts

### Conflict between Parts 3 – 6

- Part 3: Remove & Replace Flooring as Shown on Drawings
- Part 4: Vinyl Tile Flooring
- Part 5: (No Specifications)
- Part 6: Ceramic Tile Flooring (Concept Drawings)
- Part 6: As-Built Drawings (Wood Laminate Flooring)

### PPI/RFI Response?

### **Wood Laminate Flooring**

UFGS 01 33 10.05 20: Part 3 – Project Program Requirements takes precedence, passing to Part 6 – As-built (Wood Laminate Flooring) as the first standard of flooring material that will “replace” the flooring. Note Part 3 did not distinguish which drawings (Concept or As-Built).

# Vignette No. 7

## GOV Solicitation (RFP) Internal Conflicts

### Conflict between Parts 3 – 6

- Part 3: Remove & Replace Flooring Shown on Concept Drawings
- Part 4: Vinyl Tile Flooring
- Part 5: (No Specifications)
- Part 6: Ceramic Tile Flooring (Concept Drawings)
- Part 6: As-Built (Wood Laminate Flooring)

### PPI/RFI Response?

### **Ceramic Tile Flooring**

UFGS 01 33 10.05 20: Part 3 – Project Program Requirements takes precedence, passing to Part 6 – Concept Drawings (Ceramic Tile Flooring) as directed by Part 3.