

Deltek
INSIGHT
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Contract types are evolving; Are you?

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OPTIMIZE
YOUR POTENTIAL



Contract Types

- FAR – The Foundation of All Contract Types
- Contract Types
 - Basics
 - FAR Policy
 - FAR Guidance
 - Political Considerations
 - Inherent Risk by Contract Type
 - Obligations of the Contracting Parties
 - Contract Forms and Variations
- Important Contract Clauses
- Questions & Contacts



FAR

FAR versus CAS

- FAR
 - All about ALLOWABILITY
 - Defines when and to what extent costs can be recovered under a government contract
- CAS
 - All about ALLOCABILITY
 - Dictates the way in which a contractor must maintain its accounting system and instructs contractors how to account for certain types of costs; how costs flow to project or job (i.e. cost objectives)

FAR Overview / Applicability

- Federal Acquisition Regulation - FAR
- The FAR is a system of uniform policies and procedures governing the acquisition and contracting actions of all Executive agencies of the Federal Government
- The use of the FAR is what makes contracts with the federal government different than commercial contracts

FAR Overview / Applicability

- FAR is Applicable to You When:
 - You Respond to Request for Proposal (RFP)
 - You Receive a Federal Prime Contract
 - You Receive a Subcontract under Federal Prime Contract
 - You Issue a Subcontract under a Federal Prime Contract

FAR at a Glance

- The FAR has Eight Subchapters with 52 parts
 - ◆ Subchapter A – General Information, Parts 1 – 4
 - ◆ Subchapter B – Competition and Acquisition Planning, Parts 5 - 12
 - ◆ **Subchapter C – Contract Methods and Contract Types, Parts 13 - 18**
 - ◆ Subchapter D – Socioeconomic Programs, Parts 19 - 26
 - ◆ Subchapter E – General Contract Requirements, Parts 27 – 33
 - ◆ Subchapter F – Special Categories of Contracting, Parts 34 - 41
 - ◆ Subchapter G – Contract Management, Parts 42 - 51
 - ◆ **Subchapter H – Clauses and Forms, Parts 52 - 53**



Zooming In

- Most of FAR is a cookbook – tells Contracting Officers how to put together solicitations and contracts

- Parts most relevant to contract types:
 - ◆ Part 16 – Types of Contracts
 - ◆ Part 52 – Contract clauses and solicitation provisions



Contract Types

Basics

Contract Types

- Three Basic Contract Types:

1. **Fixed Price** [also called Firm Fixed Price (FFP)]

- Requirements are known and can be described with precision
- Cost of performance can be predicted with a reasonable degree of certainty

2. **Time and Material/Labor Hour (T&M/LH)**

- Requirements poorly described or subject to frequent or unpredictable change
- Cost of performance can be predicted with a reasonable degree of certainty

3. **Cost Reimbursement** (also called “Cost Plus” type contracts)

- Requirements or ability to perform are uncertain
- Costs cannot be predicted with any degree of certainty



Contract Types

Policy – FAR 16.102

Policy on Use of Contract Types

- Contracts resulting from “**sealed bidding**” must be FFP or FFP with Economic Price Adjustment (EPA)
- **Negotiated contracts** may be of any type except those prohibited by law or regulation
- A cost-plus-a-percentage-of-cost contract may not be used either as a prime or subcontract



Contract Types

Guidance – FAR 16.103



Guidance on Use of Contract Types

- Judgment based on nature of procured goods or services
- Type and price are closely related and should be considered together
- The FFP type shall be used when the risk is minimal or can be predicted

Guidance on Use of Contract Types (cont.)

- Through the course of a program (i.e. overtime Contracting parties learn, developing standards, benchmarks, etc.), contract type should evolve as risks decrease or certainty increase

- Contract-type decisions must be documented in the contract file/acquisition plan, except:
 1. FFP under Simplified Acquisition Procedures (SAP),
 2. FFP other than major program or R&D, and
 3. Sealed bid partial set-asides

Factors for Consideration

- Price competition - implies FFP with adequate market pressures
- Price analysis – Implies FFP when price standard can be established
- Cost analysis – FFP still possible, but increased cost risk may indicate other
- Complexity of the requirement – implies greater risk, uncertainty and undefined criteria – assumption by Gov't may be appropriate
- Urgency – time constraints Gov't may choose to assume more risk when time is short (procure OR perform)
- POP – performance over long period may require EPA
- Contractor's technical capability and financial responsibility – inability to perform or finance one type may indicate another – may also kill the contract

Factors for Consideration (Cont.)

- **Adequacy of accounting system** – For any type other than FFP contracting officer MUST ensure accounting system will permit timely development of all necessary cost data in the form required by the proposed contract type.
- **Concurrent contracts** - concurrent operations under other contracts must be considered
- **Subcontracting** – If subcontracting is extensive, actual risk to prime should be considered
- **Acquisition history** – repetitive buys decrease risk and imply FFP



Contract Types

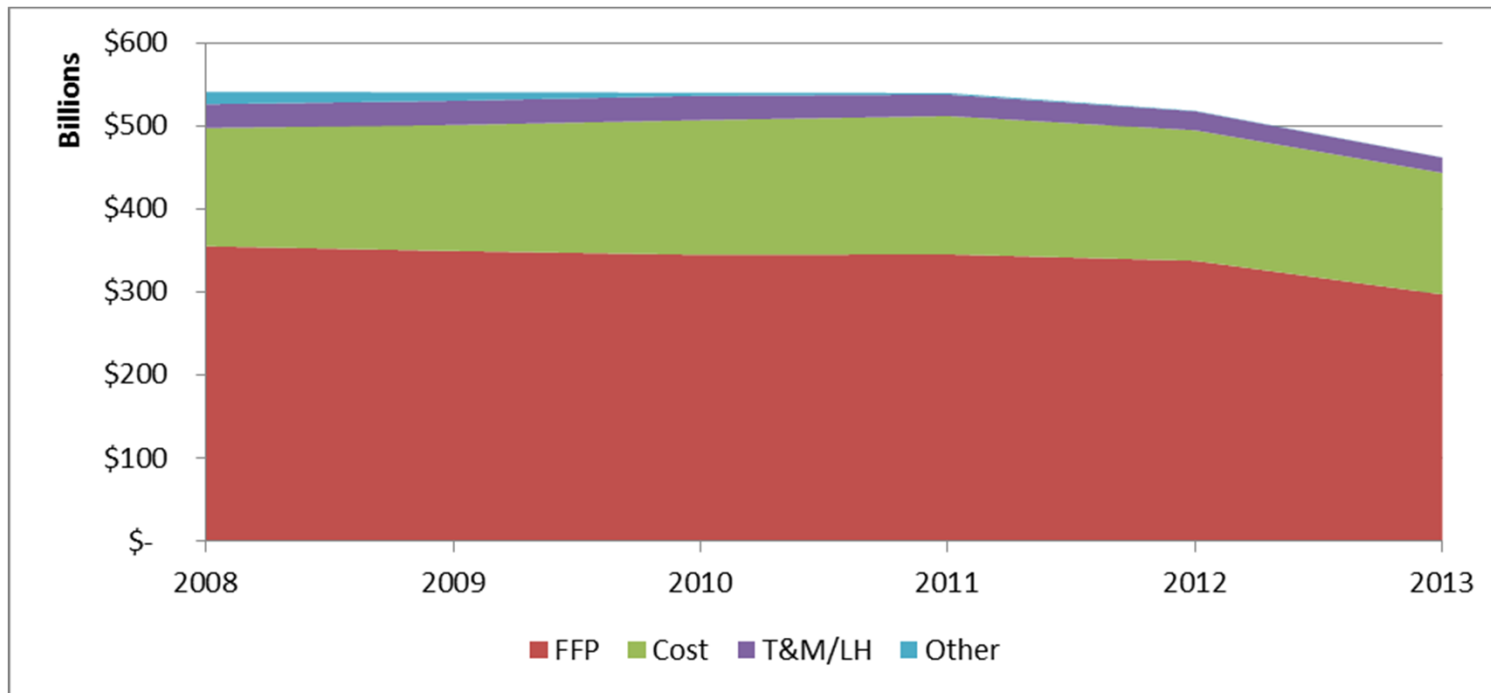
Political Considerations – NOT in FAR

Political Considerations

- Politicians LOVE “Fixed Price” contracts – good press
 - Results in extreme preference for FFP in legislation and regulation
 - Makes life VERY difficult for program managers
- Politicians love to pound podiums and demonize “Cost Plus” contracts and the contractors who hold them
 - Results in initiatives to reduce or “wipe out” cost plus contracting
 - No real effect on procurement processes to date
- Politicians ignore “T&M” contracts because neither they nor the public know what they are or how they work
 - In all of congress, there are probably less than a dozen legislators that could accurately describe the characteristics of the three basic contract types

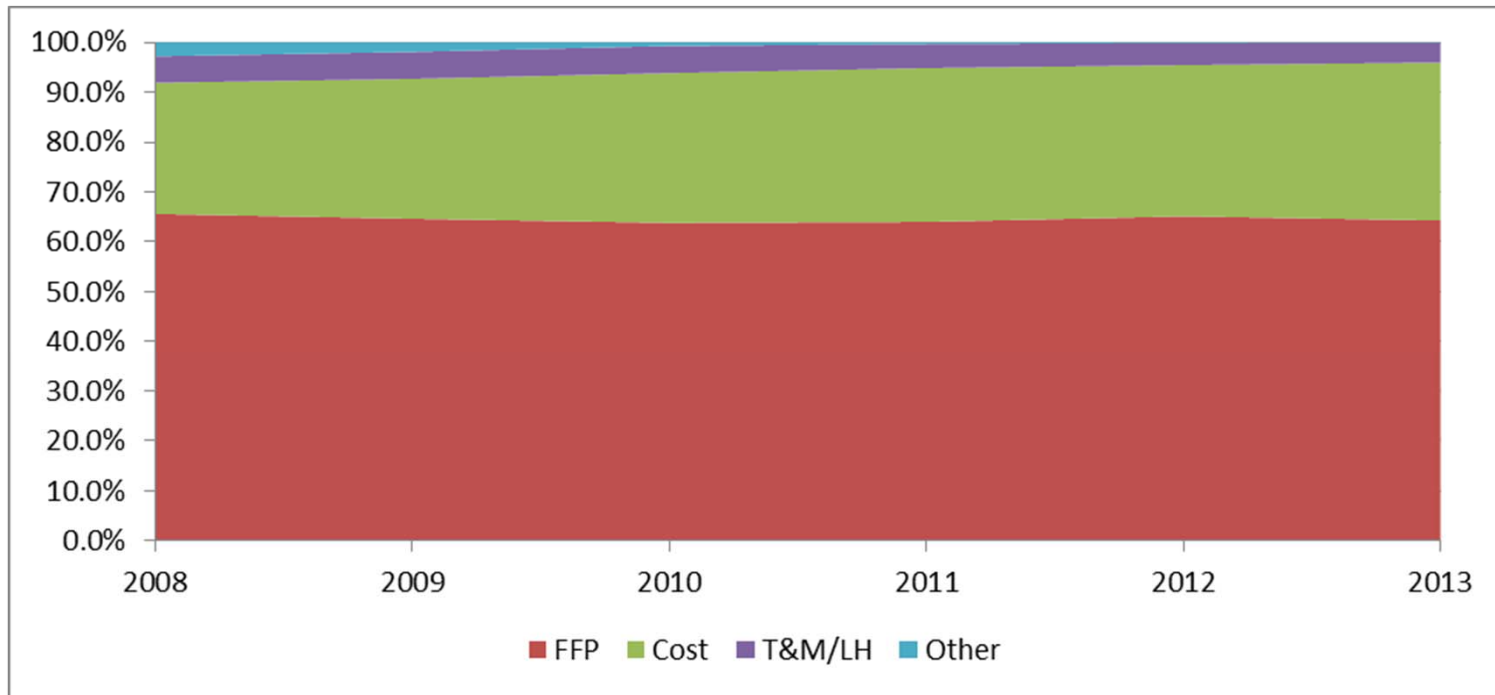
FY08-13 Obligations by Type (\$B)

	2008	2009	2010	2011	2012	2013
FFP	\$355.0	\$349.4	\$344.7	\$345.4	\$337.6	\$297.1
Cost	\$142.3	\$151.6	\$162.2	\$166.4	\$157.1	\$146.3
T&M/LH	\$28.7	\$29.2	\$29.4	\$25.9	\$23.0	\$18.4
Other	\$15.1	\$10.3	\$3.8	\$1.9	\$0.6	\$0.2
	\$541.2	\$540.5	\$540.1	\$539.6	\$518.3	\$462.1



FY08-13 Obligations by Type (%)

	2008	2009	2010	2011	2012	2013
FFP	65.6%	64.6%	63.8%	64.0%	65.1%	64.3%
Cost	26.3%	28.1%	30.0%	30.8%	30.3%	31.7%
T&M/LH	5.3%	5.4%	5.4%	4.8%	4.4%	4.0%
Other	2.8%	1.9%	0.7%	0.3%	0.1%	0.0%
	100%	100%	100%	100%	100%	100%





Contract Types

Risk Inherent by Contract Type

CONTRACT TYPES (cont.)

Inherent Risk by Contract Type

- Performance Risks
 - The amount and nature of the profit incentive offered to the contractor for achieving or exceeding specified standards or goals
 - Can it even be done? Are we sure?
 - If it can't, who takes the hit?

- Cost Risks
 - The degree and timing of the responsibility assumed by the contractor for the costs of performance
 - Do we know what this will cost?
 - If we're wrong, who takes the hit?

- The Contract Risk Spectrum

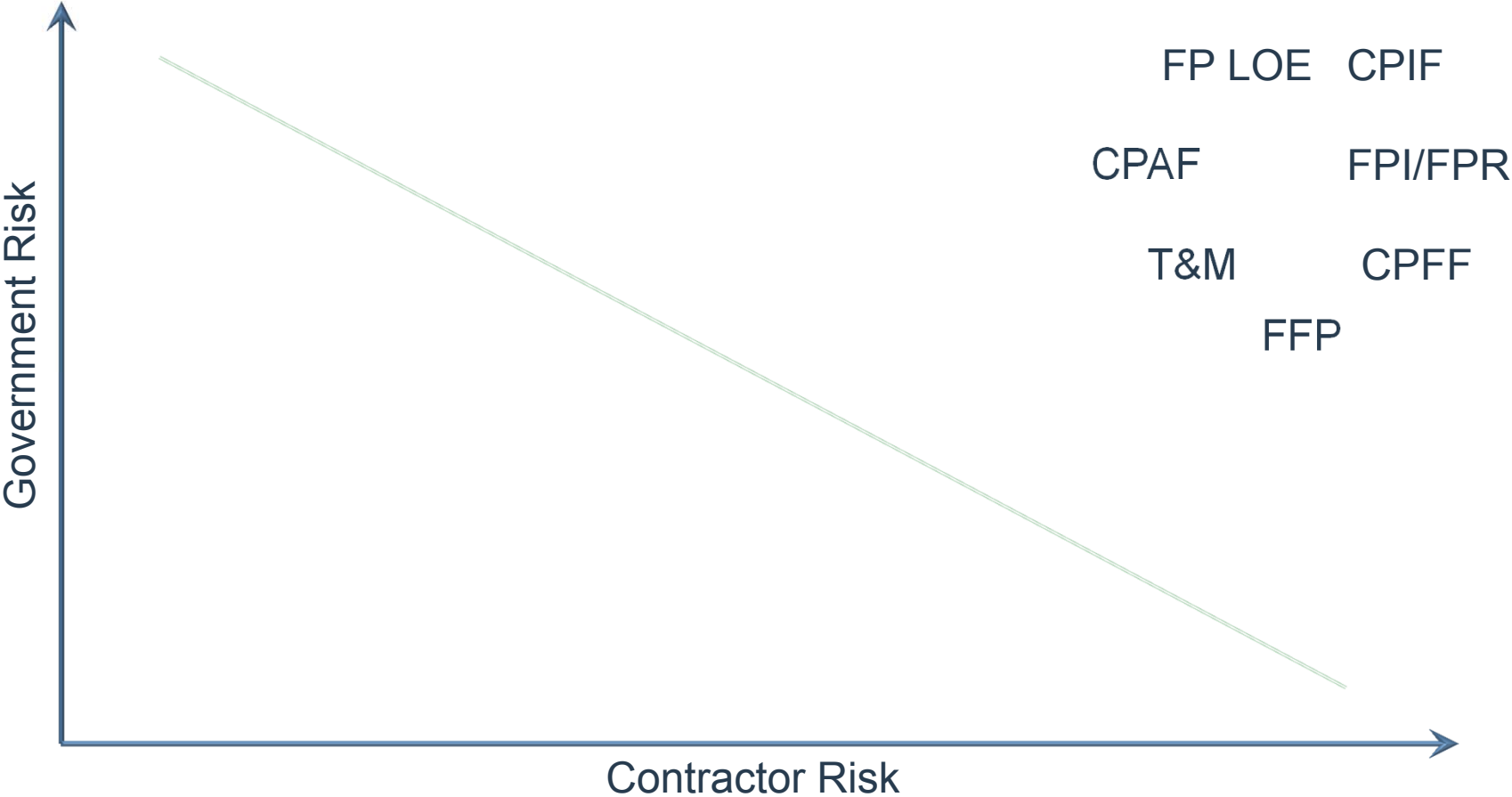


Contract Types by Risks of the Parties

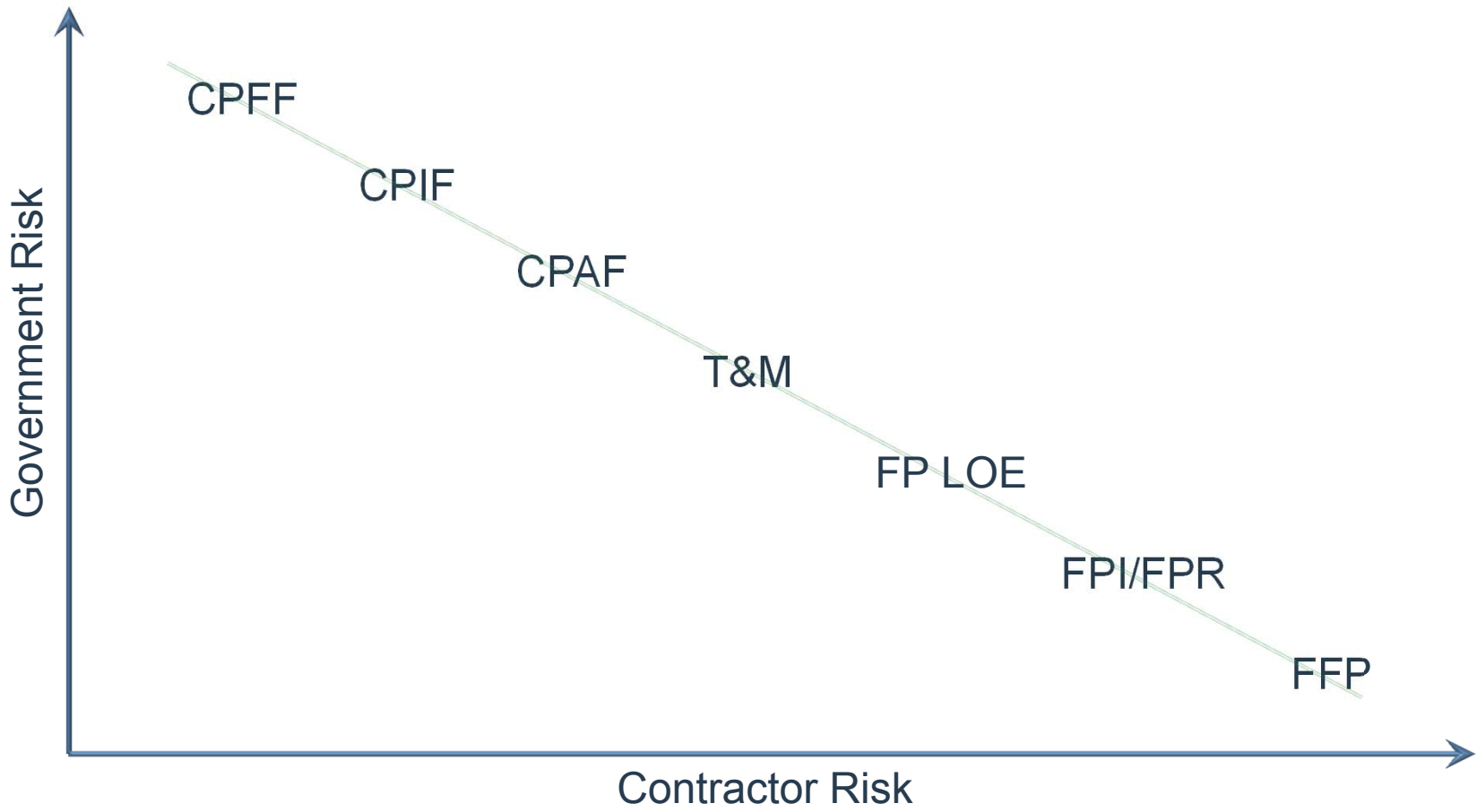
Contract Type	Contract Form	Contractor Risk		Government Risk	
		Performance	Cost	Performance	Cost
Firm Fixed Price	Completion	Very High	Very High	Very Low	Very Low
	Level of Effort	Very Low	Moderately Low	Moderately High	Moderately Low
Fixed Price Incentive	Completion	High	High	Very Low	Low
Time & Materials	Level of Effort	Very Low	Moderately Low	High	Moderately High
Cost Plus Fixed Fee	Completion	Very Low	Very Low	Very High	Very High
	Level of Effort	Very Low	Very Low	Very High	Very High
Cost Plus Incentive Fee	Completion	Very Low	Low	Very High	High
	Level of Effort (?)	Very Low	Low	Very High	High
Cost Plus Award Fee	Completion	Very Low	Low	Very High	Very High
	Level of Effort	Very Low	Low	Very High	Very High



Contract Risk Spectrum



Contract Risk Spectrum





Contract Types

Obligations of the Contracting Parties



Contract Types by Obligations of the Parties

Contract Type	Contract Form	Contractor Obligations	Government Obligations
Firm Fixed Price	Completion	To deliver goods or services (Performance-based contract)	To pay promptly on delivery, inspection, acceptance and presentation of a proper invoice
	Level of Effort	To deliver the hours specified in the contract level of effort clause in pursuit of the stated objectives in the SOW	To pay promptly on delivery, inspection, acceptance and presentation of a proper invoice - often treated like a T&M during performance
Time and Materials	Completion	N/A	N/A
	Level of Effort	To deliver the hours specified in the contract in pursuit of the stated objectives in the SOW and to acquire the materials required in performance of the SOW	To pay for hours delivered and accepted upon presentation of a proper statement of work
Cost Reimbursable	Completion	To provide the contractor's "best efforts" in pursuit of the objectives stated in the SOW	To reimburse the contractor's total cost of performance subject to the allowability and allocability rules of FAR and CAS and the restrictions of the contract clauses
	Level of Effort	To provide the contractor's "best efforts" AND the level of effort stated in the LOE clause of the contract in pursuit of the objectives in the SOW	To reimburse the contractor's total cost of performance subject to the allowability and allocability rules of FAR and CAS and the restrictions of the contract clauses

CONTRACT TYPES (cont.)

- A **firm-fixed-price contract** provides for a price that is not subject to any adjustment on the basis of the contractor's cost experience in performing the contract. This contract type places upon the contractor maximum risk and full responsibility for all costs and resulting profit or loss.
- A **fixed-price contract with economic price adjustment** provides for upward and downward revision of the stated contract price upon the occurrence of specified contingencies. Economic price adjustments are of three general types:
 - 1) Adjustments based on established prices. These price adjustments are based on increases or decreases from an agreed-upon level in published or otherwise established prices of specific items or the contract end items.
 - 2) Adjustments based on actual costs of labor or material. These price adjustments are based on increases or decreases in specified costs of labor or material that the contractor actually experiences during contract performance.
 - 3) Adjustments based on cost indexes of labor or material. These price adjustments are based on increases or decreases in labor or material cost standards or indexes that are specifically identified in the contract.

CONTRACT TYPES (cont.)

- A **fixed-price contract with prospective price redetermination** provides for—
 - a) A firm fixed price for an initial period of contract deliveries or performance; and
 - b) Prospective redetermination, at a stated time or times during performance, of the price for subsequent periods of performance.
- A **fixed-ceiling-price contract with retroactive price redetermination** provides for—
 - a) A fixed ceiling price; and
 - b) Retroactive price redetermination within the ceiling after completion of the contract.
- A **firm-fixed-price, level-of-effort term contract** requires—
 - a) The contractor to provide a specified level of effort, over a stated period of time, on work that can be stated only in general terms; and
 - b) The Government to pay the contractor a fixed dollar amount.

CONTRACT TYPES (cont.)

- **Cost-reimbursement** types of contracts provide for payment of allowable incurred costs, to the extent prescribed in the contract. These contracts establish an estimate of total cost for the purpose of obligating funds and establishing a ceiling that the contractor may not exceed (except at its own risk) without the approval of the contracting officer.
 - **Cost-No Fee Contracts:** No fee for Contractor
 - **Cost-Sharing Contract:** No fee and only agreed upon portion of allowable costs are reimbursed.
 - **Cost Plus Incentive Fee Contract:** Fee is adjusted based on formula of total allowable costs to total target costs
 - **Cost Plus Award Fee Contract:** Fee based on judgmental evaluation by the Government (see award fee table later in presentation)
 - **Cost Plus Fixed Fee:** Fee is fixed at inception of contract



The R&D (and Services) Conundrum

- The variables in the equation
 - Can the job be done?
 - How long will it take?
 - What will it cost?
- In R&D (and most services)
 - Only two of the variables can be known
 - Pick any two and the other one must be unknown (think Time & Materials)
 - More than one variable MAY be unknown (think Cost Plus)
- If all three variables are known with some degree of certainty...
 - Contracts should (and probably will) be Fixed Price
 - Risk should be minimal and the Government will want that risk to be born by the contractor



Contract Forms and Variations

Contract Forms

- **Term Form:** Describes the scope of work in general terms for a specified period of time
 - **Level of Effort form** - obligates the contractor to devote a specified Level of Effort (LOE) over the stated period of time
 - **Performance-based form** – obligates the contractor to perform a specified service over the stated period of time
- **Completion Form:** Describes the scope of work by stating a definite goal or target and/or specifying an end product



Contract Variations

- Incentives
 - Cost Incentives
 - Performance Incentives
 - Delivery Incentives
 - Multiple-Incentives
 - Fixed Price Incentives (firm targets, successive targets)
- Re-determinable contracts
- Economic Price Adjustment Provisions
- Requirements Contracts



Contract Variations (cont.)

Award Fees

Award-Fee Adjectival Rating	Award-Fee Pool Available To Be Earned	Description
Excellent	91%-100%	Contractor has exceeded almost all of the significant award-fee criteria and has met overall cost, schedule, and technical performance requirements of the contract in the aggregate as defined and measured against the criteria in the award-fee plan for the award-fee evaluation period.
Very Good	76%-90%	Contractor has exceeded many of the significant award-fee criteria and has met overall cost, schedule, and technical performance requirements of the contract in the aggregate as defined and measured against the criteria in the award-fee plan for the award-fee evaluation period.
Good	51%-75%	Contractor has exceeded some of the significant award-fee criteria and has met overall cost, schedule, and technical performance requirements of the contract in the aggregate as defined and measured against the criteria in the award-fee plan for the award-fee evaluation period.
Satisfactory	No Greater Than 50%	Contractor has met overall cost, schedule, and technical performance requirements of the contract in the aggregate as defined and measured against the criteria in the award-fee plan for the award-fee evaluation period.
Unsatisfactory	0%	Contractor has failed to meet overall cost, schedule, and technical performance requirements of the contract in the aggregate as defined and measured against the criteria in the award-fee plan for the award-fee evaluation period.

CONTRACT TYPES (cont.)

- A **time-and-materials (T&M)** contract provides for acquiring supplies or services on the basis of:
 - a) Direct labor hours at specified fixed hourly rates that include wages, overhead, general and administrative expenses, and profit;
and
 - b) Actual cost for materials.

Materials means:

1. Direct materials, including supplies transferred between divisions, subsidiaries, or affiliates of the contractor under a common control;
2. Subcontracts for supplies and incidental services for which there is not a labor category specified in the contract;
3. Other direct costs (e.g., incidental services for which there is not a labor category specified in the contract, travel, computer usage charges, etc.); and
4. Applicable indirect costs

CONTRACT TYPES (cont.)

- A **labor-hour (LH) contract** is a variation of the time-and-materials contract, differing only in that materials are not supplied by the contractor.
- A **letter contract** is a written preliminary contractual instrument that authorizes the contractor to begin immediately manufacturing supplies or performing services. A letter contract may be used when:
 1. The Government's interests demand that the contractor be given a binding commitment so that work can start immediately and
 2. Negotiating a definitive contract is not possible in sufficient time to meet the requirement. However, a letter contract should be as complete and definite as feasible under the circumstances.



Contract Risk and Obligations Revisited

- Discussion of the Effect of Contract Form
- Discussion of the Effect of Variations



Contracting Methods and Vehicles

- Government-Wide Acquisition Contract (GWAC) (OMB auth. req.)
 - Alliant & Alliant Small Business (GSA)
 - NETCENTS (U.S. Air Force Network-Centric Solutions Contract)
 - CIO-SP3 (National Institutes of Health)
- GSA Schedules (IDIQ)

Schedule		Sales in Million		Percentage of Total	
		2013	2014*	2013	2014*
IT	70	\$ 14,435	\$ 13,550	41.5%	42.5%
MOBIS	874	4,445	3,931	12.8%	12.3%
PES	871	2,802	2,657	8.0%	8.3%
FABS	520	1,914	2,213	5.5%	6.9%
Law Enf. / Security	84	2,012	1,365	5.8%	4.3%
Other		9,209	8,166	26.4%	25.6%
		\$ 36,829	\$ 31,882		
*Annualized as of October 20, 2014					

Contracting Methods and Vehicles (cont.)

- Multiple Agency Contracts
 - Solutions for Enterprise-Wide Procurement (SEWP) (NASA)
 - Enterprise Acquisition Gateway for Leading Edge solutions (EAGLE) (DHS)
 - Others
- Agency-specific Multiple Award Programs
 - ENCORE (DISA)
 - Seaport (DOD-NAVY)
- Agency or Program-specific IDIQ contracts (may or may not be a “requirements contract”) – rarely have a neat acronym or name
- Basic Ordering Agreement (BOA)
- Blanket Purchasing Agreement (BPA)



Important Contract Clauses



FAR Part 52

Solicitation Provisions and Contract Clauses

- **52.216-7 Allowable Cost and Payment**
 - ◆ Controls payments for work progress
 - ◆ Includes requirement for...
 - Submission of Final Indirect Cost Rate Proposal
 - Indirect expense rates for billing purposes
 - Audit of interim billings
 - Closeout and final payment

FAR Part 52

Solicitation Provisions and Contract Clauses

■ 52.232-22 Limitation of Funds

- ◆ For Cost Reimbursable contracts, notification to the Government that a certain percentage of funds have been expended or will be expended, usually 75% to 85%



The Christian Doctrine

- Clauses unambiguously required by law or regulation operate as if they were in the contract even if omitted
- Only a few FAR clauses and it varies by contract type (examples)
 - Termination for Default
 - Termination for Convenience
 - Changes



Questions?

Contact Us

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Stop by our Booth to look for hidden treasure!

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