FAR FACTS
SEASON 2023, EPISODE ELEVEN
FAR PART 16

1. Contract types are grouped into two broad categories: fixed-price and cost-reimbursement contracts. The selection of contract type must take into account risk allocation, and should be tailored to the uncertainties involved in contract performance. **FAR 16.101(b).**

2. The contract type must comply with statutory restrictions and regulatory limitations. For example, cost-plus-a-percentage-of-cost type contracts are prohibited at either the prime or sub level. **FAR 16.102(c).** For criteria to determine whether a contract is a cost-plus-a-percentage-of-costs contract, *see Urban Data Sys. v. United States*, 699 F.2d 1147, 1150-51 (Fed. Cir. 1983) (adopting GAO criteria).

3. Contract types that are not described in the FAR shall not be used, except as a FAR subpart 1.4 deviation. **FAR 16.102(b).**

4. A non-exclusive list of factors that should be considered in selecting contract type can be found at **FAR 16.104.**

5. In a fixed-price contract, the contract is not subject to any adjustment on the basis of the contractor's cost experience in performing the contract. **FAR 16.202-1.** This places most of the financial and performance risk on the contractor.

6. A fixed-price with economic price adjustments contract provides for upward and downward revision of the stated contract price upon the occurrence of specified contingencies. **FAR 16.203-1(a).** This contract type may only be used if there is a "serious doubt concerning the stability of market or labor conditions that will exist during an extended period of contract performance" AND "contingencies that would otherwise be included in the contract price can be identified and covered separately in the contract." **FAR 16.203-2.**

7. A fixed-price-level-of-effort contract type provides for the contractor to perform a specified level of effort (i.e., hours by labor category) and total fixed dollar amount to be paid for at the completion of that stated level of effort or periodically during contract performance (i.e., monthly). **FAR 16.207-1.** This contract type is suitable for the procurement of investigations or studies where payment is based on the on the effort expended rather than on the results achieved. **FAR 16.207-2.**

8. Cost-reimbursement type contracts establish an estimate of total cost, for the purpose of obligating funds, and establish a ceiling that the contractor may not exceed without the approval of the contracting officer. **FAR 16.301-1.** Cost-reimbursement contracts shall only be used when the agency is unable "to define its requirements sufficiently to allow for fixed-price type contracts" OR uncertainties of contract performance "do not permit costs to be estimated with sufficient accuracy to use any type of fixed-price contract." **FAR 16.301-2.**

9. The use of cost reimbursement contracts is prohibited for the acquisition of commercial products and commercial services. **FAR 16.301-3(b).**

10. A cost-plus-incentive-fee contract type provides for an initially negotiated fee that will be adjusted later based on the relationship of total allowable costs to total target costs. **FAR 16.304.**

11. A cost-plus-award-fee contract type is a type of cost-reimbursement contract that provides for a fee consisting of (a) a base amount, which may be zero, fixed at the start of the contract plus (b) an award amount, based upon a judgmental evaluation by the Government, sufficient to provide motivation for excellence in contract performance. **FAR 16.305.**

12. A cost-plus-fixed-fee contract normally should not be used in development of major systems once the Government—through exploration, studies and risk reduction—has determined that development of the system is "achievable" and has established reasonably firm performance objectives and schedules. **FAR 16.306(b)(2).**

13. A time-and-materials contract may be used only when a contracting officer has "determined" that "it is not possible at the time of placing the contract to estimate accurately the extent or duration of the work or to anticipate costs with any reasonable degree of confidence", **FAR 16.601(c)**, and no other contract type is "suitable." **FAR 16.601(d)(1).**

14. With both time-and-materials contracts and labor-hour contracts, the contractor is only required to use "best efforts" during contract performance and there is no guarantee that the work required will be completed within the contract's stated "ceiling price." **FAR 52.232-7(d).**

15. Contractors offering non-commercial services on a time and materials or labor hour basis without adequate price competition are required to specify and separate labor rates for labor performed by:
    - the contractor, (b) subcontractors, and (c) each division, subsidiary, or affiliate of the contractor.

    FAR 16.601(c)(2)(ii).

16. An indefinite delivery/indefinite quantity ("ID/IQ") contract may be used when the Government cannot predetermine, above a specified minimum, the precise quantities of supplies or services it will require during the contract period, and it is inadvisable for the Government to commit for more than a minimum quantity. It should be used only when a recurring need is anticipated. **FAR 16.504(b).**

18. Requirements contracts are required, when feasible, to contain a “maximum quantity” clause. **FAR 16.503(a)(2).**

19. ID/IQ contracts are required to contain a “minimum guarantee” and “maximum quantity” clause. **FAR 16.504(a)(1).**

20. As a general rule, contracting officers are required, to the maximum extent practicable, to give preference to making multiple awards of ID/IQ contracts under a single solicitation for the same or similar services. **FAR 16.504(c)(1)(i).**

21. Under multiple award ID/IQ contracts, contracting officers must provide each awardee a “fair opportunity to be considered” for each order exceeding the micro-purchase threshold ($10,000). **FAR 16.505(b)(1)(i).**

22. A contracting officer need not provide awardees under a multiple award ID/IQ contract a “fair opportunity to be considered” if one of the following conditions exists:

    - The agency need for the supplies or services is so urgent that providing fair opportunity will cause unacceptable delays;
    - Only one awardee is capable of providing the supplies or services at the level of quality required because the supplies or services ordered are unique or highly specialized;
    - The order must be issued on a sole source basis in the interest of economy and efficiency because it is a logical follow-on to an order already issued under the ID/IQ contract and all awardees were provided a fair opportunity for the original order; and
    - It is necessary to place an order to satisfy a minimum guarantee.

    FAR 16.505(b)(2).

23. Contracting officers are only required to notify unsuccessful offerors when the total price of an order issued under a multiple award ID/IQ contract exceeds $6 million. **FAR 16.505(b)(6).**

24. Letter contracts are required to be definitized within 180 days after the date of the letter contract or before completion of 40% of the work to be performed, whichever occurs first. **FAR 16.603-2(c).**

25. A “basic agreement” described in **FAR 16.702** and a “basic ordering agreement” described in **FAR 16.703** are simply “agreements to agree on term and provisions,” and therefore are not contracts.