SESSION GUIDE
SEASON 2023, EPISODE ELEVEN
FAR PART 16: Types of Contracts

I. Introduction

You've probably noticed us talking about types of contracts in passing throughout the series. We've thrown around terms like "firm-fixed-price" and "time and materials" quite a bit, since those types of contracts apply to concepts we've been discussing. In this chapter we will explore the purpose and principal provisions of each type of contract used by the government.

We will also learn about the implications of each type of contract for the Government and industry, and when specific contract types should or should not be used.

There are seven-and-a-half broad categories of contracts described in Part 16: Fixed-Price (**16.2**), Cost-Reimbursement (**16.3**), Incentive (**16.4**), Indefinite-Delivery (**16.5**), Time-and-Materials (**16.6**), Labor-Hour (**16.6**), Letter Contracts (**16.6**), and Basic Ordering Agreements ("BOA") (**16.7**). We say seven and a half because a BOA is not really a contract, as such.

Before we get too far into the actual contract types, though, we will discuss the factors a CO should consider before selecting the contract type for an acquisition. We will also discuss when and how the parties should negotiate contract type as well as what solicitation provisions to use.

II. Selecting the Contract Type

The first thing a CO should do when selecting contract type is to check whether any statutory or regulatory restriction or limitation applies. For example, as we discussed a few chapters ago, in a sealed bidding competition COs can use only firm-fixed-price contracts. (Since the winning sealed bid is chosen on the basis of low price, the FAR explicitly limits sealed bidding procurements to firm-fixed-price or fixed-price with economic price adjustment contracts.) After that, the CO should carefully consider the Statement of Work (SOW), the contract specifications, and the contract deliverables.

Additionally, as we have discussed previously, the Government has a strong preference in favor of procuring commercial products or commercial services when available. The Government also prefers that prime contractors and subcontractors utilize commercial products or commercial services "to the maximum extent practicable," per **FAR 12.101**. The CO should also consider this preference when selecting a contract type. As we will see below, only certain types of contracts can be used to purchase commercial products or commercial services.

The FAR also directs the CO to keep in mind some more general considerations. For example, the CO should consider the stage of the program. A Cost-Reimbursement or Time and Materials type contract might be appropriate in the early stages of a program, but in later stages, when the specifications are better defined, a Fixed-Price contract may be appropriate. The CO should also consider how firm the specifications are (i.e., is there a risk of significant “scope creep”), the nature and negotiation of price or cost, and the profit incentive the Government might offer the contractor for meeting or exceeding specific performance standards or goals.

Question 1 –According to the FAR Council, what two objectives should a contractor achieve when choosing or negotiating a specific contract type? [Hint: Check out **FAR 16.103**]

1. ____
   ____
2. ____
   ____

FAR 16.104 identifies 12 specific factors that a contracting officer should consider when selecting a contract type. It is important to note that this is a non-exhaustive list, and the CO can, and often should, consider other factors when determining contract type. For instance, remember those regulatory limitations we touched on briefly? As it turns out, there are lots more limitations. Shocking, we know! Other limitations include those in **Part 12**, which deals with commercial product and commercial service acquisitions. In such acquisitions, a CO may only use Firm-Fixed-Price or Fixed-Price-With-Economic-Price-Adjustment (although in certain extremely limited situations the CO may also use Time-and Materials or Labor-Hour contracts, per **FAR 12.207**, **16.601**, and **16.602**). For non-commercial competitive negotiations, COs may generally use any type of contract allowed in the FAR, although some restrictions apply from **10 U.S.C. § 2306(a)** and **41 U.S.C. § 254**.

Question 2 – What type of contract is specifically prohibited by **10 U.S.C. § 2306a** and **41 U.S.C. § 254**? Where can you find this prohibition in **FAR Part 16**?

III. Fixed-Price Contracts

According to USASpending.gov, the Government spent approximately $393 billion on fixed-price contracts during FY 2021. The fixed-price category of contracts contains six sub-types: Firm-Fixed-Price (**16.202**), Fixed-Price with Economic Price Adjustment (**16.203**), Fixed-Price Incentive (**16.204**), Fixed-Price with Prospective Price Redetermination (**16.205**), Fixed-Price with Retroactive Price Redetermination (**16.206**), and Firm-Fixed-Price Level of Effort (**16.207**).

A. Firm-Fixed-Price (FFP)

This type of contract is described in **FAR 16.202**. As its name implies, it does not allow for price renegotiation after the parties settle the initial price at the time of award (unless the scope of work is later changed). This means that an FFP contract places the highest level of cost risk on the contractor. Under this type of contract, the Government does not care whether the contractor's costs are higher than expected; the Government only cares that the job gets done (for which it will pay only the agreed-upon fixed price).

B. Fixed-Price with Economic Price Adjustments (FP EPA)

This type of contract is described in **16.203**, and is more forgiving with respect to pricing than only a FFP contract type. It allows for upward or downward revision of the original contract price if specific contingencies occur. As you probably guessed, those contingencies have to do with economic cost issues. The contingencies include major changes in contract component costs, including the cost of materials (often oil, gas, specialty metals or other resources subject to unpredictable market fluctuations) or labor, often based upon changes in specified cost indexes (e.g., the Consumer Price Index). A CO may use this type of contract if serious doubts regarding market or labor stability will exist during a significant portion of contract performance. When we think about it, this makes sense. Maybe a procurement would be a great fit for an FFP contract, but the market for one of the supplies that is vital to contract performance is extremely volatile. If the Government is stuck with an FFP contract, an offeror would incur a major cost risk, or would have to include in its bid a cost contingency that might make its bid noncompetitive. Note that unstable markets or labor issues must be separately identifiable, and that only a portion of the fixed price is "de-risked." The rest of the contract costs will behave like an FFP contract. The economic price adjustments only apply to the specifically-identified problem areas.

C. Fixed-Price Incentive (FPI)

This type of contract is described in **FAR 16.204** and **16.403** and is not frequently used. It is different from other Fixed-Price contracts in that the total fixed price to be paid by the Government is not actually set until the contract has been fully performed. Unlike a standard FFP type contract, it provides a formula for adjusting profit and establishing the final contract price. The formula is based on the relationship between the total final negotiated cost and the target cost set forth in the contract. This contract type is a bit of a hybrid, used in situations where an FFP contract would not be appropriate, but neither would any of the Cost-Reimbursement types. In this gray area, the Government reimburses the contractor for its costs (subject to a price ceiling limitation), but provides fee incentives based on how closely the contractor manages its costs to the original estimated target price. In fixed price incentive contracts, billing practices are established on an “interim basis” for payment which can be adjusted during contract performance upon the request of either party when it becomes apparent that the final negotiated cost will be substantially different from the target cost. **FAR 16.403(c)**. The Government is also permitted to offer incentive payment related to technical performance or timely delivery. **FAR 16.403(b)(3)**.

D. Fixed-Price with Prospective Price Redetermination (FP PPR)

This type of contract is described in **FAR 16.205**. Like FPI contracts, this type of contract is also rarely used. It allows the parties to negotiate a fixed price for the initial period of contract performance, and then renegotiate the price for future periods. These redeterminations can occur at a set time, or at several set times, during performance. COs should use this type of contract when an FFP contract would be appropriate for the first contract period, but prices will probably change and so should be renegotiated later.

E. Fixed-Ceiling-Price with Retrospective Price Redetermination (FCP RPR)

This type of contract is described in **FAR 16.206**, and once again is rarely used. It is similar to an FP PPR contract in that it has a set time for price redetermination during contract performance. However, instead of price redetermination for future periods, it features retroactive price negotiation for the entire performance of the contract. The parties establish a price ceiling during the initial negotiation of the contract. After the contractor has completed performance, the parties determine the final price. This contract type is typically used only for research and development contracts that are valued at less than $150,000 and have a short performance period, and when no other type of contract would be feasible.

F. Firm-Fixed-Price Level of Effort (FFP LOE)

This type of contract is found in **FAR 16.207**, and at first glance looks a little different from its other Fixed-Price contract types. However, once we examine it a bit, it is fairly similar. An FFP LOE contract is used to procure services up to a specified “level of effort” (i.e., a specific number of hours by labor category). When the number of promised hours is fully expended, the contractor has fulfilled its promise and can then be paid the firm fixed price guaranteed by the Government for completion of that time worked. This type of contract also permits for accelerated payments so the contractor may receive payment prior to full completion of the contract. If the contractor fails to fully utilize all of the required hours, the Government can reduce the overall contract price. Without additional approvals, this contract type should be used only for research and development contracts valued at less than $150,000.

Question 3 – What circumstances (other than procurement of a commercial item) must exist to support a contracting officer's decision to choose a firm-fixed-price type contract? [Hint: Check out **16.202-2**]

Exercise 1 – Using only the list of Fixed-Price contract types above and the brief descriptions of each type of contract, indicate what type of Fixed-Price contract would be most appropriate for each of the following situations. Keep in mind that more than one contract type may be correct!

A contract to purchase office desks and chairs: ____

A four-year services contract for specialized technical services where significant fluctuations in the specialized technical labor market are anticipated to occur during the contract period of performance: ____

A contract for purchasing computer graphics cards, which are currently very expensive but will probably decline in price in the future: ____

A five-month study valued at less than $120,000 into the effectiveness replacing particular circuits in existing drone technologies: ____

A contract to purchase a commercial jet airliner which will be converted to a cargo plane for the military: ____

IV. Cost-Reimbursement Contracts

This family of contract types is on the opposite end of the risk spectrum from the Fixed-Price family. In Cost-Reimbursement contracts, the Government reimburses the contractor for costs actually incurred, as long as they are "allowable," instead of setting a fixed price at the beginning of the contract. (We'll discuss the concept of "allowability" in a later chapter.) These contracts establish an estimate of total cost for the purpose of obligating funds and establish a ceiling that the contractor may not exceed. The contractor is required to provide the Government adequate notice if it believes that additional funds will be required to complete the contract and is required to stop work upon reaching the agreed upon cost ceiling. Because this type of contract causes the greatest amount of financial risk to the buyer, the Government prefers not to use Cost-Reimbursement contracts. *See* **FAR 16.301-2**. There are five types of Cost-Reimbursement contracts: Cost, (**16.302**), Cost-Sharing (**16.303**), Cost-Plus-Incentive-Fee (**16.304**), Cost-Plus-Award-Fee (**16.305**), and Cost-Plus-Fixed-Fee (**16.306**).

Note that *none* of these contract types may be used to acquire commercial products or commercial services! The Government may only acquire commercial products or commercial services using FFP, T&M or labor hour contracts.

A. Cost Only

This special cost type contract—which is used primarily to purchase research and development services—reimburses contractor solely for its costs and does not all for the inclusion of any fee (i.e., profit). The Government often uses this contract type when procuring research and development work performed by non-profit organizations or non-profit educational institutions.

B. Cost-Sharing (CS)

We continue our discussion with a bit of an odd duck: Cost-Sharing contracts, described in **FAR 16.303**. In these contracts, the Government only reimburses the contractor for an agreed-upon share of its allowable costs, and pays no fee to the contractor. So why in the world would a contractor ever agree to a Cost-Sharing contract? Generally, a contractor might agree to this type of contract as a way of getting its foot in the door with the Government, or in expectation of some benefit in the commercial marketplace from the product or service provided under the contract. Of all the kinds of Cost-Reimbursement contracts, this is the least-used type, as you might expect.

C. Cost-Plus-Incentive-Fee (CPIF)

In this type of contract, described in **FAR 16.304**, the Government reimburses the contractor for its allowable costs, and also pays the contractor an incentive fee. This probably sounds familiar; CPIF contracts function in a fashion similar to FPI contracts. The main difference is that in a CPIF contract, the Government does not establish a fixed ceiling price, because the circumstances of the procurement require a Cost-Reimbursement contract instead of a Fixed-Price contract. Instead, the parties agree to a target cost, a target fee, minimum and maximum fees, and a fee adjustment (cost-sharing) formula. **FAR 16.405-1**. This contract type is most useful when contract specifications are too uncertain to use a fixed-price contract vehicle, but the Government wants to incentivize the contractor to manage its costs efficiently. CPIF contracts provide both carrots and sticks; if the contractor manages the contract poorly its fee is reduced, but if it manages the contract well it receives a greater fee.

D. Cost-Plus-Award-Fee (CPAF)

This type of contract, described in **FAR 16.305**, is a Cost-Reimbursement contract in which part of the fee consists of “an award amount, based upon a judgmental evaluation by the Government, sufficient to provide motivation for excellence in contract performance.” **FAR 16.305(b)**. The Government and the contractor agree on the fixed fee (which may be as low as $0) and an amount that goes into an “award fee pool.” Like the CPIF contract type, an award fee contract provides performance incentives to the contractor. The difference is that the CPIF fee is based on a formula that is determined only by the contractor’s cost control, whereas in a CPAF contract, the fee, which is typically awarded over multiple "award fee periods," is based on the judgment of a Government team and can be based on many different performance-related factors. This type of contract is appropriate when the Government wants to provide motivation that goes beyond cost control.

E. Cost-Plus-Fixed-Fee (CPFF)

This type of contract, described in **FAR 16.306**, is exactly what it sounds like. The Government reimburses the contractor for all allowable costs and also pays a fixed fee, which the parties agreed to during the initial negotiation phase. The fee can be adjusted later if the scope of work changes, but will not be adjusted based on the contractor's actual costs or performance. This type of contract is typically used for research and development contracts and contracts that seek to establish proof of concept. Often no one knows whether the subject of the contract is even possible at the time the parties enter into the contract, so it is impossible not only to determine a fair fixed price, but even reasonable target costs.

Exercise 2 – Using the list of Cost-Reimbursement type contracts above and the brief descriptions of each type of contract, indicate what type of Cost-Reimbursement contract would be most appropriate for each below situation. Keep in mind that more than one contract type may be correct!

A research contract with a non-profit organization about the environmental impact of wild horse herds maintained by the federal government in the Pacific Northwest: _________________________

A contract for the manufacture of a new submarine that includes some key technological updates which have not been fully researched yet: ____

A contract for construction of vaccine manufacturing facility, including the successful manufacturing and production of one bulk lot of vaccine by the contractor: __________________________________

A contract for the research and development of new AI border monitoring technology:
____

V. Incentive Contracts

We have already discussed incentive contracts in the prior sections, but will add a few words about them here. The procedures for awarding and performing all types of Incentive contracts are laid out in **FAR 16.4**. This Subpart essentially acts as a supplement to the other Subparts, which described the actual Incentive types. It details how COs should calculate incentives, when incentives are appropriate, and which contract clauses to include. Since multiple types of Incentive contracts use the same procedures for calculating incentives and other functions, it makes more sense to have a separate Subpart to detail these procedures instead of repeating them for every Incentive contract. This is why we have made occasional reference to various portions of **16.4** in the above sections.

Question 4 – Using the table found at **FAR 16.401(e)(3)(iv)**, what Adjectival Performance Rating should the CO assign to the contractor based upon the following performance evaluation? Identify the highest award fee that a contractor can achieve by achieving that following performance rating.

> "Contractor has exceeded some of the significant award fee criteria and has met overall cost, schedule and performance requirements."

VI. Indefinite Delivery Contracts

Sometimes the Government knows it will have a recurring need for a supply or service, but it is not sure how much of the supply or service it will require, or when it will be required. There are three types of Indefinite Delivery contracts described in **FAR 16.5**: Definite-Quantity (**16.502**), Requirements (**16.503**), and Indefinite Delivery/Indefinite Quantity (**16.504**). As you probably guessed, this family of contract types is fairly specific, and cannot be used in just any old situation. The basic requirements for using any Indefinite Delivery contract is that the Government must determine that a need exists and the Government can establish everything in a contract except for actual delivery dates, , and ,except for definite delivery contracts, an exact quantity needed, or both. Each specific contract type has further restrictions, which we will discuss below. As we go through this section, you will see how Indefinite Delivery contracts can be really convenient in many circumstances, and can be used on a Fixed-Price, Time and Materials, Labor Hour or Cost-Reimbursement basis. Indefinite Delivery contracts are often used for commercial item acquisitions, but can be used in other situations as well. During FY2021, the Government spent about $12.2 billion on indefinite delivery vehicles.

A. Definite-Quantity

This contract type is useful when the Government knows how much of a supply or service it needs, but is not sure exactly when it will be needed. We find the regulations governing Definite-Quantity contracts in **FAR 16.502**. A definite quantity contract establishes a specified guaranteed amount that must be ordered by the Government prior to the completion of the contract. A CO should only use this contract type when the required goods or services are regularly available or can become available after a short lead time. Additionally, this contract type is not appropriate for a contract with multiple awardees.

B. Requirements

A CO may use this type of contract when the Government anticipates that it will require certain supplies or services on a recurring basis, but it is not certain of the exact quantity it will require. This same scenario may support a CO's decision to issue an ID/IQ type contract, which we will discuss below. However, under a Requirements type contract, the Government must promise not to procure the requested item from any other contractor for the period of the contract's performance. This type of contract is required to include a realistic estimated total quantity that is expected to be ordered but this is not a guarantee that such an amount will be ordered. **FAR 16.503(a)(1)**. Likewise, when feasible, the contract must include a maximum order ceiling, and may specify minimum or maximum quantities the Government must order under each purchase order. It may also include a maximum quantity the Government can order during the entire period of contract performance.

We should note that the total cost of a Requirements contract, including any options, may not exceed $100 million unless the CO drafts an appropriate Determination & Findings. **FAR 16.503(b)(2)**. Like a Definite Quantity contract, a Requirements contract is single award, so a CO cannot make multiple awards to multiple contractors under the same contract.

C. Indefinite Delivery/Indefinite Quantity (ID/IQ)

Now we come to the beloved ID/IQ, described in **FAR 16.504**. Many articles have been penned on the subject of ID/IQs; the topic is vast, and unfortunately, we can only cover it briefly here. COs use ID/IQs when the Government will have a recurring need of an unknown quantity of supplies or services, within stated limits, during a fixed period of time. An ID/IQ is most appropriate when the Government can't predetermine the exact quantity of supplies or services it will require during the contract period, at least beyond a specified minimum guarantee, and it is inadvisable for the Government to commit to more than that minimum quantity. The specified minimum guarantee must be more than a nominal amount; otherwise, the contract will not be binding! The FAR doesn't specifically define "nominal amount," so COs should look at past agency practice as well as industry practice to figure out what that amount might be, since it can vary based on what the Government is procuring. For example, the minimum guarantee to support the award of a GSA FSS Schedule 70 contract—which is an ID/IQ type contract—is only $25,000. We should also note that this "guarantee" is actually more of a requirement; the contractor must sell at least $25,000 worth of supplies or services under a Schedule 70 contract, or else the GSA will revoke the contract.

Because of the uncertain nature of ID/IQs, the Government should provide for a total maximum ordering amount and include a Statement of Work in the solicitation. This Statement of Work should describe the general scope, nature, complexity, and purpose of the supplies or services to be procured, and must do so in a way that will help prospective offerors decide whether to submit an offer. The FAR tells COs to make multiple ID/IQ awards "to the maximum extent practicable." **FAR 16.504(c)(1)**.

ID/IQs often have statements of work that are fairly broad, and awarding to only one contractor could substantially reduce competition, especially when it is contemplated that the statement of work may encompass a variety of products or services, not all of which may be within the capability or strength of a single contractor. However, this does not mean that every awardee will be considered for every order! ID/IQ awardees in a multiple award contract are simply *eligible* to compete for task orders under the solicitation, and are not guaranteed business (beyond the contractual minimum needed to make the contract binding). That is why multiple award ID/IQ contracts are sometimes referred to as "hunting licenses." COs must provide every awardee a "fair opportunity" to be considered for each order over $3,500, but **FAR 16.505**, which details ordering processes, allows for flexibility in this area. **FAR 16.505(b)(1)**. The Government uses task orders to place an order for services under an ID/IQ, and delivery orders to place an order for supplies.

Exercise 3 – Using the list of Indefinite Delivery type contracts above and the brief descriptions of each type of contract, indicate what type of Indefinite Delivery contract would be most appropriate for each situation. Keep in mind that more than one contract type may be correct!

A five-year contract for 1,000 fire extinguishers: ____

A multiple-award regional contract for provision of repair, maintenance and construction of parking lots and roadways on military bases: ____

A single-award contract for acting services to support military training operations, which the Government knows it will require over a three-year period, but is unsure exactly how much service will be required: ____

VII. Time & Materials, Labor-Hour, and Letter Contracts

We can find these contract types described in **FAR 16.6**. Time & Materials contracts (**16.601**) and Labor-Hour contracts (**16.602**) are not firm fixed-price contracts (although some have argued that a labor- hour contract could be considered an FFP contract as the overall price is based upon "fixed unit rates" (i.e., hourly rates). As other than FFP contracts, they are not "preferred" contract vehicles. Note that a CO can only use one of these contract types if she completes a Determination & Findings, indicating that no other contract type is appropriate under the circumstances. Letter contracts (**16.603**) are relatively informal arrangements, so they are also not used frequently, and their use is heavily restricted. A CO can award a letter contract on a fixed-price or cost-reimbursement basis, but the agency head must indicate in writing that a letter contract is the only contract type that is suitable under the circumstances.

A. Time & Materials (T&M)

Time & Materials contracts, described in **FAR 16.601**, are used when the Government cannot accurately estimate the duration or extent of the work it will require, or when the Government cannot predict the cost of the contract with a reasonable degree of certainty. T&M contracts are essentially what they sound like; the Government pays the contractor for hours worked (at agreeable labor category hourly rates) and material costs incurred (which often includes travel) during the contract period of performance. The amounts paid for work performed are subject to hourly rates that are negotiated and mutually agreed to at the time of award. See **FAR 52.216-29**, **FAR 52.216-30**, and **FAR 52.216-31** for discussion about how a contractor must explain its labor rate structures in its price proposals. A T&M contract will always include a price ceiling which exists, in part, to help control the Government's financial risk. A contractor must always provide 30 days' notice to the Government when it believes the agreed upon price ceiling is not sufficient to complete performance and must always stop work when the full price ceiling has been reached. Under a T&M contract, contractors are required only to use their "best efforts." There is no guarantee that the contractor will complete all work upon it reaching the price ceiling. We will talk more about labor rates and price ceilings in our discussion about **FAR Part 32 (Contract Financing)**.

B. Labor-Hour

Labor-Hour contracts are an offshoot of T&M contracts, and are thus only given a short blurb in **16.602**. The difference between a Labor-Hour and T&M contract is that in a Labor-Hour contract, the contractor is required to "fully load" all of its expected costs into its hourly rates and will not be paid for any travel, material or other direct costs that are not otherwise included in the contract's negotiated hourly rates.

C. Letter Contracts

We find letter contracts in **FAR 16.603**. COs can only use Letter contracts when there is not enough time to negotiate a regular contract, and the Government needs contract performance to begin immediately. COs should still make Letter contracts as complete as possible, and should use contracting by negotiation procedures to the maximum extent practicable. Letter contracts should include a definitive schedule under which the informal contract is to evolve into a full contract by a specific date certain. Additional restrictions are located in **FAR 16.603-3**.

Exercise 4 – Using the list of contracts above and the brief descriptions of each type of contract, indicate what type of contract would be most appropriate for each situation. Keep in mind that more than one contract type may be correct!

A contract for translation services: ____

A contract for information technology services that will require the performance technical services, delivery of equipment and travel by the consultants: ____

A contract for the emergency acquisition of bottled water in the aftermath of a natural disaster:

____

VIII. A Quick Note on Agreements

The final "half-type" of contract we mentioned in the Introduction is a Basic or Blanket Ordering Agreement. It is important to note that these agreements, in fact, are *not* enforceable contracts! Rather, they are a "written instrument of understanding" between the Government and contractor, per **FAR 16.702 and 16.703**.

Basic Agreements are most useful when the Government "might" award a substantial number of contracts to a specific contractor in a certain time period, and the Government has experienced substantial recurring problems of negotiation with that contractor in the past. Thus, to streamline the acquisition process, the Government and contractor create a Basic Agreement, which outlines the contract clauses which *must* be included in future contracts by statute and regulation, as well as any other clauses to which the parties agree. **FAR 16.702(b)**. Basic Agreements must also contain various other provisions, found in **FAR 16.702(b)(2)-(5)**. In short, a Basis Agreement is simply an "agreement to agree". Since Basic Agreements do not contain any consideration to the contract and do not obligate funds or otherwise bind the Government's future obligations, particularly regarding competition. Contracts made using a Basic Agreement may incorporate the agreement by reference or by attachment. **FAR 16.702(d)**.

Basic Ordering Agreements are the same as Basic Agreements with respect to their restrictions and reason for use; however, they are used to streamline future *orders* instead of future *contracts*. Thus, Basic Ordering Agreements must include everything a Basic Agreement does, and must also include various agreed in advance ordering-specific terms, such as delivery terms and conditions. **FAR 16.703(c)**. **16.703(d)** outlines the process used for placing orders under a Basic Ordering Agreement.

IX. A Quick Note on Hybrid Contracts

Sometimes one contract type doesn't quite encompass everything the Government needs in a procurement. In that case, the Government can use multiple contract types within one contract. To accomplish this, the Government uses Contract Line Item Numbers, or CLINs. For example, the Government can enter into a Firm-Fixed-Price service contract that contains a Cost-Reimbursement travel CLIN. **FAR 4.10** contains the guidelines for uniform line items, although each agency usually has their own numbering system. In short, a CLIN allows the Government to procure certain products or services in a manner different from the way it is buying under the rest of the contract.

Discussion Questions

1. What two types of solicitations do not require the inclusion of contract clause 52.216-1 (Type of Contract)?

2. What level within an agency's contract organization must approve the selection of a cost reimbursement type contract? **[Hint: Check out FAR 16.301-3]**

3. The FAR Councils states that using indefinite delivery contractors offer four distinct advantages. Name them.

4. True or False? A contracting officer may terminate a contractor for default it has not completed all requested work upon reaching the price ceiling in a labor hour contract. Explain your answer.

5. Under what conditions should a contracting officer award an ID/IQ contract to only one awardee? Where in **Part 16** you found the answer.

6. Cost-plus-fixed-fee contracts may only be awarded if certain conditions are met. What are these conditions. **[Hint: Check out FAR 16.301-2 and FAR 16.305]**

7. Under what circumstances may a contracting officer order services from a contractor on a sole source basis under an indefinite delivery/indefinite quantity contract? **[Hint: Check out FAR 16.505]**

8. **FAR Question**: Throughout FAR Part 16, the FAR Council explains the types of contracts available to a contracting officer and offers three categories of information which explains when or if a specific type is appropriate. What are the titles of these three categories?

Answer Key

Answer 1 –

1. Negotiate a contract type and price (or estimated cost and fee) that will result in reasonable contractor risk.
2. Provide the contractor with the greatest incentive for efficient and economical performance.

Answer 2 – The cost-plus-a-percentage-of-cost system of contracting shall not be used; this is found in FAR 16.102(c).

Answer 3 – A contracting officer should select a firm fixed price type contract when he/she is acquiring supplies or services on the basis of reasonable definite functional or detailed specifications and fair and reasonable prices can be established at the outset, such as when (i) there is adequate price competition, (ii) there are reasonable price comparisons with prior purchases of the same or similar supplies or services made on a competitive basis or supported by valid certified cost or pricing data, available cost pricing information permits realistic estimates of the probable costs of performance, or (iv) performance uncertainties can be identified and reasonable estimates of their cost impact can be made, and the contractor is willing to accept a firm fixed price representing assumption of the risks involved.

Exercise 1 –

A contract to purchase office desks and chairs: <u>Firm-Fixed-Price (FFP)</u>

A four-year services contract for specialized technical services where significant fluctuations in the specialized technical labor market are anticipated to occur during the contract period of performance: <u>Fixed-Price with Economic Price Adjustment (FP EPA)</u>

A contract for purchasing computer graphics cards, which are currently very expensive but will probably decline in price in the future: <u>Firm-Fixed-Price with Prospective Price Redetermination</u>

A five-month study valued at less than $120,000 into the effectiveness of replacing particular circuits in existing drone technologies: <u>Firm-Fixed-Price Level of Effort type contract</u>

A contract to purchase a commercial jet airliner which will be converted to a cargo plane for the military: <u>Fixed-Price Incentive (FPI)</u>

Exercise 2 –

A research contract with a non-profit organization about the environmental impact of wild horse herds maintained by the federal government in the Pacific Northwest: <u>Cost Only</u>

A contract for the manufacture of a new submarine that includes some key technological updates which have not been fully researched yet: <u>Cost-Sharing (CS)</u>

A contract for construction of vaccine manufacturing facility, including the successful manufacturing and production of one bulk lot of vaccine by the contractor: Cost-Plus-Award-Fee (CPAF)

A contract for the research and development of new AI border monitoring technology: Cost-Plus-Fixed-Fee (CPFF)

Answer 4 – A contractor who is only able to exceed some of the significant award fee criteria will receive a score of "GOOD" and, at best, will be entitled to receive 75% of the stated award fee amount.

Exercise 3 –

A five-year contract for 1,000 fire extinguishers: Definite Quantity

A multiple-award regional contract for provision of repair, maintenance, and construction of parking lots and roadways on military bases: Indefinite Delivery/Indefinite Quantity

A single-award contract for acting services to support military training operations, which the Government knows it will require over a three-year period, but is unsure exactly how much service will be required: Requirements or Indefinite Delivery/Indefinite Quantity

Exercise 4 –

A contract for translation services: Labor-Hour (LH)

A contract for information technology services that will require the performance technical services, delivery of equipment and travel by the consultants: Time & Materials (T&M)

A contract for the emergency acquisition of bottled water in the aftermath of a natural disaster: Letter Contracts

Discussion Questions Answer Key

1. The two types of solicitation that do not require the inclusion of FAR claus32 52.216-1 (Type of Contract) are solicitation issued for (i) FFP contracts with a value under the simplified acquisition threshold or (ii) information planning purposes.

2. A written acquisition plan for a cost reimbursement contract must be approved one level above the contracting officer.

3. All three types of infinite-delivery contracts permit- (i) Government stocks to be maintained at minimum levels; and (ii) Direct shipment to users (2) Indefinite-quantity contracts and requirements contracts also permit- (i) Flexibility in both quantities and delivery scheduling; and (ii) Ordering of supplies or services after requirements materialize. (3) Indefinite-quantity contracts limit the Government's obligation to the minimum quantity specified in the contract. (4) Requirements contracts may permit faster deliveries when production lead time is involved, because contractors are usually willing to maintain limited stocks when the Government will obtain all of its actual purchase requirements from the contractor

4. The contracting officer is not permitted to terminate the contractor for breach as completion is not guaranteed in a T&M contract. Instead, the contractor only promised to use its best efforts to complete the contract within the price ceiling amount agreed to by the parties.

5. Yes. FAR 16.504(c) addresses the preference for multiple awards in an ID/IQ contract. But subsection 16.504(c)(ii)(B) specifically outlines 6 scenarios where the contracting officer should make award to only one contractor. These include where (1) Only one contractor is capable of providing performance at the level of quality required because the supplies or services are unique or highly specialized and (4) The projected task orders are so integrally related that only a single contractor can reasonably perform the work, and (5) The total estimated value of the contract (not delivery or task orders) is less than the simplified acquisition threshold among the others specifically listed.

6. 1) Circumstances do not allow the agency to define its requirements sufficiently to allow for a fixed-price type contract 2) Uncertainties involved in contract performance do not permit costs to be estimated with sufficient accuracy to use any type of fixed-price contract 3) Provides for a fee consisting of (a) a base amount (which may be zero) fixed at inception of the contract and (b) an award amount, based upon a judgmental evaluation by the Government, sufficient to provide motivation for excellence in contract performance

7. (i) urgent need, (ii) only one source available, (iii) logical follow on, and (iv) satisfy minimum guarantee.

8. Description, Application, Limitations

APPENDIX

All of the following materials are linked below to PCI's website or to an online link.

Air Force Award Fee Guide

A guide issued in October 2008 by The Department of the Air Force regarding the appropriate use of award fee in base-level contracting. The guide covers a spectrum of acquisitions for which award-fee arrangements are appropriate and provides assistance on the application of award fee.

DPAP Comparison of Major Contract Types

Chart issued by the Defense Acquisition University comparing the major procurement contract types and describing various elements, requirements, typical applications and more. The document also addressed strategies when considering contract types and planning tips.

Firm Fixed Price Contract Line Item Number Template

Template for Contract Line Item Number in a Firm Fixed Price Contract.

GAO-17-244SP, Assessment of Government-wide Trends

Government Accountability Office report to Congress from March 2017 regarding a Contracting Data Analysis on the Assessment of Government-wide Trends. The GAO conducted the study because Federal agencies obligated over $430B through contracts for products and services in the fiscal year 2015 and used the information to understand the trends in the Government's buying. The report does not contain recommendations but an analysis of the data.

GAO-17-329, Agencies Widely Used Indefinite Contracts to Provide Flexibility to Meet Mission Needs

Government Accountability Office report to the Committee on Homeland Security and Governmental Affairs in the U.S. Senate from April 2017 regarding Federal Contracts finding that agencies widely used indefinite contracts to provide flexibility to meet mission needs.

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Episode 11
FAR Part 16
<u>Summary Outline</u>

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IV. Closing Remarks