



U.S. DEPARTMENT OF
ENERGY



Issues in Contract Management

Ralph Holland

*Assistant Director, Office of Contracting
Environmental Management Consolidated Business Center*

**Waste Management Conference: Panel Session #56
US DOE Procurement and Contracting Opportunities**



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Issues in Contract Management

“Contract management is front and center – front and center – in our focus.”

– Daniel Gordon, Administrator of the Office of Federal Procurement Policy
during December 10, 2010 discussion on procurement reforms



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Issues in Contract Management

- Alignment of Project Management and Contract Management
- Change Management
- The Role of Management Reserve and Contingency
- Opportunities for Improvement



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Contract/Baseline Alignment

- Initial Baseline Reflects Contract After True Up
 - Provides basis for contract management
- Effective Contract Management Requires Solid Infrastructure
- Consistent Application of Management Reserve and Contingency
- Efficient Change Processing
 - Recognition of linkage between baseline changes and contract
 - Timely resolution is critical
 - Disciplined compliance with contract terms regarding changes
- Alignment between contract and baseline maintained throughout performance



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Contract True Up

- Objective is alignment between contract and baseline at project commencement
- Addresses differences between assumed and actual conditions
 - Waste Volumes
 - Numbers of structures
 - Disposition pathways
 - Regulatory conditions
- EM Goal is 180 Days After Conclusion of Transition Period
 - Requires prompt initiation of contract action to:
 - ♦ Define changes
 - ♦ Receive and evaluate proposals
 - ♦ Obtain required approvals
 - ♦ Negotiate and finalize change



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Change Management

➤ Contract Change or Baseline Change?

- Given that contract and baseline are aligned at contract start...
 - ♦ Baseline changes require a contract change
- Given that the baseline is subordinate to the contract...
 - ♦ A contract change is complementary to a baseline change
 - ♦ A baseline change does NOT constitute a contract change
- Therefore, baseline change proposals should be accompanied by a contract change proposal
 - ♦ Contract change should be negotiated in conjunction with BCP approval

➤ Required Elements

- Common understanding of roles and responsibilities
- System maturity
- Disciplined approach



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Change Management (Continued)

- Adherence to Technical Direction clause
 - Understand limitations of COR authority
 - ◆ May not change scope, cost, or schedule
 - Contractor has a duty to notify CO when direction exceeds COR authority
 - CO has duty to promptly render a decision
- Upon recognition of a potential change
 - Notification to contracting officer
 - Initiate change order accounting
- Initiate action to revise contract
 - EM goal is definitize change in 180 days or less
 - 60/60/60 “rule of thumb”
 - Critical that systems are in place to deliver auditable certified cost and pricing data within the 60 days or less

Baseline change should be submitted with contract change



Management Reserve and Contingency

➤ DOE Order 413.3B

- Management Reserve: “An amount of the total contract budget withheld for management control purposes by the contractor.”
- Contingency: “Contingency is the portion of the project budget that is available for risk uncertainty within the project scope but outside the scope of the contract...”

➤ Federal Acquisition Regulation

- Management Reserve: Not recognized as a cost
- Contingency: “...a possible future event or condition arising from presently known or unknown causes, the outcome of which is indeterminable at the present time.” (FAR 31.205-7(a))



Contingency in Contract Pricing

➤ FAR Recognizes Two Types of Contingency in Connection With Future Costs

- Those arising from known and existing conditions, the effects of which are foreseeable within the limits of accuracy, e.g., anticipated costs of rejects and rework.
 - ♦ Included in estimates of cost
- Those arising from presently known and unknown conditions, the effects of which cannot be measured so precisely as to provide equitable results to the parties
 - ♦ Excluded from estimates of cost...but, should be disclosed separately to facilitate negotiation of appropriate contractual coverage



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Contingency in Contract Pricing (Continued)

- Known and existing...effects of which are foreseeable
 - Priced as part of discrete cost element
 - ♦ Escalation
 - ♦ Productivity
 - ♦ Scrap

- Known and Unknown...can not be measured
 - Never included in contract price
 - However, the contracting officer may provide “appropriate contractual coverage”
 - ♦ Economic price adjustment clause
 - ♦ Assumptions
 - ♦ Fee neutral provisions



DOE Guidance on Management Reserve and Contingency

- Acquisition Letter AL 2009-01, October 6, 2008 provides that contracting officers:
 - Shall not use management reserve or contingency as defined by DOE O 413.3B in the pricing of contract actions, even if validated as part of the project management process;
 - Shall not, except as allowed by FAR 31.205-7, include contingency in contract prices nor pay fee to compensate for excluding contingencies from the contract price;
 - Shall not include any amount in a contract price to cover prospective requests for equitable adjustments, changes, or risks that might or might not occur during performance.



DOE Guidance on Management Reserve and Contingency (Continued)

- EM-50 Memorandum, Environmental Management Contractor Management Reserve Practices, May 20, 2009 states:
 - Management reserve is not part of the Performance Management Baseline.
 - Even though management reserve is never priced into federal contracts, the expectation is that after contract award the contractor sets aside a portion of the Contract Budget Base for unforeseen contractor costs.
 - This management reserve is determined, held, used, and controlled by the contractor...



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Opportunities for Improvement

- Baseline changes confused with contract changes
 - Changes priced in reliance on validated baseline
- Proposal quality
 - Failure to comply with FAR Table 15-2
- Change order accounting not implemented
 - Burden of proof rests with the contractor
- Accumulation of multiple changes
- Failure to address cost of deleted work
- Inappropriate inclusion of contingency in contract pricing

- Cumulative effect is proposal rework, delays, inaccurate project reporting, and lost fee.



Summary

- Contract management remains an area of emphasis
- Alignment of contract and baseline is essential
 - At the time of contract award through contract completion
- Risk management in project management and contract management are complementary
- Effective contract management results in higher performance and increased fee



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