

2010

Department of Energy  
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U.S. DEPARTMENT OF  
**ENERGY**

*"Meeting  
The  
Challenge"*

# Managing Contract Changes The Key to Project Success

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Director, OECM

# The Panel

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- Edward Simpson, Director  
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Assistance Management, DOE
- Paul Bosco, Director  
Office of Engineering and  
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# It's Still About the Contract!

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- Ensure Project Success
  - Get what we bargained for
  - On time, within cost
- Award a Contract that
  - Motivates the contractor to perform at highest levels
  - Accurately reflects Government's needs
  - Set the rules for the relationship – Rights and Remedies
  - Allocates Risk – Accept, Shift, Mitigate, Avoid
- Drives contract management and project management processes

# The Simple Truths

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- DOE projects tend to be complex, high dollar value, longer term.
- The REAL work begins at Contract Award
- Certainties in Life – Death, Taxes, Contract Changes
  - Funding/Budget
  - Regulatory Requirements/Interfaces
  - Congressional Interests
  - Characterization/Latent Conditions
  - Commodity Prices – Escalation
  - Contract Terms and Conditions
- Things will likely not go as planned

# Transition To Non M&O Contracts

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- Assumption of Legacy Workforce
- No Significant Increase In Federal Oversight Resources Despite Significant Increase In Both Pre-Award And Post-Award Workload
- Slow To Change In Contract Administration Culture
  - Continual Technical Direction
  - Few Change Orders Issued
  - Broad SOW, Few Hard Deliverables
- Still Budget Driven
- Difficulty in Accurately Estimating Work To Be Done For Set Budget

# Transition To Non M& O Contracts

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- Contract Types (FFP, CPIF, CPAF) Require More Active And Discipline Contract Administration
- Contract Contain FAR Changes Clause Versus DEAR M&O Changes Clause
- Fee Set At Contract Award And Not Set By Annual Budget
- Additional Fee Based On Additive Changes

# Keys to Contract and Project Success

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- Key: Disciplined Contract Administration is
  - Contract Management Planning
  - Documented Contract Management Plan
  - Project Management Plan
- Key: To Be Effective, The Contract Needs To Be Kept Current
- Key: An Effective Change Control Process is Required

# Change Control

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- Contract changes ensure alignment of contract scope and terms/conditions over the life of the contract
- Contract changes can impact any area of the contract – scope, legal, financial, duration, performance expectations, fee



# GUIDANCE

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- POLICY FLASH 2008-39 Contract Change Order Administration (April 1, 2008 Memorandum)
- DEAR ACQUISITION GUIDE – 15.4-3, Pre-negotiation Plan & the Price Negotiation Memorandum
- AL 2009-01 Management Reserve and Contingency
- DOE Acquisition & Financial Assistance Implementation Guide For The American Recovery & Reinvestment Act Of 2009

# Strengthening Change Control

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- Establish Federal Change Control/Change Boards
  - DOD and NASA Have Formal Change Control Boards for Major Projects
  - Brings Discipline to the Process and Decision making
  - Identifies Funding or Other Trade Offs
  - Integrates Functional Considerations
  - Graded Approach Allows For Tailoring To Appropriate Management Levels

# Strengthening Change Control

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- Timely Identification And Issuance of Changes
  - Both Additive and Deleted Work Scope, Requirements
  - Relaxation of Contract Requirements and Deleted Work Are Also Within The Scope of Changes
  - Changes in Project Management Baseline

# Strengthening Change Control

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- Changes Are To Be Issued In Writing Via Contract Modification
  - Requirement for Formal Change Orders (FAR 43.201(a))
  - Changes to Statement of Work/Work Scope Clearly Identifies and Bounded – Additions and Deletions
  - Additional Contract Funding If Necessary
  - Definitization Schedule for Receipt of the Contractor's Change Proposal And Negotiation Settlement
  - Other Administrative Controls and Direction As Needed
  - Cost Ceiling For Changed Work

# Strengthening Change Control

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- Contractor Change Order Proposal/  
Request for Equitable Adjustment
  - Change Order Accounting (FAR 52.243-6)
  - Specific Change Order/REA Proposal Instead of Project Management Baseline
  - “Cost Incurred/Cost To Go” Approach Inadequate
  - Cost Element Breakdown Needed
  - Contractor Must Establish Entitlement In Order To Support Additional Fee Associated with the Change
  - Must be Auditable By Cognizant Audit Agency
  - Certified Cost or Pricing Data Requirements

# Strengthening Change Control

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- Evaluation of Contractor's Proposal
- Evaluation Must Be Accomplished for Each Change
- "Global Settlement" Approach Should Not Be Assumed or Pursued
- Management Reserve (MR) and Contingency Are Not Part of the Contract Cost

# Strengthening Change Control

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- Evaluation of Contractor's Proposal
  - Technical Evaluation of Contractor's Proposal –  
Focused On Work Execution, Project Impacts, Schedule
    - Technical Approach, Added or Deleted Work, Delays
  - Cost Reasonableness/Realism Analyses  
Supported by Audit Findings
    - Resolution of Audit Findings
  - Cost Growths Due to Cost Overruns
  - Recognition of Incurred Costs
  - Determination of Entitlement
  - Impacts on Fee and Incentives Structure

# ENTITLEMENT

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- A Prerequisite To An Equitable Adjustment
- Directed Or Constructive Change In The Contract Requirement (Something That The Government Did That Changes The Contractor's Costs For Which The Government Is Legally Liable)
- Burden Of Proof Is On The Party Claiming The Benefit Of The Adjustment
- For A Delay, The Contractor Has To Prove That The Delay Was Caused Solely By The Government Action And Was Not Concurrent With Contractor Caused Delay



# ENTITLEMENT

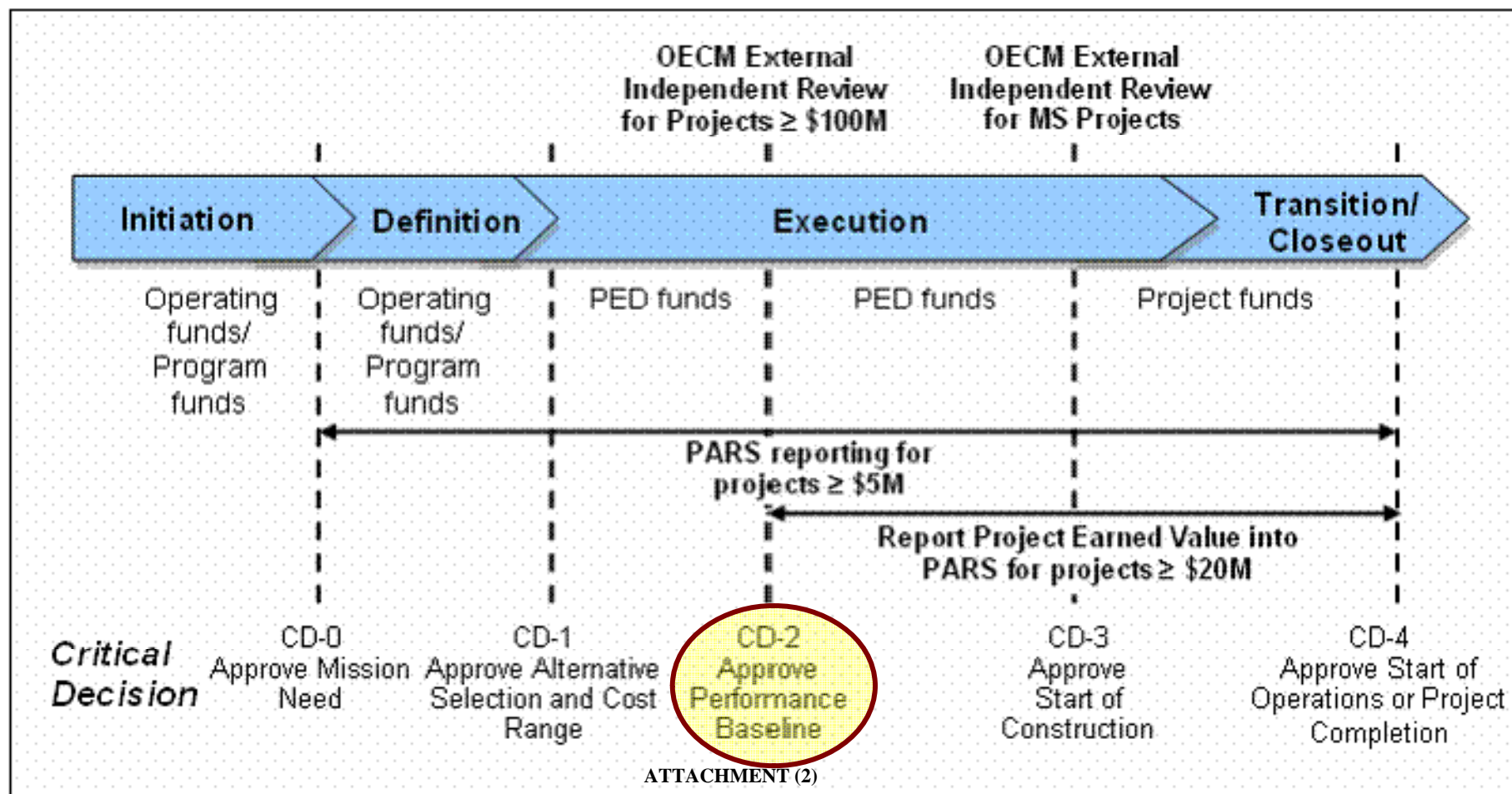
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- Entitlement Is Not:
  - Cost Growth
  - Change In The Contractor's Project Management Baseline
  - Design Maturity
  - Critical Decision Approval
  - Lack Of Incentive Effectiveness or Fee

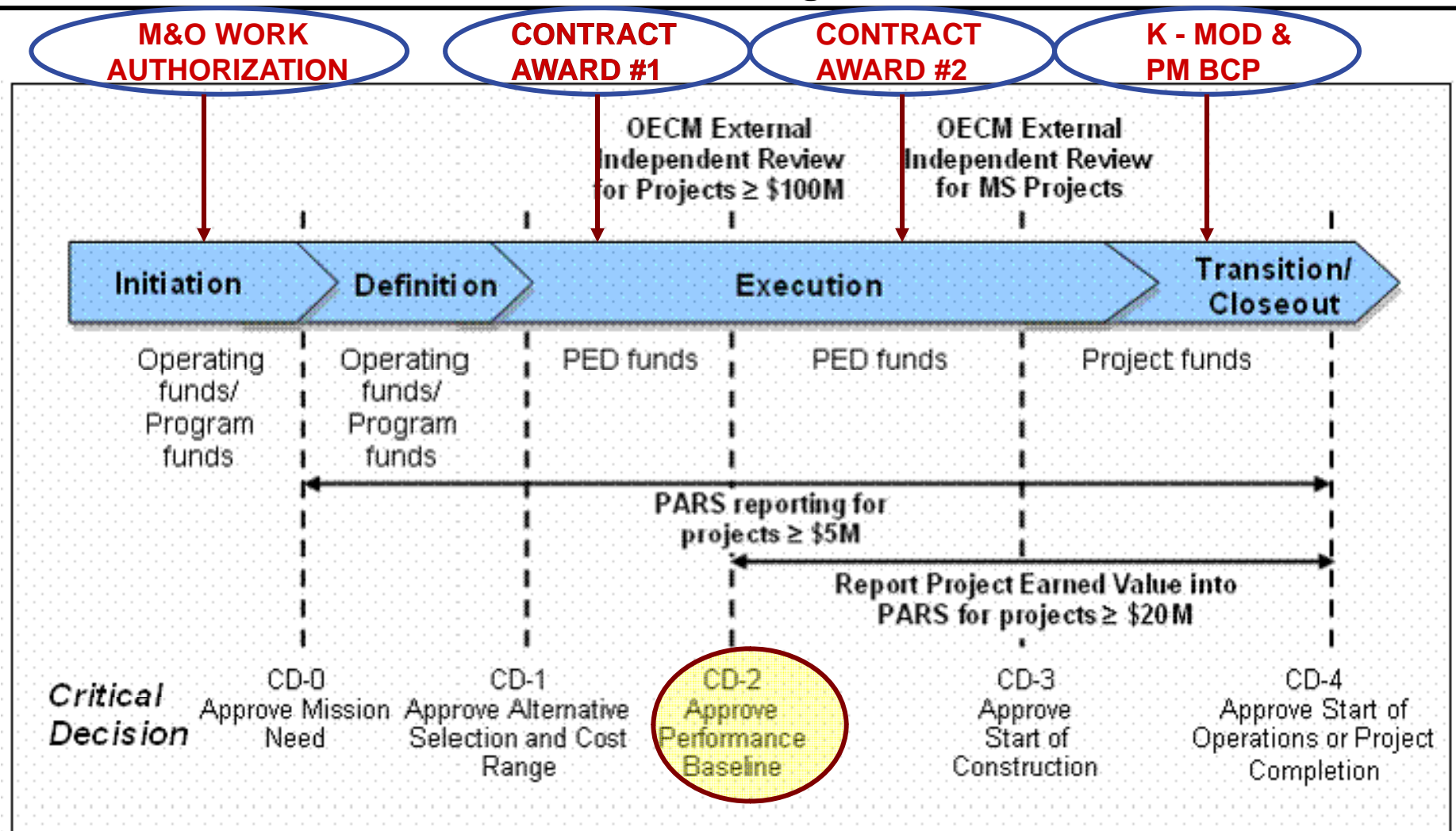
# Project Management Process

## “DOE Acquisition Management System”

### w/ Critical Decision (CD) Milestones



# Project Management vs. Contract Management



# Contract vs. Project Mgmt Cost Estimates

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**CD-2: TPC Validation  $\neq$  Contract Award**

**CD-3: Readiness Review  $\neq$  Contract Award**

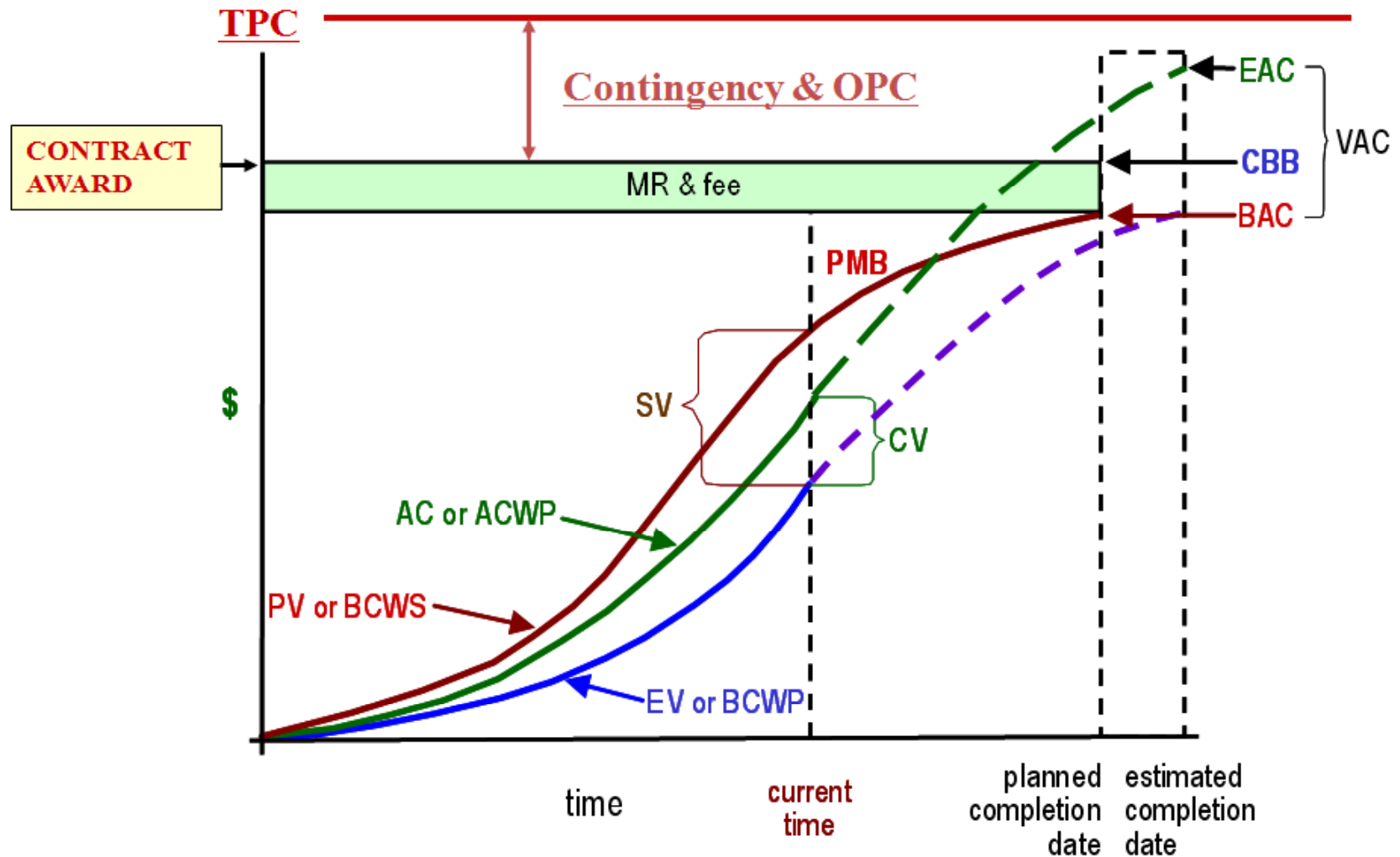
**Baseline Chg. Proposal  $\neq$  Contract MOD**

**TPC  $\neq$  Contract Award Amount**

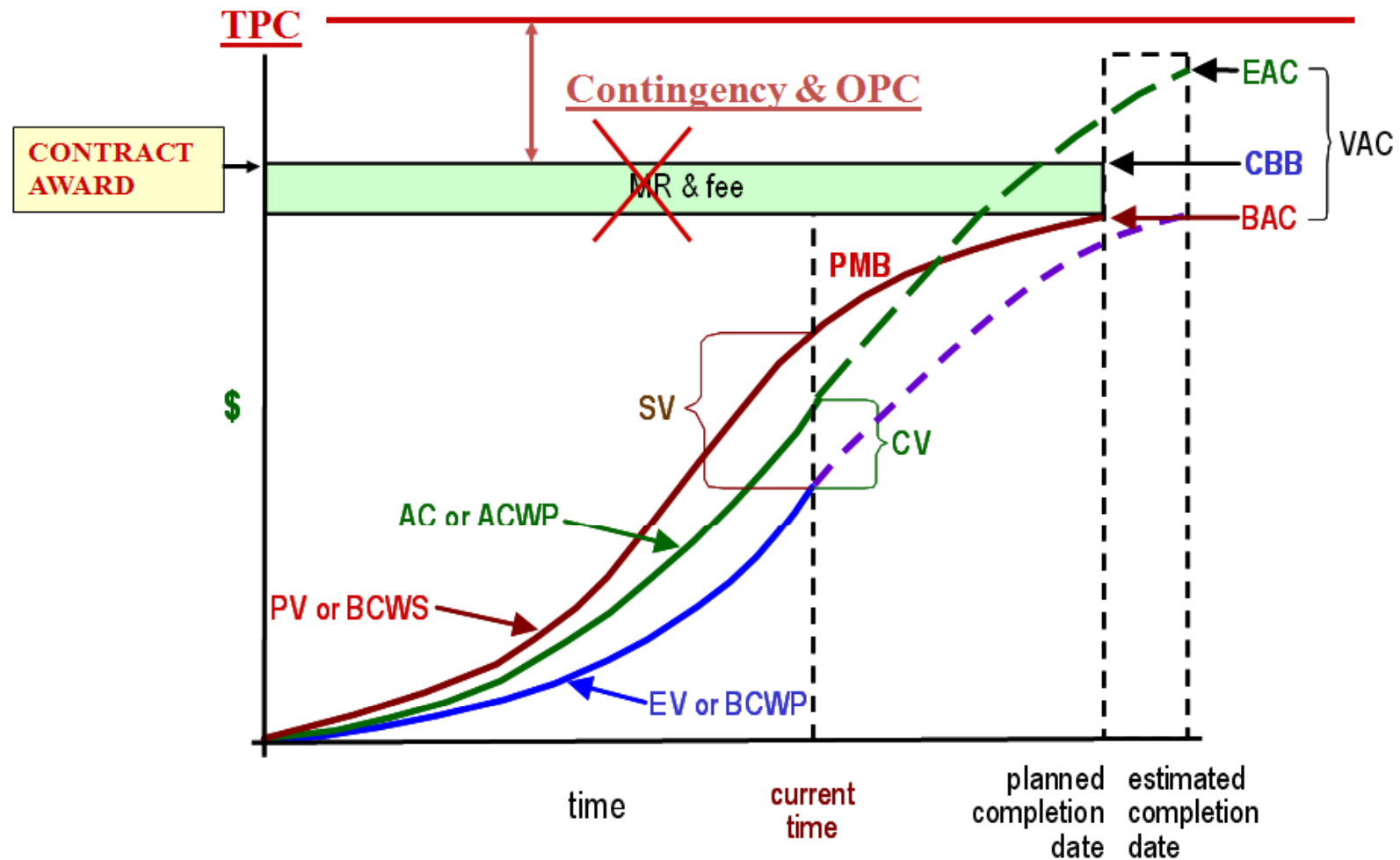
**FAR 36.203: Government Estimate of Construction Costs: An (IGCE) of construction cost SHALL be prepared and furnished to the contracting officer for each contract...and mod...in as much detail as though the Government were competing for award.**

# PROJECT VS. Contract Mgmt.

## MR vs. Contingency



# CONTRACT VS. Project Mgmt. MR vs. Contingency



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# QUESTIONS / COMMENTS