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Acquisition Regulation

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ACQUISITION LETTER

This Acquisition Letter is issued under the authority of the Procurement Executive of DOE.

Subject: Contract Management Planning

References:

FAR 37.602-2	Quality Assurance
DEAR 970.1100-1	Performance-based contracting
OFPP Memorandum of August 8, 1997	PBSC Checklist
DOE Acquisition Guide	Chapter 37 Service Contracting

When is this Acquisition Letter (AL) Effective?

This AL is effective 10 business days from the date of issuance.

When Does this AL Expire?

This AL remains in effect until superseded or canceled.

Whom Do You Contact for More Information?

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Visit our website at www.pr.doe.gov for information on Acquisition Letters and other policy issues.

What is the Purpose of this AL?

The purpose of this AL is to set forth guidance on proper contracting administration planning under applicable the Department of Energy (DOE) contracts. This AL does not apply to National Nuclear Security Administration (NNSA) activities unless otherwise directed by NNSA officials.

What is the Background Information You Need to Know?

In October 1994, the Office of Federal Procurement Policy (OFPP) published the "Guide to Best Practices for Contract Administration." The OFPP guide considered the use of contract administration plans to be a best practice. DOE has broadened the term to Contract Management Plan (CMP) to indicate the importance of managing our contracts as they evolve into more complex performance-based instruments. Because performance-based contracting necessitates our telling contractors "what" to perform (through the contract and through other communications) but not now "how" to accomplish it, the art of contract management is becoming a more refined and complex discipline.

The purpose of a CMP is to assist sites in developing an appropriate level of planning for contract management commensurate with the level of complexity and involvement by members of the contract management team (project managers, program managers, attorneys, and financial and procurement officials) throughout the term of the contract. Contracts typically place many duties and responsibilities on both the contractor and government side. Identifying these roles and responsibilities early on as well as applying the appropriate level of surveillance and risk mitigation is critical to the success of these contracts. The level of detail may vary depending on the complexity of the contract and/or its project(s). The attached Guide is provided to assist the Department in formulating a structured and integrated systematic approach for performing contract management planning.

What is the Guidance contained in this AL?

Contract Management Plans, in accordance with the attachment to this AL, shall be prepared and utilized for:

- Management & Operating (M&O) contracts,
- major site and facility contracts for performance of work at current or former M&O contract sites and facilities,
- contracts subject to the requirements of DOE O 413.3, "Program and Project Management for the Acquisition of Capital Assets," and any successor directives, and
- Procurement Directors should consider the use of a CMP for other service contracts where one or more of the following elements are present:

1. the dollar value of the contract is significant;
2. contract administration is of a sufficiently complex nature to require a CMP because of unique contract terms and conditions (including contract type);
3. the contracting office has little or no historical familiarity with the contract requirements;
4. the number of contracting officer's representatives requires a greater degree of coordination; or
5. any other factor which the Contracting Officer believes warrants an enhanced level of contract administration.

A key component of effective contract management is the use of an integrated team to ensure that the individuals involved in contract management function together as a real team dedicated to the common goal of successful performance of the contract. The need to establish a contract management team is important even when a formal CMP is not used. A good practice is to plan for the contract management and administration of the contract prior to the award. Teaming early on reduces risk both to the Government and the contractor by leveraging resources and technology to meet customer and contractor expectations alike.

The following factors should be considered when creating a CMP and at other times when building an integrated approach to contract management:

The Contract Management Team (CMT) should be created during the formation of the acquisition strategy phase and should continue as a functioning team through contract award and progress until all requirements under the contract are satisfied and the contract is closed. The CMT may consist of the same membership as the Integrated Project Team (IPT) required by DOE O 413.3. In parallel to creating the acquisition strategy and the acquisition planning documents, the participating contracting officer and IPT should; (1) form very clear criteria for measuring contract success, (2) develop a strategy for meeting project objectives, and (3) draft a strategy for managing unique terms and conditions (i.e., government furnished materials or information). The criteria for success are pivotal when determining the contractor's incentive award. Upon contract award, the designated contracting officer has the lead in coordinating and finalizing the CMP. For contracts that have been awarded, the CMT should begin by implementing an effective team approach to managing the contract by emphasizing effective communications and coordination among all members of the team on all issues pertaining to contract performance.

With the early involvement of the CMT, the team will be able to appropriately merge the key objectives of the contract into the CMP and fully integrate all necessary contract management functions including project management, financial management, and contract management by forming a clear and deliberate process for managing the contract.

The membership of the CMT by necessity should include representatives from the program officials, project officials, Contracting Officer, financial officials, legal counsel, ES&H officials, federal safeguards and security officials, and the designated Contracting Officer's Representative (COR) (if different than the Project Manager), technical monitors, and contractor delegates (when appropriate).

The role, and responsibilities of the CMT should evolve to those of measurement, evaluation, and management with clear lines of responsibility and accountability to promote a form in which all the parties conducting contractor oversight have a well defined fully integrated strategy for managing the contract.

DOE Field Offices should confirm that those performing the duties of contractor oversight are adequately trained and appropriately placed within the organization to meet the challenges of performance measurement and evaluation of the contractor. This includes providing adequate training on the unique aspects of performance-based contracting, measuring predetermined work scope validation and performing earned value analysis as appropriate to uncover potential risk areas and in preparing more accurate forecasts of completion costs as well as understanding all aspects of the contract.

The formal designation of a COR is essential to streamlining and integrating all technical aspects of contractor oversight. In cases where it is necessary to designate multiple COR(s) because of the complexity of the contract, it becomes vital to ensure all parties; communicate and work in concert with each other. Regular meetings and coordination are necessary to eliminate and/or mitigate issues as well as to develop a more disciplined approach to providing technical direction to the contractor.

To streamline communications and minimize unnecessary interface with the contractor, individuals subordinate to the COR who are subject matter experts and perform day-to-day operational awareness, should receive appropriate training for performing contractor oversight and should be formally designated as "Technical Monitors" with responsibilities confined to monitoring and reporting the contractor's performance and providing immediate feedback to the COR and/or CO.

AL-2003-02 (03/07/03)

Organizationally, when a COR manages and/or supervises a CO there is a potential for a conflict of interest. This may be especially problematic when the COR does not have training in contracting and procurement issues. This conflict of interest may arise when a CO makes a decision on a contractual issue and the COR supervisor elects to overturn that CO decision for technical or other business reasons while unaware of the contractual ramifications of such an action. Early and frequent communication to ensure that all parties understand both the technical and contractual issues is paramount to avoiding or mitigating such situations. This will merge considerations for any of the COR's technical/business concerns and the CO's contractual concerns into the final decision. The parties should establish cooperative ways to resolve any disagreements that may arise during contract performance.

Attachment

DEPARTMENT OF ENERGY



A GUIDE FOR

CONTRACT MANAGEMENT PLANNING

March 2003

U.S. Department of Energy
Office of Procurement and Assistance Management
Washington, D.C. 20585



TABLE OF CONTENTS

Background	1
What is the purpose of a Contract Management Plan? ..	2
When is a Contract Management Plan Necessary?	2
What is the Link Between the Performance Evaluation Measurement Plan (PEMP) and the Contract Management Plan?	3
What are some Key Components of a Contract Management Plan?	3
Are there any other Special Emphasis Areas?	6
Post-Award Conference.,	7
Project Management	7
Quality Assurance Plan	8
Written and Oral Direction	9
The Role of the Contract Management Team	9
What are some Sample Tasks Performed by the Government?	10
How can I use the Contract Management Plan to Ensure Successful Contract Performance?	11

Contract Management Planning



0 BACKGROUND

Contract "administration" has been in the lexicon for quite some time and is used in the regulations governing government procurement. The reason for using the word "management" rather than "administration" is to convey the broader context in which the administration and management of the contract occurs. "Contract management" includes a broader multi-disciplinary approach to contractor oversight. It encompasses the technical and administrative responsibilities in managing the contractor's performance.

To deliver on how the Department of Energy (DOE) will successfully manage its contracts, the Contracting Officer (CO) should work closely with all necessary disciplines during the early development of the acquisition strategy and project execution planning to more fully integrate the project objectives with contract management planning. Through early integration and strategic planning, project objectives are preserved and made part of the Contract Management Plan (CMP).

Contract management involves those activities performed by the entire Contract Management Team (CMT) (project/program management, technical, legal, contracting and financial officials, federal safeguards and security directors, etc.) after a contract has been awarded to determine how well the government and the contractor perform to the requirements of the contract. It encompasses the management of all dealings between the government and the contractor from the time the contract is awarded until the work has been completed and accepted or the contract is terminated, payment has been made, and disputes have been resolved. As such, contract management constitutes that primary part of the acquisition process that assures the government gets what it pays for.

The CMP should blend technical, financial, and business aspects of the performing contractor as well as combining the governmental responsibilities of reducing risk, managing performance-based incentives, conducting quality assurance, and adjusting to changing priorities. Good planning builds effective partnerships between both parties, open communications, clear expectations, and defines roles and responsibilities for getting the job done.

With the Department spending a majority of its budget on contracted services and products, contract management should be a core competency of the organization. To achieve core competency, an organization should ensure that those performing the duties of contractor oversight are adequately trained and appropriately placed within the organization to meet the challenges of performance measurement and management of the contractor.

Contract Management Planning



This Guide is provided to assist the Department in formulating a structured and integrated systematic approach for performing contract management planning.

D WHAT IS THE PURPOSE OF A CONTRACT MANAGEMENT PLAN?

The purpose of a CMP is to assist sites in developing an appropriate level of planning commensurate with the level of complexity and involvement by project managers, program managers, financial and procurement officials throughout the contract term. Contracts typically place many duties and responsibilities on both the contractor and government side. Identifying these roles and responsibilities early on as well as applying the appropriate level of surveillance and risk mitigation is critical to the success of these contracts. The level of detail may vary depending on the complexity of the contract and/or its project(s).

Contract management should focus on obtaining supplies and services of requisite quality, on time, and within cost. While the legal requirements of the contract are determinative of the proper course of action of government officials in administering a contract, the exercise of skill and judgment is required in order to protect the public's interest.

Factors influencing the degree of contract management include the nature of the work, the type of contract, and the experience and commitment of the personnel involved. The CMP should adequately specify:

- ▶ the performance requirements of the statement of work,
- ▶ the method for conducting quality inspections, assessments, evaluations, etc.
- ▶ individuals and their major roles, responsibilities, authorities, and limitations,
- ▶ governmental milestones, and
- ▶ level and types of surveillance, roles and responsibilities of key participants (management, project manager, contracting officer, etc.) to ensure those performing the oversight have a clear understanding of the objectives.

D WHEN IS A CONTRACT MANAGEMENT PLAN NECESSARY?

A specific challenge facing most sites that have historically managed major site facility contracts such as, management and operating (M&O) contracts, is the Department's implementation of performance-based contracts and more recently the use of cost plus incentive fee contracts. These new methods have presented interesting challenges to the way we do business. We must now look at ways to enhance our infrastructure to accommodate these new contract mechanisms.

Contract Management Planning



A CMP can help bring about a cultural change by identifying a new behavior in managing these performance-based contracts (a behavior that focuses more on performance measurement).

Regardless of contract type, a CMP helps to fuse human resources and activities into one corporate business oversight strategy. A strategy that best describes the Government's approach in managing its contracts from the point of award through completion.

Ideally, a strategy for the CMP should be prepared during the acquisition strategy phase of the procurement cycle. Immediately after contract award, the CO should coordinate and finalize the CMP to reflect the Government's "game plan" for ensuring contract success.

0 WHAT IS THE LINK BETWEEN THE PERFORMANCE EVALUATION MEASUREMENT PLAN (PEMP) AND THE CONTRACT MANAGEMENT PLAN?

To more effectively manage performance in mission critical areas, the Department develops a PEMP or similar document that incorporates performance objectives, measures and expectations allocated to the performance of specific tasks reflecting their priority and value to the government. Much of the remaining work, i.e., work that is not mission critical, may not have fee directly associated with it, but may have fee paid contingent upon it being performed at a satisfactory level and within schedule. This approach encourages the contractor to meet the requirements of the PEMP as well as all other contractual requirements.

The PEMP is a tool for managing a contract and is viewed as a function within contract management. It is designed to measure contractor performance against specific performance objectives and measures and not the entire environment within which the contracted effort is proceeding.

Although business and financial areas connected to the performance measures are tracked and monitored as necessary, other areas do not receive the same level of analysis.

A well-developed CMP would identify these gaps and would ensure that all areas are monitored to ensure compliance with the contract terms and conditions.

0 WHAT ARE SOME KEY COMPONENTS OF A CONTRACT MANAGEMENT PLAN?

The following is a sampling of key components that should be considered when drafting a CMP. This list is not meant to be all-inclusive.

Contract Management Planning



Also, not all areas may apply to your contract; therefore you should select only the ones that apply. If there are other areas pertinent to your contract, please include.

Remember, the goal of the CMP is to identify the activities to be performed by Government officials in managing and administering the contract, particularly the measuring and monitoring of the contractor's performance. Many of the documents (QAP, PEMP, Risk Management Plans, etc.) mentioned herein may already exist separately and therefore should be included as attachments or references within the CMP. The goal is not to duplicate what is contained within these documents but to tie these documents into a cohesive management strategy.

1. A brief introduction and background on the scope of work, place of performance and goals of the contract.
2. The identification of key contract management team members, including authorities and limitations, of the CO, Contracting Officer Representative (COR), Technical Monitors (TM), quality assurance monitors, facilities representatives, program officials, contractor human resource management specialists, or other Program Office Security Officials, etc. to further clarify the government's roles and responsibilities
3. Contractor name, contract type and number, key contractor personnel, performance period and total contract value.
4. A method for developing, negotiating, approving, and monitoring performance-based objectives, measures, expectations, and incentive fee arrangements. Include roles and responsibilities of those organizational elements (program and project management, financial management, and procurement) that have a direct role.
5. A listing of key contract vulnerabilities or performance risk areas that are inherent in the contract and describe the provisions for dealing with these, including, but not limited to the following:
 - ▶ Both the tangible and intangible realms of agency reputation, safeguards and security, operations interruption, third party liability, environmental liability, pollution, diverse operating risk factors and program liability.
 - ▶ Uncertainty in the future outcome of a specific task, contract milestone or deliverable.

Contract Management Planning



- ▶ The coordination with other sites as necessary to ensure timely agreements, shipments, receiverships, and any other support necessary to ensure the unencumbered success of the contract.
 - ▶ Achieving completion of one or more critical milestones that could impact the next phase of performance (preliminary designs, design and build, procurement of long-lead items, regulatory approvals, Environmental Protection Agency milestones, etc.)
 - ▶ Major performance areas (waste management, science, safety, safeguards and security, Environment, Safety and Health (ES&H), operations, environmental clean up, project management, cost controls, etc.) that may have a level of risk or uncertainty to successfully achieving performance.
 - ▶ The delivery of government provided information, data, and equipment that if not delivered timely may have an impact on performance, cost and/or schedule.
 - ▶ A formal Risk Management Plan, to the extent required by DOE O 413.3, must be integrated into the CMP. Participants' roles and responsibilities in both Plans should be clearly established.
6. A listing of Post-Contract Liabilities that are the sum total of liabilities for contractor employees and their beneficiaries, including a strategy for dealing with these liabilities.
7. A strategy that provides for the inspection and acceptance process that conforms to quality assurance requirements and provides risk identification through inspection and data verification.
8. Key performance metrics for determining contractor progress, quality of performance, and cost expenditures, etc.
9. Contract transition planning from an incumbent contractor to a new contractor and/or contract type; include transition strategies, schedules and list parties responsible for facilitating a smooth transformation.
10. A strategy to monitor and ensure that the Contractor conducts expedient reporting and processing of employee compensation claims and develops a proactive approach to settling or closing open claims to reduce the length of time a worker's compensation insurance policy or contract remains open.

Contract Management Planning



11. An effective strategy for cost reduction by removing non-value added directives/requirements.
12. A listing of major contractor milestones, performance incentives, and reporting requirements along with the names of those individuals responsible for review and approval.
13. The structure for managing the change control process to scope, cost and schedule as well as mitigating variances to approved scope, cost or schedule. Identify individuals responsible for the review and approval of these baseline change proposals and variances.
14. Voucher processing or reviewing cost reports are an important aspect of contract management. Payment to the contractor for supplies and services rendered is the government's obligation under the contract. A plan or process for quickly and efficiently meeting this obligation is essential.
15. A strategy for managing any unique terms and conditions of the contract (i.e., government furnished property, information, receiverships, etc.)
16. A contractor litigation management outline listing what litigation is outstanding, approximate value, responsible parties and duration are a good way to track for budgeting purposes and general awareness when undergoing contract transition.
17. Partnering agreements with the state, community or other entities that are critical to the success of the contract should be referenced and parties responsible for nurturing these agreements should be identified.
18. A strategy for what records will be transferred to the new contract or maintained with the expired contract is necessary to ensure that the government is protected and that there is a good records management program.
19. A strategy to ensure the contractor submits a proposed settlement of costs for Post Contract Liabilities that includes adequate documentation that is supported by a reasonable audit trail as to measurement, composition, cost methods and actuarial assumptions.
20. A contract closeout strategy, as necessary, when the contract is physically complete.

0 ARE THERE ANY OTHER SPECIAL EMPHASIS AREAS?

Yes, there are several special emphasis areas that should be included when designing a CMP.

Contract Management Planning



Each office is encouraged to include emphasis areas specific to the circumstances of the contract as well as the areas provided herein.

Post Award Conference:

Good contract management starts with a post award conference, either by conference, letter or some other form of communication. This communication process can be a useful tool that helps the government and contractor achieve a clear and mutual understanding of the contract requirements. It also helps the contractor understand the roles and responsibilities of the government officials who will manage the contract.

A pre-meeting with applicable project, program, and contracting officials prior to the post award conference ensures a continued focus on project objectives and anticipated outcomes. Consistent with project objectives, the program office should describe their desired characteristics of contract success. The team should address how to facilitate communications both between and within the government and contractor organizations.

Topics for the post-award conference include identifying the roles and responsibilities of government personnel managing the contract, quality control and testing, specific contract deliverable requirements, special contract provisions and conditions, surveillance requirements and responsibilities, voucher review and approval process, etc.

It is also a good idea to solicit from the contractor its approach to contract execution. For example, how will it manage the performance incentives, work prioritization, quality control, risk reduction, internal and external relations, scheduling conflicts, and critical path and project management?

With the exchange of approaches to contract management and execution, both parties start off with a clear understanding of each other's intent.

Project Management:

Whenever the contract to be administered contains the requirements of DOE O 413.3, the CO should ensure that program and project management requirements are integrated into the CMP as appropriate.

Contract Management Planning



Quality Assurance Plan:

If a contract is a performance based service contract, then it must have a Quality Assurance Plan (QAP).

The Office of Federal Procurement Policy "A Guide to Best Practices for Performance-Based Service Contracting" (October 1998), recommends writing the Performance Work Statement (PWS) and QAP simultaneously for ease of both the contractor and quality inspector. Since the QAP is intended to measure performance against standards in the PWS, these interdependent documents should be linked.

The QAP should be systematic and sufficient to fairly evaluate the contractor's total performance throughout the performance period and provide a structured approach for individuals performing quality inspections and surveillance of contractor generated outputs.

The QAP establishes how resources will be used to ensure the government receives what it is paying for. The detail in the QAP regarding a certain task should be consistent with the importance of the task. The QAP should focus on the quality and timeliness, etc. of the performance outcomes to be achieved by the contractor, and not on the steps required or procedures used to provide the product or service.

Another tool in monitoring is reviewing the contractor reporting requirements such as progress reports, shop plans, and blueprints which often can uncover potential cost overruns, late deliveries and poor contractor performance. The extent of surveillance is determined by the surveillance schedule established in the QAP.

When performance is deficient, the COR should advise the CO and promptly notify the contractor to implement a corrective action plan to correct the deficiencies and track contractor performance. The government should be proactive in its approach to improving contractor performance and be attentive to the terms and conditions of the contract which offer potential remedies to induce performance improvement.

At the same time, when surveillance results show good performance consistently, the amount of surveillance should be adjusted accordingly. This saves the government money, reduces oversight burdens on the contractor and recognizes the contractor's achievement of performance.

Contract Management Planning



Written and Oral Direction:

The CO, in coordination with the COR and the program office, should strive to provide a structured and integrated approach for coordinating written and oral direction to a contractor on technical and contractual matters. The CMP should identify who is authorized to give direction to the contractor both orally and in writing. Normally, oral and written direction is limited to the CO and the COR (with limitations). However, when it is necessary to give oral directions to the contractor, it should always be followed up in writing.

The Role of the Contract Management Team:

The Contract Management Team (CMT) consists of all participants in Government acquisition including not only representatives of the technical and procurement communities but also the customers they serve, and the contractors who provide the products and services. The primary team members are the CO, COR, and TM(s). The CMT may be augmented with other subject matter experts (local federal safeguards and security director, ES&H, as well as other critical functional areas) as necessary. The Team is responsible and accountable for the wise use of public resources as well as acting in a manner which maintains the public's trust. Fairness and openness require open communications among team members, internal and external customers, and the public.

As referenced in FAR subpart 1.602-2, CO's are responsible for ensuring performance of all necessary actions for effective contracting, ensuring compliance with the terms of the contract, and safeguarding the interests of the United States. CO's are challenged to take the lead in encouraging business process innovations and ensuring that business decisions are sound. This new mind-set opens the door for Contracting Officers to be business managers and strategists.

The COR plays a critical role in affecting the outcome of the contract management process. It is absolutely necessary that those entrusted with the duty to ensure that the government gets all that it has bargained for be competent in the practices of contract management and aware of and faithful to the contents and limits of their delegation of authority.

Within the Department, most CORs are Senior Managers with direct Contractor oversight performed by subordinates. These subordinates are usually subject matter experts that provide specialized monitoring of the contractor in Program and Project areas, such as Quality Assurance, Safeguards and Security, and ES&H. To formalize this practice, these individuals should be formally designated as TM(s) for the COR and should therefore be trained in contract management.

Contract Management Planning



The TM does not usually have specific delegations of authority to act as a designated COR and therefore cannot direct the contractor, redirect scope, or impact the contract in any way. However, the TM plays a vital role in providing day-to-day oversight of the contractor's performance and in communicating results to the CO and COR.

In order to promote a corporate oversight strategy, the Team should convene regular meetings with top-level contractors, procurement, and program officials to discuss the contractor's performance, delivery schedules, quality of services, safeguards and security issues, risk issues, cost and any other contractual matters. To promote continued communications, regularly scheduled meetings between the CO and COR should be conducted.

It is essential that only the members of the Team with the appropriately delegated authorities give direction. These individuals should be identified in writing to the contractor along with any limitations on authorities. The identification of these individuals at the time of contract award streamlines the process and eliminates and/or minimizes interruptions, schedule delays, unnecessary cost impacts, and false starts. This is especially necessary when there are multiple COR(s) monitoring and directing contractor performance within their functional areas.

☐ **WHAT ARE SOME SAMPLE TASKS PERFORMED BY THE GOVERNMENT PERSONNEL?**

- m Monitoring contractor's quality assurance program
- m Furnishing government resources, information, data or equipment
- m Reviewing and responding to contractor reports/requests
- i & Owner in-process, inspection, assessment, acceptance, deliverable review, etc.
- m Certifying costs incurred or physical progress for cost reimbursement and fee payment purposes
- i & Assessing/validating performance
- i & Developing/submitting annual budget plans
- i & A general awareness of personnel/labor
- i & Assessing regulatory compliance



Contract Management Planning

- i & Data verification
- i & Evaluating cost reports
- i & Reviewing potential problem or risk areas
- i & Developing milestones for reports from government team members
- i & Monitoring compliance with subcontracting plans
- i & Assessment validation
- "" Peer reviews
- "" Lab appraisals

0 HOW CAN I USE THE CONTRACT MANAGEMENT PLAN TO ENSURE SUCCESSFUL CONTRACT PERFORMANCE?

- * By coordinating and soliciting input from all government staff that play an active role in contract management and contractor oversight;
- * By disseminating the CMP for all parties to become familiar with and refer to on a daily basis;
- * By conducting a special session with the contractor on the goals and objectives of the CMP as well as identifying the individuals with key roles and responsibilities;
- * By meeting regularly with all parties performing contractor oversight to share contractor status on all technical, financial, business areas, discuss any key contract vulnerabilities or performance risk areas, decide on any course of action, and determine any future activities;
- * By tracking and reporting on milestones from the CMT, contractor deliverables and identifying and taking immediate action on any risk areas that may develop during contractor performance; and
- * Finally, as the contract progresses, you may find it necessary to shift responsibilities or add tasks that could not have been anticipated at the time of award. Therefore, over the life of the contract, you will need to update your plan to reflect these developments.

Your goal is to identify what must be done, when it must take place, who must do it and as necessary, how and where it is to be accomplished.