Aligning Contract Incentives

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Aligning Contract Incentives

• The Deputy Secretary issued December 2012 memo: “Aligning Contract Incentives”

• The purpose of the memo:
  • Align Contractor Incentives with taxpayer interests
  • Hold each party to the contract responsible for its actions

• Ultimately the policy was designed to improve contractor accountability through the use of profit/fee
Aligning Contract Incentives

• Emphasizes the need to:
  • Define the scope
  • Establish clear performance requirements
  • Allocate risk of poor performance to the contractor
The policy memo represents sound contracting practices to be utilized on all contracts.

The FAR states "The objective is to negotiate a contract type and price (or estimated cost and fee) that will result in reasonable contractor risk and provide the contractor with the greatest incentive for efficient and economical performance."

FAR 16.103(c) states, "...contracting officers should avoid protracted use of a cost-reimbursement or time-and-materials contract after experience provides a basis for firmer pricing."
• FAR 16.103(d)(1)(ii) requires discussion of “...additional risks and the burden to manage the contract type selected (e.g., when a cost-reimbursement contract is selected, the Government incurs additional cost risks, and the Government has the additional burden of managing the contractor’s costs).”

• FAR 16.103(d)(1)(iv) For other than a firm-fixed-price contract, at a minimum the documentation should include
  - (A) An analysis of why the use of other than a firm-fixed-price contract (e.g., cost reimbursement, time and materials, labor hour) is appropriate.
The Department has a long history of using cost reimbursement contracts to accomplish its mission.

Other agencies use:
- Firm-Fixed-Price
- Fixed Unit Rate
- Cost type
- ID/IQ
## Contractor Allocation of Talent

<table>
<thead>
<tr>
<th>Contract</th>
<th>Talent Allocation</th>
<th>Why</th>
</tr>
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<tbody>
<tr>
<td>Firm-Fixed-Price</td>
<td>Top Talent</td>
<td>Greatest Profit/Loss Potential</td>
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<tr>
<td>Cost Reimbursement</td>
<td>Lesser Talent</td>
<td>Principle Risk is Loss of Fee</td>
</tr>
<tr>
<td>Restructured Contract with no Consequences for Poor Performance (Reset Button)</td>
<td>Least Talented Team</td>
<td>Industry Learns the Customer is Unsophisticated: Not Even Fee at Risk</td>
</tr>
</tbody>
</table>
Aligning Contract Incentives

- Firm-fixed-price contracts should be the default when entering into a new acquisition.
- Cost-reimbursement is still suitable when uncertainties exist.
- When using a cost-type contract we can still use concepts such as:
  - Hard cost caps;
  - Cost sharing (bounded or unbounded);
  - Provisional fee.
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• How do we move forward towards fixed-price contracts?
  • Better requirements definition/work scope
    • Clear, concise, easily understood and measurable
    • May need to seek assistance in development of the requirement (i.e., Army Corps of Engineers, engineering support contracts)
  • Shorter periods of performance
    • Longer = more uncertainty, less clarity, budget dynamics
  • Break up work into smaller, more manageable performance driven contracts
    • Provides for accurate and reliable contractor developed cost estimate and schedules
Moving forward (continued)

• Focus on scope to be completed (not just portions of the effort)
• Site characterization needs to be sufficiently mature
• Look to immediately fix-price efforts such as infrastructure/facility support functions and remediation activities such as moving earth, digging wells, pouring concrete, and in general all commercially available activities
• Establish performance measures that are outcome oriented (objective, measurable, etc.)
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• Moving forward (continued)
  • Document performance. Record in detail for the contract file
  • Meaningful past performance is critical. Must have timely, detailed input into the Contractor Performance Assessment Reporting System (CPARS)
  • Fee determinations for capital asset projects in excess of $750M must be briefed to the Acquisition Executive by the Fee Determining Official
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• A two-pronged approach is used by the Office of Contract Management to assist the programs in the implementation of the policy
  • Pre award activities
    • Sit on IPTs. Challenge ourselves as to why we can’t implement the policy to its fullest. Identify obstacles that are in the way to determine how to overcome them if possible
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• Post award activities
  • Award Fee Plans (i.e., PEMP) must be as objective and measurable
    • Incentivize actions completed...not delivery of reports;
    • Balance between cost and schedule;
    • Focus on the critical few;
    • Fee must be commensurate with benefit received; and
    • Use provisional fee until end state of the contract is achieved
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• Post award activities (continued)
  • Major milestones or events (significant negotiation, option exercise, etc.)
  • Ask ourselves questions:
    • Does the contract incorporate the principles of the 2012 policy memo?
    • Can we break up the contract?
    • Can we incorporate more defined contract line items or incorporate hybrid features into the contract?
• Procurement Management Reviews assess how the sites are doing with regard to the policy memo
Aligning Contract Incentives

• The journey since 2012
  • Western Area Power Administration on this path for nearly 10 years now. The culture changed
  • Sodium Bearing Waste Treatment Plant under the Idaho clean up contract incorporated a hard cost cap
  • Separations Process Research Unit (SPRU) contains a hard cost cap
  • Hanford Occupational Health Services contract is a $98.7M fixed-price-award-fee (FPAF) contract
  • K-33 in Oak Ridge was a fixed-price demolition of a building
The journey (continued)

- Moab site clean-up task order awarded under the Office of Environment Management (EM) multiple award ID/IQ contract includes fixed unit rates.

- Paducah Deactivation is a hybrid contract using fixed-price and cost reimbursable CLINs and implemented first use of provisional fee (clawback).

- 222 S-Lab for the Office of River Protection upon award will be a fixed-price-award fee contract with a cost reimbursable fixed labor rate CLIN for surge capability.

- Office of Science IT services contains both fixed-price and ID/IQ line items. 75% of the effort is fixed-price.
• The journey (continued)
  • EM’s TRU Waste Processing Center (TWPC) Category II nuclear facility support RFP contains FFP CLINs
  • Headquarters Procurement Operations Guard Services contract will be a hybrid firm-fixed-price with a cost reimbursable CLIN for surge capability
  • EM issued a fixed-price RFP with an ID/IQ line item for infrastructure services at Portsmouth and Paducah
Aligning Contract Incentives

• Going forward...
  • We must continue to challenge ourselves
  • We must issue contracts that make sense...“One size **DOES NOT** fit all”
  • We must be agile and explore new concepts. Listen to industry while continuing to advance the policy of aligning contract incentives
Questions?
Contract Management Trends

David Leotta
Office of Contract Management
Office of Acquisition and Procurement Management
• Procurement Management Review (PMR)
  – Benefits
  – Meritorious Process, Procedures, or Best Practice
• Business Clearance
  – What’s Hot – What’s Not

  or

  “Hot N Cold”
Participants gain valuable insight into how other offices deal with contracting and financial assistance issues.

Most importantly they exchange ideas with their peers and bring back new perspectives that should improve the operations of their own office.
Why Conduct Peer Reviews?

Meaningful Oversight

Independent assessment of key aspects of the operation with strong emphasis on the organization and procurement management

Reality Checks

Organizations have a bias for optimistic rather than realistic views

Breaks Down Barriers

Organizations are slow to look outside for solutions or help; peers from other sites provide experience and expertise
## Why Conduct Peer Reviews?

<table>
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<tr>
<th>Ensures Progress</th>
<th>Preparing for reviews <strong>focuses</strong> the organization on current status and future plans</th>
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<tbody>
<tr>
<td>Builds Credibility</td>
<td>A successful review usually signals to all stakeholders that the organization is <strong>on track</strong> (reassessed at next Peer Review)</td>
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<tr>
<td>Shares Lessons Learned</td>
<td>Procurement organizations and reviewers learn from each other</td>
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Positive feedback from participants

- “...developed professional working relationships with both the contracting staff at Richland and the PMR team.”
- “I highly recommend that the Site Procurement Director participate in a PMR 6-12 months before his/her own site is scheduled ...”
- “In my experience, both as a participant and as one who was reviewed, the process was uncontentious, non-adversarial, and a completely positive experience”
- “…the main point I took back was how well the teams worked together.”
- “… major impact for me was the opportunity to network with my peers and HQ staff.”
Typical Interviews

https://youtu.be/wwf8uVx2tyM
• 33 processes identified over 11 PMRs
  – Organizational structure
  – Databases
  – Creative uses of commercial software
  – SharePoint usage
  – Employee recognition or incentive programs
  – Tools
  – Guides
  – Programs
### WAPA Adobe Pro

**STRIPES Supporting Document Upload**

**Adobe Contract File Index White Paper**

Date: August 2013

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**Step by Step Instructions**

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<th>POST AWARD DOCUMENTS</th>
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<td>106. Contract Award</td>
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<td>107. Modifications and Backup Documentation</td>
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<td>108. Task/Delivery Order Log</td>
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<td>109. ADO Appointment Letter</td>
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<td>110. COR Appointment Letter and Distribution (DOE 0-541.18)</td>
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<td>111. Property Administrator Appointment Letter</td>
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<td>113. Post Award Notices (FAAR 5.202) and (FAAR 5.208)</td>
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<tr>
<td>114. Post Award Request/Responses for Award Information (FAAR 13.503-3-03)</td>
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<td>115. Post Award Delinquencies (FAAR 5.505-3 and 13.504)</td>
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<td>116. Post Award Delinquencies (FAAR 13.504 and 13.504)</td>
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<td>117. Submittal Data</td>
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<td>118. Performance and Payment Bonds Without Certificate and Insurance Certificate</td>
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<tr>
<td>119. Vouchers/Invoices/Invoices Log</td>
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<tr>
<td>120. Subcontracting Reports (FAAR 22.905) Submittals</td>
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<td>121. Audits</td>
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<td>122. Inspection and Acceptance (FAAR 41.128)</td>
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<td>123. Payment of Claim (FAAR 41.129)</td>
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<td>124. Assignment of Claim (FAAR 41.123)</td>
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<td>125. Labor Compliance Checks (FAAR 22.502)</td>
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<td>126. Payroll Reviews and Physical Location of Files (FAAR 22.502-7)</td>
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<td>127. Disputes/Claims</td>
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<td>128. Liquidated Damages Assessment (FAAR 13.131 and 22.502)</td>
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<tr>
<td>129. Cure/Show Cause Notices (FAAR 50.202) and (FAAR 50.103)</td>
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<tr>
<td>130. Termination for Convenience/Default</td>
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<tr>
<td>131. Interim (partial) Final (FAAR 22.502-1) and/or Final (FAAR 22.502-2) Performance Evaluation if required (FAAR 50.202) No. of days 30</td>
</tr>
<tr>
<td>132. Miscellaneous Correspondence</td>
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<tr>
<td>133. Claim Documentation Checklist</td>
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<td>134. Other:</td>
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<tr>
<td>Contract Specialist:</td>
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<tr>
<td>Contracting Officer:</td>
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<td>COR/Technical POC:</td>
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<tr>
<td>COR/Technical POC Email:</td>
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<td>COR/Technical POC Phone:</td>
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Step by Step Instructions
Solutions Available to You
Identified processes distributed annually to HCAs and PDs

- “Procurement Management Review (PMR) Best Practices FY 2012-2013”
- “Procurement Management Review (PMR) Best Practices FY 2014”
Hot N Cold

https://youtu.be/1upZz3a-7iM
Contract Management Trends

**What’s Hot**

- True PWS: defining the “end state”
- Incentivize Key Results
- IDIQs

**What’s Not**

- Broad, Vague “PWS” or SOW
- Incentives for Activity
- “Task Assignment” Contracts
Contract Management Trends

What’s Hot
Hybrid Contracting
Parallel Reviews
Integration of Project & Contract Management

What’s Not
Single Contract Types
Serial / Linear Reviews
We’re acquisition. Leave us alone.
Contract Management Trends

- What’s Hot
  - Early Communication
  - Early Collaboration
  - Incremental Review

- What’s Not
  - Awkward Silence
Linear
Mission, Timely Schedule, & Quality Acquisition

HCA & HQ

Field Sites

Mission, Timely Schedule, & Quality Acquisition

GC / Functional Office

Business Clearance (MA)
In the end it’s all about teamwork...

https://youtu.be/1qzzYrCTKuk