CONTRACT MANAGEMENT FOR THE PROGRAM MANAGER

Presented by: Brian Greenberg
THE PROGRAM MANAGER

For every Function and Phase of the Contract there is a clause in the contract.
Contracts 101

Contract Vehicles

- Contracts- Subcontracts- Purchase Orders
- Indefinite Delivery/Indefinite Quantity (IDIQ)
  - Delivery Orders - Products
  - Task Orders - Service
- Basic Ordering Agreements (BOA)
- Schedules
  - GSA
Contracts 101

Government Contract Types
- Fixed Price
- Cost Reimbursement
- Time and Material

Commercial and International
- Fixed Price
- Time and Material
- Labor Hour

Would you manage your contract any differently?
- Gov’t vs Commercial
- FFP vs CPFF
FAR 12 is applicable to commercial contracts. Commercial contracts are the preferred approach but must meet the definition of “Commercial”.

(1) Any item, other than real property, that is of a type customarily used by the general public or by non-governmental entities for purposes other than governmental purposes, and—

(i) Has been sold, leased, or licensed to the general public; or

(ii) Has been offered for sale, lease, or license to the general public;

“Cost” Proposals are at “Price”

Subject to price analysis- “Fair and Reasonable Determination”

Note: FAR 12 Contracts are always FFP or T&M
U.S. Government FAR Part 12 vs 15

- FAR 15 applies to non-commercial negotiated contracts, meaning one that uses competitive or other-than-competitive procedures after the receipt of proposals.
  - Cost Proposals require full cost disclosure
    - Labor rates/Overhead/G&A/Fee or Profit
    - Subject to Government audit
    - Subject to Disclosure Statements
    - Subject to Hundreds of FAR Clauses

Would you manage your contract any differently?
- FAR 12 vs FAR 15
PRE-RFP

✔ NDA’s (Non-Disclosure Agreement)
✔ Teaming Agreements
✔ International:
  ✔ REP Agreements
    ✔ Scope
    ✔ Commissions
    ✔ FCPA
  ✔ VAR Agreements
  ✔ In-Country Partners/Suppliers
    ✔ Offset Agreements
  ✔ TAA’s?
  ✔ Export Approvals?
PM CM Issues

CONTRACT REVIEW
Who is the customer?
Prime vs Sub
Small Business Prime – Pass Thru
Start – End Date
CLIN Structure
Type Contract
IDIQ – Delivery Order Process?
Funding
Key Personnel
Pre-Contract Costs Allowed
Level of Effort Clause
Incentive Clauses
Options
Other Special Clauses

LEGAL
Data Rights – IP (Intellectual Property)
OCI (Organizational Conflicts of Interest)
LoL (Limitation of Liability)
LD’s (Liquidated Damages)
Indemnification

SECURITY
Special Briefings - Training
Clearances Required
Facilities
Personnel

HR
Hiring Limitations
Labor Qualifications
Key Personnel
Where will the staff be working?
SCA – DBA?
PM CM Issues

ACCOUNTING
Payment terms
Billing provisions
Withholds
Type contract
Milestone payments
T&M Rates
Fixed Unit Prices
DD 250
Revenue Recognition

FINANCE
Performance Bonds
Bank Guarantees
Insurance
Currency Exchange
Liquidated Damages
Warranty

PROGRAM MANAGEMENT
PWS
CDRL’s
Travel
CFE/GFE
TIMS/PDR/CDR/PRR/FAT
Logistics –Lifetime Support
In-Country Support
Schedules
Shipping Terms
Acceptance Criteria
How do we know when we are done?

SUBCONTRACT – PURCHASING
Who are the subcontractors
Purchasing restrictions – approvals
Subcontract Approval
Subcontract Plans - Reporting
PM CM Issues:
Subcontracts and Purchasing

- PWS
- Flow down key Clauses and Provisions
- Review subs Basis of Estimates
- Perform Price Analysis
- Identify Proprietary Deliverables
- Flow-up & Down of unique provisions
  a. Delivery
  b. Acceptance
  c. Warranty
  d. Training
  e. Documentation

Get Subcontracts and Purchasing involved early in the proposal process.
Understanding the Contract

GOVERNMENT FORMAT
A. COVER PAGE
B. CLINS
C. SOW
D. DELIVERY- INSPECTION- ACCEPTANCE
E. PACKAGING AND MARKING
F. PERIODS OF PERFORMANCE
G. CONTRACT ADMINISTRATION DATA
H. SPECIAL CLAUSES
I. FAR/DFAR CLAUSES
J. LIST OF ATTACHMENTS

You MUST read all documents to understand what we are contractually required to do and supply.
WHEN IN DOUBT, READ THE CONTRACT

COMMERCIAL FORMAT

SECTION 1.0 – GENERAL PROGRAM DESCRIPTION
SECTION 2.0 – SCOPE OF AGREEMENT
SECTION 3.0 – PERIOD OF PERFORMANCE, PRICING, AND PAYMENT TERMS
SECTION 4.0 – PACKAGING AND SHIPPING
SECTION 5.0 – EXPORT/IMPORT COMPLIANCE
SECTION 6.0 – DELIVERIES
SECTION 7.0 – PRODUCT SUPPORT
SECTION 8.0 – QUALITY ASSURANCE
SECTION 9.0 – RELIABILITY
SECTION 10.0 – TECHNICAL GUARANTEES
SECTION 11.0 – WARRANTY
SECTION 12.0 – CHANGES
SECTION 13.0 – DERIVATIVE AIRCRAFT
SECTION 14.0 – INTELLECTUAL PROPERTY RIGHTS
SECTION 15.0 – INDEMNIFICATION
SECTION 16.0 – TERMINATION
SECTION 17.0 – MISCELLANEOUS
SECTION 18.0 – SUSTAINABILITY
SECTION 19.0 – CONFLICT MINERALS
SECTION 20.0 – BUSINESS CONTINUITY
SECTION 21.0 – ELECTRONIC ORDER MANAGEMENT
SECTION 22.0 – ORDER OF PRECEDENCE
SECTION 23.0 – ATTACHMENTS

Don’t forget flowdowns to subcontracts
Key Contract Sections and Clauses

1. Effective Dates
2. CLINS
3. Statement of Work & CDRL’s
4. Delivery- Inspection- Acceptance
5. Termination (T4D & T4C)
6. Liquidated Damages
7. Limitation of Liability
8. Intellectual Property
9. Changes
10. Warranty
11. Payment clauses
12. Service Level Agreements
13. Exercising Options
14. SW Licenses
15. Level of Effort
16. Obsolescence
17. Cyber Security
18. Export
19. Offsets
20. Associate Contractors
Why do I care about the effective Date?

- CPFF – DETERMINES WHEN I CAN START INVOICING COSTS TO THE GOVERNMENT.
- ESTABLISHES WHAT DATE MILESTONES/DelIVERIES BASED ON.
  - LATE = LIQUIDATED DAMAGES
    - = POOR PAST PERFORMANCE RATING
- ATP vs Award Date
CLINS

CLINS DEFINE WHAT THE CUSTOMER IS BUYING

- PRODUCTS/SERVICES/HOURS/ODC’S
- QUANTITIES
- UNIT OF MEASURE
  - LOT VS EACH VS HOURS VS MONTHS
- UNIT PRICE
- TOTAL PRICE
- OPTIONS

ISSUES:
- TYPE CONTRACT
  - FFP/CPFF/COST/T&M
- SEGREGATE VALUES BETWEEN CLINS
- ARE THE CLINS FULLY FUNDED?
- 6 Month Surge Clause
STATEMENT OF WORK

➢ SCOPE
   ➢ Broad vs Narrow – Does the Type of Contract matter?

➢ REQUIREMENTS
   ➢ Broad vs Narrow – Specified vs Performance Based

➢ VAGUE WORDING –
   ➢ “Included but not limited to”
   ➢ “at a minimum”
   ➢ “shall consider”
   ➢ “as required”
   ➢ “support”
   ➢ “as necessary”
   ➢ “compatible”
   ➢ “for life of contract”
   ➢ “for life of product”
   ➢ “fit for intended purposes”
   ➢ “may”
   ➢ “should”

Pre-Contract – Define and/or Eliminate

Post Contract - Manage Customer Expectations
STATEMENT OF WORK  Cont’d

- Program and technical reviews
  - where, when, how many, who

- Software Upgrades
  - when and how

- GFP / CFE
  - when-what-where-how many

- GFI /CFI
  - when-what-where-how

- Training
- Depot Support
- NOC Support
- Help Desk Support

 Manage your schedule and cost risks

If CFE and CFI are on critical path then this must be managed! Late or Defective = Equitable Adjustment to cost and schedule

Same issue applies to your Subcontractors

Are these defined?
2.1.2. The contractor shall provide SATCOM connections and network services.
2.1.2.1. This includes providing specific connections, without any equipment modifications and/or equipment changes aboard any aircraft.

**SITUATION:**
The SATCOM connection/network service is available to the aircraft but the GFE Equipment (previously purchased from the same contractor through another command) fails to receive the SATCOM connection. Now what?
DELIVERY

Delivery, Title, Risk of Loss and Acceptance
➢ They are not all the same
   ➢ The customer may very well take delivery at our ship dock, take title and risk of loss at their site when the equipment gets there and accept the equipment after we have passed the on-site testing
➢ Got it?

ISSUES:
• Early Deliveries
• Payment Trigger
• Revenue Recognition
• Transfer of Title
• Warranty Activation
• CoC needed? (System or LRU or Part Level)
• Final Acceptance occurs when Prime’s customer accepts
Acceptance – When are we done?

» What it is:
  › The criteria we must meet to get paid

» What we strive for …
  › Acceptance criteria:
    › Fully defined in the SOW or specification.

 › Product Acceptance occurs at:
   › If no on-site (i.e. installation) activity: on shipment
   › If on-site (i.e. installation) activity: on successfully (as defined in the SOW) completion of the on-site testing

Test Plans – when is it drafted and who approves

NRE Milestones – are they clearly defined? Example: When is the CDR complete? End of meeting or when action items completed?

Service Milestones – are they clearly defined? Example: "Service will be activated upon commissioning of the hub."
CASH IS KING!!!!

How do we get paid?

Do the payment milestones have **Objective Conclusive Criteria?**

<table>
<thead>
<tr>
<th>CLIN 0001 MARS ROVER VEHICLE</th>
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</thead>
<tbody>
<tr>
<td>Contract Award</td>
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<tr>
<td>Delivery</td>
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<tr>
<td><strong>Total CLIN 0001</strong></td>
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<table>
<thead>
<tr>
<th>CLIN 0002 MARS COLLECTION SYSTEM</th>
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<tbody>
<tr>
<td>Contract Award</td>
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<tr>
<td>Delivery</td>
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<tr>
<td><strong>Total CLIN 0002</strong></td>
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<table>
<thead>
<tr>
<th>CLIN 0003 MARS Qual Certification Support</th>
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<tbody>
<tr>
<td>Kickoff</td>
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<tr>
<td>SRR</td>
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<td>CDR</td>
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<tr>
<td>TRR</td>
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<tr>
<td>TerrainTest</td>
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<tr>
<td>Full MQCS</td>
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<tr>
<td><strong>Total CLIN 0003</strong></td>
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<tr>
<th>CLIN 0005 Travel</th>
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<td>Invoiced as incurred</td>
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<tr>
<th>CLIN 0006 Training</th>
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<tr>
<td>Training</td>
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</table>
Options

- Pre-priced optional services and/or equipment that the customer can order during the performance period of the contract
  - Details should include:
    - Validity – how long the buyer has to order the options (e.g. within 180 days of Effective Date of Contract (EDC))
    - Escalation on pricing if validity is > 1 year
    - Delivery (e.g. 180 days after order)
    - Milestone payments
      - Hardware (e.g. 50% on order, 50% on shipment)
      - Services (e.g. billed monthly)
    - Payment terms (e.g. 30 days)

- FAR Option to extend services (6 Mo)
Liquidated Damages (LDs)

» What it is:
  › Dollar penalty (usually expressed as a % of the contract or milestone) for being late, e.g. for a service such as a Preliminary Design Review (PDR) or an equipment delivery such as an antenna system

» What we strive for…
  › No LDs
  › If we have to accept LDs we negotiate to get…
    › Reasonable penalty
      ▪ No greater than 10% of contract value
      ▪ Typically we are able to negotiate percentage in the 5 – 10% range
    › Grace period (called a “cure period”) before the penalty kicks in, usually 30 days
    › Incentive to deliver early
    › If our delay does not impact the customer, the LD should not be invoked
    › LD against individual milestones, not against the entire contract value

› What contingency do we have in the costing for the LDs?
Liquidated Damages (LDs)- EXAMPLE

a. Liquidated damages

i. for late delivery of the Data Items (SDRLs) as defined in Annex B: Purchaser Technical Specification:

One percent of the value of the delayed Item for the first full week of delay, plus an additional two per cent of the delayed item for the second full week of delay, an additional three percent for the third week of delay and an additional four percent of the value for the fourth week of delay. In no event shall the liquidated damages exceed the ten percent of the value of the late item.

i.ii. for late delivery of the Item:

Claim as liquidated damages whichever is higher of a lump sum of two-tenths percent (0.2%) of the price of the Shipset if the Order is placed for a Shipset, or, of the Item if the Order is placed for an Item, for each day of delay in the delivery, up to a maximum of thirty (30) days, commencing on the day following the Due Delivery Date.
Limitation of Liability (LOL)

» What it is:
   › If something goes wrong, LOL sets the maximum $ exposure
   › LOL’s protect profit and provide some certainty regarding contract risk
     › From a risk viewpoint, most important clause in the contract
       ▪ Can save a bad contract
       ▪ One bad LOL clause can be a company-killer
   › Different flavors
     ▪ Exclusive (sole remedy)
     ▪ Cap on certain dollar amount or percentage of contract value
   › If contract does not include LOL clause, damages will be determined by the Universal Commercial Code (UCC) at 4X the contract value.

» What we strive for…
   › A LOL no more than the $ value of the contract
Managing Contract Changes

» The Program Manager has the responsibility to set Customer expectations throughout the program, including Changes

» No matter how good the SOW/spec/contract was written, there are always “gray areas”

› Items may not have been fully defined in the proposal process (may be on purpose)

› Oversights in our proposal

› Late RFP changes during the proposal process not fully vetted
Changes

» What we strive for in order of preference…
  › Mutual change – both parties agree to the change impact (scope, $ and schedule) BEFORE we start
  › Directed change the same as the language contained in the FAR
    › Changes limited to drawings, designs, or specifications, method of shipment or packing, and/or place of delivery.
  › Directed change that says something like “changes including, but not limited to, drawings, designs, …”
    › Do NOT want to sign up to this → customer can direct us to make a change and then never pay us for it!
Managing Changes

› It is imperative that we manage changes in the program
› Avoid “scope creep”
› React in a timely manner
› There may be a requirement in the contract that you have to submit a claim to the customer within a time period (i.e. 30 days) – otherwise you have no rights to get compensated
› You have to know when a change is in scope or out of scope.
   › The place of testing has changed
   › Where and how training takes place
   › Requested changes to the COTS User Guide
   › Burying something in the Monthly Status Report does qualify as contractual notification.
What is an REA?

Request for Equitable Adjustment (REA): a “Proposal” for Additional Compensation as a Result of Certain Circumstances or Government/Customer Conduct

• Examples:
  • Changes Clause (FAR § 52.243-1): CO “Shall Make an Equitable Adjustment”

  • Differing Site Conditions (FAR § 52.236-2): “[A]n equitable adjustment shall be made” if differing site conditions increase Contractor’s cost.

  • Government Property (FAR § 52.245-1): For unsuitable government property, CO “shall consider an equitable adjustment.”

  • Suspension of Work (FAR § 52.242-14): “[A]n adjustment shall be made” for CO actions that delay and increase the cost of performance.
**REA - Request for Equitable Adjustments**

<table>
<thead>
<tr>
<th>Question</th>
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<tbody>
<tr>
<td>1. Does the contract contain any of the FAR clauses that provide for an equitable adjustment?</td>
</tr>
<tr>
<td>2. Did the government fail to issue a formal or express change order under the FAR Changes Clause?</td>
</tr>
<tr>
<td>3. Is the government demanding an unreasonable interpretation of the contract requirements?</td>
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<tr>
<td>4. Are the contract specifications ambiguous?</td>
</tr>
<tr>
<td>5. Has the government included conflicting clauses in the contract?</td>
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<tr>
<td>6. Has the government awarded a contract type that is inappropriate for the procurement (e.g. fixed price development)?</td>
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<tr>
<td>7. Has the government increased the scope of the tasks under the contract?</td>
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<tr>
<td>8. Has the government revised the tasks to be performed under the contract?</td>
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<tr>
<td>9. Is the government’s interpretation of contract requirements more costly than that of the contractor?</td>
</tr>
<tr>
<td>10. Is the government imposing a higher standard of performance than is required by the express requirements of the contract?</td>
</tr>
<tr>
<td>11. Has the government rejected work that actually meets the requirements of the contract?</td>
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</tbody>
</table>
## REA- Request for Equitable Adjustments

<table>
<thead>
<tr>
<th>Question</th>
<th>Details</th>
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<tbody>
<tr>
<td>12. Has the government imposed inspection procedures that are in excess of those deemed reasonable?</td>
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<td>13. Has the government greatly increased the amount of documentation required?</td>
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<td>14. Has the government induced the use of an entirely different inspection system than planned, which has increased the cost of contract performance?</td>
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<td>15. Are the government inspectors following inconsistent inspection procedures?</td>
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<td>16. Has the government performed its inspections at a later time than required by the contract, increasing contractor costs?</td>
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<td>17. Has the government provided approvals or disapprovals of plans, drawings, reports, etc. outside of the time limits included in the contract?</td>
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<td>18. Do the specifications of the contract make it impractical or impossible for the contractor to perform?</td>
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<td>19. Are the contract specifications unachievable due to some technical error?</td>
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<td>20. Do the contract specifications exceed what any contractor could possibly achieve given the technology available?</td>
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<td>21. Is the cost of achieving contract requirements prohibitive or wasteful?</td>
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<td>22. Has the government failed to disclose superior knowledge vital to the successful performance of the contract?</td>
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<td>Question</td>
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<td>23. Was the undisclosed information known to the contracting agency or a meaningfully</td>
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<td>connected agency?</td>
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<td>24. Was the contractor unaware that the undisclosed information was available?</td>
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<tr>
<td>25. Did the government cause the contractor actual harm (e.g. increased cost of performance)</td>
<td></td>
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<tr>
<td>by not disclosing the information?</td>
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<td>26. Did the government in any way require or imply that the contractor should accelerate</td>
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<tr>
<td>contract performance?</td>
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<td>27. Did the government refuse to adjust schedule or completion dates even though the</td>
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<td>contractor experienced excusable delay?</td>
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<tr>
<td>28. Did the contractor, at the insistence of the contracting office, attempt to accelerate</td>
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<td>contract performance and incur additional costs?</td>
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<td>29. Did the government fail to provide government-furnished property or information in</td>
<td></td>
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<tr>
<td>accordance with the contract requirements?</td>
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<tr>
<td>30. Was the government-furnished property or information provided unsuitable for its</td>
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<tr>
<td>intended use?</td>
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<td>31. Did the government fail to cooperate, through an action or inaction, during contract</td>
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<tr>
<td>performance?</td>
<td></td>
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<td>32. Did the government exercise a contract option after the option’s indicated expiration</td>
<td></td>
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<tr>
<td>date?</td>
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</tr>
<tr>
<td>33. Did the government fail to satisfy all of its requirements as defined in the “requirements” contract?</td>
<td></td>
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</tbody>
</table>
Good morning Brian

Per our telephone conversation this morning, the Government's position is that due to **late delivery** of the GOZINTA systems, which were **contractually required** for delivery by 1 June 2016, and the **inability** for these systems to meet the SOW paragraph 3.1.3 requirement for System Certification by the end of 4QFY16, we are **invoking** the requirement for the GOZOUTA System hardware.

To be clear, although the Government **will not accept late delivery** of the GOZINTA systems, **we do not see this as a stop-work** order, but an effort to pivot to the alternate system delivery in the face of the missed requirements outlined above. **Further communication** will be provided as soon as possible.

Please direct any questions/concerns to me.
Contracting Officer

**As the PM do you:**
- Stop Work?
- Keep Working?
- Wait for Contracts Direction?
- Take Vacation?
Intellectual Property (IP) Rights

» What we strive for in order of preference…
  › We own all IP – foreground and background
  › If we have to give up some IP…
    › Foreground IP: The IP must be clearly identified (listed) in the contract. Do this to GREATLY limit the amount of IP that we are giving up.
    › Background IP: We VERY SELDOM give this up – take it off the table.

» Giving up ANY IP could harm your company
  › Be very clear about what is and is not subject to providing rights to the customer.

Contract deliverable is a training manual. Customer requests your hardware drawings. Your drawings are proprietary. What do you do?
Warranty

» What it is:
  › If our equipment fails in a certain time period (the “Warranty Period”) then we will fix it

» What we strive for…
  › Warranty Clause:
    › Company standard clause
      ▪ Deviations from our standard warranty are subject to legal and contracts review and approval.
    › Includes “return-to-factory for repair”
  › Warranty Period in order of preference:
    › Company standard warranty of 1 year
    › We have standard charges for > 1 year warranties
    › If we have to accept more than 1 year, we need to make sure our suppliers give us the same warranty plus 6 months for installation at no charge
    › Note: If no time period, UCC assumes four year warranty
  › Start of Warranty:
    › For systems with no site installation: “at Shipment”
    › For systems with installations: “at Acceptance”
      ▪ To take into consideration that site activities may be delayed for extended periods of time, we desire to get a ‘time bomb” into the contract, e.g. warranty starts at Acceptance or 3 months after Shipment, which ever occurs first.
SPECIAL CLAUSES

- Level of Effort – Fee or Price adjustment
- Travel – Advance approval needed
- Subcontracts – Subject to approval
- Key Personnel
- Personnel Qualifications
- New Materials
- Obsolescence – 1 Year Notice
LIST OF ATTACHMENTS
Govt Contracts

Statement of Work
QA Plan
DD 254
Contractor Proposal
CDRL’S
Service Level Agreements
Performance Specifications
Option Prices
SW Licenses

If the proposal is incorporated then be careful what you promised outside of the SOW requirements.
# LIST OF ATTACHMENTS

## COMMERCIAL CONTRACTS

<table>
<thead>
<tr>
<th>DOCUMENT TITLE</th>
<th>REFERENCE</th>
</tr>
</thead>
<tbody>
<tr>
<td>TERMS AND CONDITIONS</td>
<td>DGIA C 000416</td>
</tr>
<tr>
<td>Appendix A AGREED NON COMPLIANCE MATRICES</td>
<td></td>
</tr>
<tr>
<td>Appendix B DASSAULT’s REQUIREMENTS</td>
<td></td>
</tr>
<tr>
<td>Appendix B1-0 GENERAL TECHNICAL REQUIREMENTS</td>
<td>DGT 103434 rev3 date April 17th, 2007</td>
</tr>
<tr>
<td>Appendix B1-1 SYSTEM GENERAL TECHNICAL REQUIREMENTS</td>
<td>DGT 81590 issue 1.0 dated February 13th, 2003.</td>
</tr>
<tr>
<td>Appendix B1-3 INITIALIZATION AND POWER DOWN RULES REQUIREMENTS</td>
<td>NOT APPLICABLE - PLEASE REFER APP. B2 ETR</td>
</tr>
<tr>
<td>Appendix B1-4 GENERAL RULES FOR TESTABILITY AND MONITORING APPLICABLE TO ALL SYSTEMS</td>
<td>NOT APPLICABLE - PLEASE REFER APP. B2 ETR</td>
</tr>
<tr>
<td>Appendix B1-5 GENERAL RULES FOR CAS RULES AND REQUIREMENTS</td>
<td>NOT APPLICABLE - PLEASE REFER APP. B2 ETR</td>
</tr>
<tr>
<td>Appendix B1-6 INTEGRATION VERIFICATION VALIDATION QUALIFICATION PROCESS &amp; DEVELOPMENT MEANS REQUIREMENTS</td>
<td>NOT APPLICABLE - PLEASE REFER APP. B4 SOW</td>
</tr>
<tr>
<td>Appendix B2 EQUIPMENT TECHNICAL REQUIREMENTS</td>
<td>TBD (in progress with Tecnical WS)</td>
</tr>
<tr>
<td>Appendix B3 Master Program Schedule + Attachment 1 specific to XXXX</td>
<td>NOT APPLICABLE - PLEASE REFER APP. B4 SOW</td>
</tr>
<tr>
<td>Appendix B4 Statement Of Work</td>
<td>TBD (in progress with Tecnical WS)</td>
</tr>
<tr>
<td>Appendix B5 ENGINEERING RULES AND REQUIREMENTS FOR THE DEFINITION AND DEVELOPMENT PHASE</td>
<td>NOT APPLICABLE - PLEASE REFER APP. B4 SOW</td>
</tr>
<tr>
<td>Appendix B6 PRODUCTION SUPPORT REQUIREMENTS</td>
<td>DAA N6242 Issue 6 dated September, 19th 2008</td>
</tr>
<tr>
<td>Appendix B7 Flight Test Rules and Requirements</td>
<td>NOT APPLICABLE - PLEASE REFER APP. B4 SOW</td>
</tr>
<tr>
<td>Appendix B8 SYSTEM MANAGEMENT AND QUALITY REQUIREMENTS</td>
<td>DGQT 27968 Issue E dated March, 26th 2010</td>
</tr>
<tr>
<td>Appendix B12 GENERAL CLAUSES APPLICABLE TO EQUIPMENT ORDERS FOR FALCON AIRCRAFTS</td>
<td>DGA L 100551 VA Issue C dated March, 6th 2009.</td>
</tr>
<tr>
<td>Appendix B14 CONFIDENTIALITY</td>
<td></td>
</tr>
<tr>
<td>Appendix B15 Requirements for certification process</td>
<td>NOT APPLICABLE - PLEASE REFER APP. B2 ETR</td>
</tr>
</tbody>
</table>
**LIST OF ATTACHMENTS - CDRLS**

<table>
<thead>
<tr>
<th>A. CONTRACT LINE ITEM NO.</th>
<th>B. EXHIBIT</th>
<th>C. CATEGORY</th>
</tr>
</thead>
<tbody>
<tr>
<td>KuKa Terminal System</td>
<td>Top</td>
<td>Other NDTI</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>D. SYSTEM ITEM</th>
<th>E. CONTRACT NO.</th>
<th>F. CONTRACTOR</th>
</tr>
</thead>
<tbody>
<tr>
<td>T. SYSTEM ITEM</td>
<td>F001 Test Plan</td>
<td>Test Plans</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>S. AUTHORITY (for Acquisition Document No.)</th>
<th>S. CONTRACT REFERENCE</th>
</tr>
</thead>
<tbody>
<tr>
<td>DI-NDTL-8506/A</td>
<td>SOW 3.2, 3.3.1, 3.3.3-3.8, 3.5.4</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>G. REQUIRED OFFICE</th>
<th>H. EST. TOTAL PRICE</th>
</tr>
</thead>
<tbody>
<tr>
<td>SFAE-CCC-WTA</td>
<td></td>
</tr>
</tbody>
</table>

**Gov’t Contract**

**When due?**

**Contractor format acceptable?**

**Reviews and Approvals?**

**Time Limits – Passive acceptance**
### CDRL’S

**Contract Data Requirements List (CDRL)**

*for Delivery Order #0003*

<table>
<thead>
<tr>
<th>CDRL Number</th>
<th>Title of Data</th>
<th>CLIN</th>
<th>Delivery Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>A001</td>
<td>Contract Summary Reports/Summary of all major events/actions under this Delivery Order</td>
<td>Draft due within 30 days of completion of event/action.</td>
<td></td>
</tr>
<tr>
<td>D002</td>
<td>Monthly Contract Status</td>
<td>Report due 10 days after month end.</td>
<td></td>
</tr>
<tr>
<td>D003</td>
<td>Item Unique Identification Marking Plan</td>
<td>Plan due within 30 days of DO award.</td>
<td></td>
</tr>
<tr>
<td>D004</td>
<td>Item Unique Identification Marking Activity.</td>
<td>Report is due within 30 days of request/need.</td>
<td></td>
</tr>
<tr>
<td>E001</td>
<td>Certification Documentation</td>
<td>Documentation due within 30 days of achieved certification.</td>
<td></td>
</tr>
<tr>
<td>F001</td>
<td>Test Plans</td>
<td>Test plans due 90 days prior to test.</td>
<td></td>
</tr>
<tr>
<td>F002</td>
<td>Test Procedures</td>
<td>Test procedures due NLT 30 days prior to test.</td>
<td></td>
</tr>
<tr>
<td>F003</td>
<td>Test Reports</td>
<td>Test procedures due NLT 30 days after completion of test.</td>
<td></td>
</tr>
<tr>
<td>H001</td>
<td>Technical Manual</td>
<td>Manuals due within 30 days of request.</td>
<td></td>
</tr>
</tbody>
</table>

**Be clear on:**

- Reviews and approvals
- How many go-backs are allowed
- Is the test plan within scope of the SOW
## Advanced Issues in Contract Types

<table>
<thead>
<tr>
<th>TYPE CONTRACT</th>
<th>WHAT ARE WE SELLING?</th>
<th>(A) HOW DO I KNOW WHEN I AM DONE?</th>
<th>(B) HOW DO I KNOW WHEN I AM DONE?</th>
<th>(C) HOW DO I KNOW WHEN I AM DONE?</th>
<th>(D) HOW DO I KNOW WHEN I AM DONE?</th>
<th>A/B/C/D HOW DO I KNOW WHEN I AM DONE?</th>
<th>DO I GET ALL OF MY FIXED FEE or FIXED PRICE?</th>
</tr>
</thead>
<tbody>
<tr>
<td>CPFF TERM (LOE)</td>
<td>HOURS</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES – A-B-C-D</td>
<td>100% of the Fixed Fee is paid only if all of the hours are delivered. If &lt; hours delivered then the Fee Amount is adjusted.</td>
</tr>
<tr>
<td>CPFF COMPLETION</td>
<td>Best Effort to Complete the Job.</td>
<td>YES</td>
<td>NA</td>
<td>YES</td>
<td>YES</td>
<td>YES- A-C-D</td>
<td>If the job is completed we get 100% of Fixed Fee regardless of how much cost or how many hours are incurred. If the Cost Ceiling is reached we also get 100% of the Fixed Fee.</td>
</tr>
<tr>
<td>FFPLOE</td>
<td>HOURS</td>
<td>YES</td>
<td>YES</td>
<td>NO</td>
<td>YES</td>
<td>YES- A-B-D</td>
<td>100% of the Fixed Price is paid only if all of the hours are delivered. If &lt; hours delivered then the Price is adjusted.</td>
</tr>
<tr>
<td>FFP</td>
<td>Guarantee to Complete the Job.</td>
<td>YES</td>
<td>NA</td>
<td>NO</td>
<td>NA</td>
<td>ONLY A</td>
<td>If the job is completed we get 100% of Fixed Price regardless of how much cost is incurred.</td>
</tr>
<tr>
<td>T&amp;M</td>
<td>HOURS</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES – A-B-C-D</td>
<td>100% of what you invoice. Make sure there are no limitations by Labor Category</td>
</tr>
</tbody>
</table>
Unconventional Contract Resolution

Scenario

- **PRODUCT DEFECT:** Delivered 5,000 Widgets (Price = $8000 each) **FFP**
  - Potentially 50% defective due to **unforeseen issues**
    - Repair cost = $500 (need to re-shape the top of the unit)
    - Most delivered Widgets are out of warranty
    - We have already spent $250,000 to solve the problem

- **ENGINEERING:** 5 ECP’S have been proposed at $500K Each Total $2.5M **CPFF**
  - ROM provided 6 months ago (no cost detail provided)
  - Only 1 of the ECP’s is requested by the Army
  - The other 4 are unsolicited ECP’s.

- **SERVICES:** Network Management System **FFP**
  - Crashes too often – unstable.
  - Contractor built the network but Customer operated.
  - One of the unsolicited ECP’s was to upgrade the NMS.

- **LOGISTICS:** Customer wants to negotiate 8 different repair prices
  - One repair due to a component defect
    - Repair = $40
  - Potentially 20,000 units out of warranty that could come back for Repair. (The units are used in a very harsh environment)

- **PRODUCTION:** Next Quantity buy = 10,000 units for GFY 16. $20M total

- **HISTORY:** 3 years of confrontational relationships.
Unconventional Contract Resolution

Scenario

Today is Thursday, Customer has requested face to face negotiations next Tuesday - “Unconventional Resolution Discussions – 2 days max to resolve all issues.”

Opening Offer from Government equated to $5M in total consideration. Government has rejected the 4 unsolicited ECPS – want ViaSat to complete at their expense.

2 Weeks to the end of the ViaSat Fiscal year - Management does not want to take a profit hit. Management wants the $80M production booking

What is your negotiation strategy?
<table>
<thead>
<tr>
<th>TRUE</th>
<th>FALSE</th>
</tr>
</thead>
<tbody>
<tr>
<td>On a cost reimbursement contract I can start work before contract award and get reimbursed.</td>
<td></td>
</tr>
<tr>
<td>Because my Subcontractor is late providing a test report, pursuant to the Excusable Delays clause, I can request a schedule adjustment.</td>
<td></td>
</tr>
<tr>
<td>The Government provided me with defective GFP, in order to meet schedule, I should go ahead and repair it and then charge the Government.</td>
<td></td>
</tr>
<tr>
<td>My proposal is FFP Commercial Far Part 12, therefore I can make the price anything I want and the Customer has to pay that price.</td>
<td></td>
</tr>
<tr>
<td>The customer PM is allowed to direct a change to the contract by sending me an email.</td>
<td></td>
</tr>
<tr>
<td>Due to urgency, I had to submit a FFP proposal before I could get quotes from my subcontractor. The subcontractor quotes came in much higher than expected. I should be able to submit a request for adjustment and recover those costs.</td>
<td></td>
</tr>
<tr>
<td>Due to urgency, I had to submit a CPFF proposal before I could get quotes from my subcontractor. The subcontractor quotes came in much higher than expected. I should be able to submit a request for adjustment and recover those costs.</td>
<td></td>
</tr>
<tr>
<td>The place of delivery, test and integration was changed from CONUS to OCONUS. I am able to submit a request for adjustment and recover those costs.</td>
<td></td>
</tr>
<tr>
<td>The customer PM asked me to perform some additional tests and provide reports. As the PM I have the authority to accept this direction and perform this work.</td>
<td></td>
</tr>
<tr>
<td>The customer called me and asked to accelerate deliveries. Even though it will cost additional money I should comply with this request.</td>
<td></td>
</tr>
<tr>
<td>My CFO is requesting I accelerate deliveries prior to the quarter end. My contract says early delivery is acceptable therefore I can comply.</td>
<td></td>
</tr>
</tbody>
</table>
Contract Management for the Program Manager

Summary

• Sorry to burst your bubble but in the end, the CONTRACT rules, not YOU and not your Customer PM!

• At the Proposal and Contract Kick-off meetings - Key Terms and Conditions should be reviewed and understand

• If you are 50% done and you have a reason to read the contract, you are probably in trouble.

• If you don’t have a formal PM – CM training program, you should

• Your Contract Manager should be your best friend. We are here to serve and protect you and the company.

QUESTIONS?