Issues in Contract Management

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US DOE Procurement and Contracting Opportunities
“Contract management is front and center – front and center – in our focus.”

Issues in Contract Management

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

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

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

Contract Change or Baseline Change?

• Given that contract and baseline are aligned at contract start…
  ‣ Baseline changes require a contract change

• Given that the baseline is subordinate to the contract…
  ‣ A contract change is complementary to a baseline change
  ‣ A baseline change does NOT constitute a contract change

• Therefore, baseline change proposals should be accompanied by a contract change proposal
  ‣ Contract change should be negotiated in conjunction with BCP approval

Required Elements

• Common understanding of roles and responsibilities
• System maturity
• Disciplined approach
Change Management (Continued)

- Adherence to Technical Direction clause
  - Understand limitations of COR authority
    - May not change scope, cost, or schedule
  - Contractor has a duty to notify CO when direction exceeds COR authority
  - CO has duty to promptly render a decision

- Upon recognition of a potential change
  - Notification to contracting officer
  - Initiate change order accounting

- Initiate action to revise contract
  - EM goal is definitize change in 180 days or less
  - 60/60/60 “rule of thumb”
  - Critical that systems are in place to deliver auditable certified cost and pricing data within the 60 days or less
  - Baseline change should be submitted with contract change
DOE Order 413.3B

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

Federal Acquisition Regulation

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

- Those arising from known and existing conditions, the effects of which are foreseeable within the limits of accuracy, e.g., anticipated costs of rejects and rework.
  - Included in estimates of cost

- Those arising from presently known and unknown conditions, the effects of which cannot be measured so precisely as to provide equitable results to the parties
  - Excluded from estimates of cost...but, should be disclosed separately to facilitate negotiation of appropriate contractual coverage
Known and existing...effects of which are foreseeable

- Priced as part of discrete cost element
  - Escalation
  - Productivity
  - Scrap

Known and Unknown...can not be measured

- Never included in contract price
- However, the contracting officer may provide “appropriate contractual coverage"
  - Economic price adjustment clause
  - Assumptions
  - Fee neutral provisions
Acquisition Letter AL 2009-01, October 6, 2008 provides that contracting officers:

- Shall not use management reserve or contingency as defined by DOE O 413.3B in the pricing of contract actions, even if validated as part of the project management process;
- Shall not, except as allowed by FAR 31.205-7, include contingency in contract prices nor pay fee to compensate for excluding contingencies from the contract price;
- Shall not include any amount in a contract price to cover prospective requests for equitable adjustments, changes, or risks that might or might not occur during performance.
EM-50 Memorandum, Environmental Management Contractor Management Reserve Practices, May 20, 2009 states:

- Management reserve is not part of the Performance Management Baseline.
- Even though management reserve is never priced into federal contracts, the expectation is that after contract award the contractor sets aside a portion of the Contract Budget Base for unforeseen contractor costs.
- This management reserve is determined, held, used, and controlled by the contractor…
Opportunities for Improvement

- Baseline changes confused with contract changes
  - Changes priced in reliance on validated baseline

- Proposal quality
  - Failure to comply with FAR Table 15-2

- Change order accounting not implemented
  - Burden of proof rests with the contractor

- Accumulation of multiple changes

- Failure to address cost of deleted work

- Inappropriate inclusion of contingency in contract pricing

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

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