Get "FAR" Sighted In 2020

LAW. SERVICE.

JENNIFER SCHAUS & ASSOCIATES

FAR PART 16

Types Of Contracts

Link:

https://acquisition.gov/content/part-16-types-contracts

April 17, 2020

Federal Acquisition Regulation (FAR) – Part 16
TYPES OF CONTRACTS

Contract types vary according to both the degree of responsibility (risk) the contractor assumes for the costs of performance and the profit incentive (reward) the government offers the contractor for achieving or exceeding specified standards or goals.

The Contracting Officer decides what type of contract to solicit.

Basically, the greater the risk to the seller (untried technology or vague specifications), the less likely the government is to issue a fixed price contract, turning instead to some variation of a cost reimbursement contract.

Conversely, the lower the risk to the seller (COTS items, specific requirements), the more likely the government will rely on some variation of a fixed price contract.

FIXED-PRICE CONTRACTS

FAR Subpart 16.2

- Contractor agrees to provide a product or service at a fixed price.
- Contractor bears the risk of increased cost of performance.
- Contractor reaps the benefits of lower cost of performance (and therefore higher rewards).

Suitable for

- The purchase of commercial items (any item that is customarily used by the general public or by non-governmental entities for purposes other than governmental purposes)
- The purchase of supplies or services where detailed specifications are available
- Provision of any supplies or services by highly efficient, process-oriented contractors

EXCEPTION (rare) Experimental / developmental programs (e.g., newly prototyped technology)

Firm Fixed-Price (FFP) Contracts

FAR 16.202

Characteristics

- Price is not suitable to adjustment on the basis of the contractor's actual cost
- Maximum incentive for contractor to control costs
- Minimum administrative burden on either party

Bidding tip

- To minimize risk, the contractor should ensure that the contract requirements are achievable, sufficiently defined, and not subject to subjective judgment of the government.

Fixed-Price Contract with Economic Price Adjustment

FAR 16.203

- A fixed-price contract with economic price adjustment provides for a change in the contract price – upward or downward – upon the occurrence of specified contingencies.
- The adjustment could be based on the: (i) price of specified items, (ii) actual cost of specified labor or material, or (iii) changes in labor or material cost standards or indexes identified in the contract.

When you might see this contract

- Economic conditions are such that significant fluctuations in labor and material are possible.

Fixed-Price Contract Redetermination (Prospective)

FAR 16.205

- This contract provides for (a) a firm fixed price for an initial period of contract deliveries or performance and (b) prospective redetermination, at a stated time or times during performance, of the price for subsequent periods of performance.
- Initial period should be the longest period for which a firm fixed price can be fairly established; subsequent period should be at least 12 months.
- Contact may provide a ceiling price.

When you might see this contract

- Economic conditions are such that it is possible to negotiate a fair price for an initial term only.

Firm-Fixed-Price, Level-of-Effort Contracts

FAR 16.207

- Contractor provides a specific number of labor hours – level of effort – over a stated period of time.
- Government pays contractor a fixed price based on the effort expended rather than on the results achieved.

When you might see this contract

- Contract is suitable for investigation or study in a specific research and development area. The product of the contract is usually a report showing the results achieved through application of the required level of effort.

COST-REIMBURSEMENT CONTRACTS

FAR Subpart 16.3

- Government will pay the allowable, incurred costs, as specified in the contract.
- Government limits its obligation by including a funding ceiling in the contract for completing the work. The contractor has no obligation to continue work beyond the funding ceiling. The government can, however, increase the funding ceiling throughout the life of the contract.
- Government bears the majority of the cost risk. Contractor is required only to use its "best efforts" to perform.

When you might see this contract

- The government is unable to estimate (and therefore approve) costs with sufficient accuracy to use any type of fixed-price contract.

Cost-Plus-Fixed-Fee Contracts
FAR 16.306

- Cost-reimbursement contract that provides for payment to the contractor of a negotiated fee that is fixed at the inception of the contract.
- The fixed fee does not vary with actual cost but may be adjusted as a result of changes in the work to be performed under the contract.
- Provides the contractor only a minimum incentive to control costs.

When you might see this contract

- Performance of research or preliminary exploration or study, and the level of effort required is unknown; or development and test programs

INCENTIVE CONTRACTS

FAR Subpart 16.4

- Contracts containing various forms of incentives may be appropriate when there is a desire or need to provide additional motivation to a contractor/seller to attain specific acquisition objectives that would be unlikely without the incentives.
- Such objectives include improved delivery, technical performance, cost management, or some significant parameter.
- Incentive contracts may be fixed price or cost reimbursement.

Incentive Contracts

FAR 16.402-1 to FAR 16.402-4

Incentives generally fall into four categories:

- **Cost incentives** – this is the most common incentive. If actual costs are lower than target cost, the contractor’s fee increases; if costs are higher, the fee decreases.
- **Performance or quality incentives** – profit or fee is tied to the achievement of uncertain, but desirable, results as compared with a target. For example, an aircraft speed or vehicle maneuverability.
- **Delivery incentives** – improvement in delivery schedule results in additional profit.
- **Multiple incentives** – includes multiple incentive types in order to motivate the contractor to strive for outstanding results in all incentive areas.

Fixed-Price Incentive Contracts

FAR 16.204 to FAR 16.403

- Fixed price contract that provides for adjusting profit and establishing the final contract price by application of a formula based on the relationship of total final negotiated cost to total target cost.
- The final price is subject to a price ceiling. The ceiling makes this a fixed-price contract.
- Two types: 1) firm target and 2) successive targets.

When you might see this contract

- Appropriate when the scope of work is insufficiently defined for a firm fixed price contract, but the performance risks are sufficiently understood that a contractor can agree to a fixed ceiling price.

Fixed-Price Incentive (Firm Target) Contracts
FAR 16.403-1

- Contract specifies a target cost, a target profit, a price ceiling (but not a profit ceiling or floor), and a profit adjustment formula.
- The price ceiling is the maximum that may be paid to the contractor.
- When the contractor completes performance, the parties negotiate the final cost. If final cost is less than the target cost, final profit increases, and if final cost is more than target cost, final profit decreases.
- If the final negotiated cost exceeds the price ceiling, the contractor absorbs the difference as a loss.

Fixed-Price Incentive (Successive Targets) Contracts

FAR 16.403-2

- Contract specifies an initial target cost, a target profit, and a profit adjustment formula.
- Differs from its firm target counterpart in that the firm target cost and profit are determined not at the contract inception but at a later specified time during production.

When you might see this contract

- A fixed-price incentive (successive targets) contract is appropriate when available cost or pricing information is insufficient to permit the negotiation of a realistic firm target cost and profit before award.

J Schaus & Associates – Washington DC – PH: 202-365-0598 - Hello@JenniferSchaus.com

Fixed-Price Contracts with Award Fees

FAR 16.404

- The fixed price is paid for satisfactory contract performance.
- Award fee earned (if any) will be paid in addition to that fixed price.
- Allows the government to increase the contract price after performance is complete based on contractor performance – as an incentive.

When you might see this contract

- Work is such that it is neither feasible nor effective to devise predetermined objective incentive targets applicable to cost, schedule, and technical performance.

Cost-Plus-Incentive-Fee Contracts

FAR 16.304 & FAR 16.405-1

- Contract specifies a target cost, a target fee, minimum and maximum fees, and a fee adjustment formula.
- Cost-reimbursement contract that provides for the initially negotiated fee to be adjusted later by a formula based on the relationship of total allowable costs to total target costs.
- Provides the contractor with an incentive to minimize actual costs, as keeping total allowable costs down results in a higher incentive fee.

When you might see this contract

- Services or development and test programs

Cost-Plus-Award-Fee Contracts

FAR 16.305 & FAR 16.405-2

- Cost-reimbursement contract that provides a fee consisting of

  1. a base amount fixed at inception of the contract, and

  2. an award amount that the contractor may earn in whole or in part during performance based on results of periodic evaluations.

INDEFINITE-DELIVERY CONTRACTS

FAR Subpart 16.5

- *Delivery-order contract* – government issues individual orders for the delivery of supplies during the period of the contract.
- *Task-order contract* – government issues orders for the performance of specific tasks during the period of the contract.

Indefinite-Delivery Contracts

FAR 16.501-2

- Definite-quantity contracts
- Requirements contracts
- Indefinite-quantity contracts

When you might see this contract

- Indefinite-delivery contract may be used to acquire supplies and/or services when then exact times and/or exact quantities of future deliveries are unknown at the time of the contract award.

Definite-Quantity Contracts
FAR 16.502

- Total quantity and price are specified for a fixed period.
- Government issues delivery orders that specify the delivery date and location.

When you might see this contract

- A definite-quantity contract may be used when it can be determined in advance that
    1. a definite quantity of supplies or services will be required during the contract period and
    2. the supplies or services are regularly available or will be available after a short lead time.

Requirements Contracts

FAR 16.503

- Government promises to order all requirements, if any, from contractor.
- Contractor promises to fill all requirements.
- Government schedules actual delivery or performance by placing orders with the contractor.
- In issuing the solicitation, the contracting officer is obliged to state a realistic estimate of the total quantity expected. This amount is not a commitment to order.
- The contract may also specify maximum or minimum quantities that the government may order under each individual order and the maximum that it may order during a specified period of time.

When you might see this contract

- May be appropriate for acquiring any supplies or services when the government anticipates recurring requirements but is unable to determine when precise quantities will be needed.

Indefinite-Quantity Contracts
FAR 16.504

- An indefinite-quantity contract provides for an indefinite quantity, within stated limits, of supplies or services during a fixed period.
- The government places orders for individual requirements. Quantity limits may be stated as number of units or as dollar values.
- The government must order a stated minimum quantity, and the contractor must delivery up to the stated maximum quantity.

When you might see this contract

- The government cannot predetermine, above a specified minimum, the precise quantities of supplies or services it will require.
- As a matter of policy, the government prefers to make award to multiple contractors, who then compete for individual task orders.

TIME-AND-MATERIALS, LABOR-HOUR, AND LETTER CONTRACTS

FAR Subpart 16.6

- Time-and-materials contracts and labor-hour contracts are <u>not</u> fixed-price contracts.
- These contracts contemplate the completion of a certain number of labor hours, regardless of whether the effort results in accomplishment of the intended task.

Time-and-Materials Contract

FAR 16.601

- A time-and-materials contract provides for acquiring supplies or services on the basis of labor hour (including all cost of all benefits) and actual cost for materials.
- The contract or order includes a ceiling price that the contractor exceeds at its own risk.

Labor-Hour Contract

FAR 16.602

- A variation of the time-and-materials contract, differing only in that materials are not supplies by the contractor.

When you might see this contract

- May be used only when it is not possible at contract inception to estimate accurately the extent or duration of the work or to anticipate costs with any reasonable degree of confidence.

Letter Contracts

FAR 16.603

- A written preliminary contractual instrument that authorizes the contractor to begin performance immediately, before the definitive contract is signed.

- A letter contract is a binding agreement.

When you might see this contract

- A letter contract may be used when 1) the government's interests require that the contractor be given a binding commitment so that work can start immediately and 2) negotiating a definitive contract is not possible in time to meet the government's requirement.

AGREEMENTS

FAR Subpart 16.7

Basic Agreements

FAR 16.702

- A basic agreement is a written instrument of understanding, negotiated between the government and a contractor, that contains terms and conditions that will apply to future contracts between the parties during the term of the agreement.
- A basic agreement contemplates that future contracts will incorporate those terms and conditions agreed upon in the basic agreement.
- A basic agreement is not a contract.

<u>When you might see this contract</u>

- Used when a number of separate contracts may be awarded to a contractor during a particular period and significant recurring negotiating problems have been experience with the contractor.

Allocation of Cost Risk by Contract Type

Contracts are listed in order from that with the most risk for contractor to least risk for contractor (CPFF-LOE)

- Firm-Fixed Price
- Firm-Fixed Price with Economic Price Adjustment
- Fixed Price Incentive
- Fixed Price Award Fee
- Cost Plus Incentive Fee
- Cost Plus Award Fee
- Cost Plus Fixed Fee
- Time & Materials
- Cost-Plus-Fixed-Fee – Level of Effort

RESOURCES

Practice tip – keep these resources handy. When you're preparing a bid or offer, re-read the relevant sections.

FAR 16 is available free of charge in PDF format (35 pages) and through e-CFR.

PDF: https://www.govinfo.gov | click "A to Z," click "Code of Federal Regulations (CFR)", click 2019, Title 48, Chapter 1, Subchapter C, Part 16.
https://www.govinfo.gov/content/pkg/CFR-2019-title48-vol1/pdf/CFR-2019-title48-vol1-part16.pdf

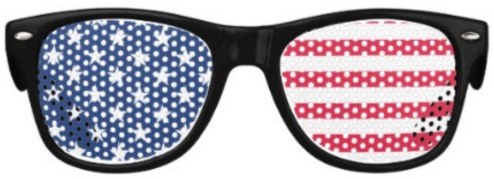
e-CFR: https://www.govinfo.gov | click "A to Z," click "Code of Federal Regulations (CFR)", look for the red "click here" to access the e-CFR (Electronic Code of Federal Regulations).

Get "FAR" Sighted In 2020

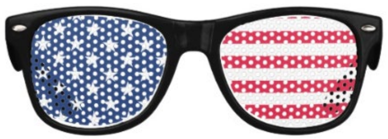
Thank You For Joining Us!

Adam Munitz
amunitz@fhhfirm.com
(703) 590-1234

JENNIFER SCHAUS
JS
& ASSOCIATES



Get “FAR” Sighted In 2020



Brought To You By:

JSchaus & Associates

Washington DC

PH: 202-365-0598

Hello@JenniferSchaus.com