

Rev. August 19, 2002

Topic:

Creative Contracting

Lower contracting costs and increase flexibility by contracting "outside the box".  
Optional methods of payment, contract structure and processes which can save time and money. Workshop will discuss features of various contract types from simple Blanket Orders to on-line releases, e-commerce and P-Card payments. Along the way we'll talk about some typical contract types such as Firm Fixed Price (FFP), Indefinite Delivery Indefinite Quantity (IDIQ) and Cost-Type Contracting. We'll also include factors such as performance risk, formation, acceptance, repudiation and audit risk in the selection of effective contract types.

Goals:

To describe various contract types, payment issues and contracting options in practical terms.

To provide the intermediate purchaser with ideas and options for setting up contracts that lower administrative cost

Here is a subject list for us to tweak that will form the basis of the outline.

Subject list & notes (working, your comments appreciated):

Pre-paid, Blanket Orders, Requirements Orders, IDIQ, JIT, P-Card payment, On-Line releases, Firm fixed price, cost-type, Evaluated Receipt (1, 2 & 3-way match), performance specification risk, repudiation, Basic Ordering Agreements, incentive fee, ASPM, NCMA Cost Evaluation Manual, DOE Incentive contracting report, DCAA audit manual

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Workshop: Creative Contracting

*Optional methods of payment, contract structure and processes which can save time and money.*

1.0 Goals:

- A. Lower contracting costs and increase flexibility by contracting "outside the box".
- B. Describe various contract types, payment issues and contracting options in practical terms.
- C. Seek ways to mitigate contracting risks beyond the repetitive "standard" process.
- D. To provide ideas and options for setting up contracts that lower administrative cost

- 2.0 Key factors to consider in contracting:
  - A. Contract formation
    - 1) Offer/acceptance
    - 2) Consideration
    - 3) Legal purpose
    - 4) Competent parties
  - B. Contract enforcement
  - C. Remedies
  - D. Cost of administration
  
- 3.0 Contract Risk
  - A. How we select and create a contract is a matter of risk
  - B. Move risk from one party to the other
  - C. Mitigate risk
  - D. Take risk in exchange for benefit
  - E. More risk =
    - 1) more flexibility
    - 2) less administration
    - 3) faster
  
- 4.0 Process review:
  - A. How do we create contracts today?
  - B. Why we do each of these process steps. ?
  - C. What is the risk/issue we are trying to protect?
  - D. Can we manage the risk differently?
  - E. Can we use an alternative means?
  
- 5.0 Written solicitation (competitive)
  - A. Price reasonableness
  - B. Negotiation leverage (option to not place an order)
  - C. Full disclosure of terms (both offeror and buyer)
  - D. Alternatives?
  
- 6.0 Written agreement
  - A. Contract formation
  - B. Price confirmation
  - C. Terms
  - D. QTY, spec, description, requirements
  - E. Special instructions
  - F. Audit, tax, IRS
  - G. Alternatives?
  
- 7.0 Signed acknowledgement
  - A. Price confirmation
  - B. Repudiation
  - C. Terms

- D. Quotation confirmation
  - E. Alternatives?
- 8.0 Receipt inspection
- A. Spec verification
  - B. Qty verification
  - C. Alternatives?
- 9.0 Invoice review & matching
- A. Price confirmation
  - B. Terms confirmation
  - C. Receipt confirmation
  - D. Cash flow management
  - E. Alternatives?
- 10.0 Payment by check
- A. Payment confirmation
  - B. Cash Flow
  - C. Audit & legal record
  - D. Alternatives?
- 11.0 Hybrid Contracts Review
- A. Basic Ordering Agreement (BOA)
  - B. Requirements order (IDIQ)
  - C. Just in Time
  - D. Blanket with releases
    - 1) Phone, email, end user, computer, internet
  - E. Payment in advance
  - F. Payment by statement (aggregate all releases for a period of time)
  - G. Payment by purchasing card
  - H. Evaluated Receipt (3 & 2- way match)
  - I. Supplier inventory, payment by stock used
  - J. Good faith billing with audit (supplier kept receipts for travel)
  - K. Fixed unit rate & Fixed Price
  - L. Incentive fee
- 12.0 References
- A. Armed Services Pricing Manual
  - B. DOE Incentive Contracting Report
  - C. NCMA
  - D. ISM
- 13.0 Articles and links
- A. <http://www.ism.ws/ResourceArticles/1994/94cpa44.cfm>
    - 1) Types of Contracts

- (a) By Elaine M. Whittington, C.P.M., G & E Enterprises, Sunland, Ca. 90140, 818/352-4995 May 1994, NAPM 79th Annual International Purchasing Conference Proceeding, Atlanta, Ga.
- B. <http://www.ism.ws/Seminars/SatSems/files/ServicesPurchasing0602.pdf>
  - (a) Services Purchasing: Making the Right Decisions  
ISM Satellite Seminar Series
- C. <http://www.nigp.org/index.htm>
- D. <http://www.ncmahq.org/>
- E. DCAA Audit Manual
  - 1) Risk assessment-- the entity's identification and analysis of relevant risks to achievement of its objectives, forming a basis for determining how the risks should be managed
  - 2) [www.dcaa.mil/cam.htm](http://www.dcaa.mil/cam.htm)
- F. Defense Contract Management Agency
  - 1) [www.dcms.mil/onebook/3.0/3.2/ContRecRevContTypes.htm](http://www.dcms.mil/onebook/3.0/3.2/ContRecRevContTypes.htm)
- G. AuditNet [www.auditnet.org/govaudit.htm](http://www.auditnet.org/govaudit.htm)

### **Creative Contract Analysis Technique (example)**

- 1- Identify key purposes of the contract (BE SPECIFIC)
  - a. Provide machine tools to the tool crib operator when he needs them
  - b. Provide office supplies to secretaries and clerks at their work location
  - c. Ensure uninterrupted supply of dingbats
  - d. Support FAR requirements for competition and price reasonableness
  - e. Document usage for follow-on analysis and future negotiations
  - f. Provide mechanism for contractual legal actions
- 2- Compare performance obligations
  - a. User shall
    - i. Identify specific needs
    - ii. Identify charge or budget codes
  - b. Contractor shall
    - i. Mark and tag
    - ii. Deliver
    - iii. Price in accordance with agreement
    - iv. Invoice correctly
  - c. Buyer Shall
    - i. Solicit a proposal
    - ii. Communicate requirements
    - iii. Pay invoices promptly
    - iv. Receive, kick and count
    - v. Deliver to work location
- 3- Analyze risks
  - a. Types of risk
    - i. Legal
    - ii. Money
    - iii. Performance
    - iv. Administrative
  - b. If the contractor fails I want a legal remedy
  - c. If the prices changes then
  - d. If the contractor doesn't ship then...
  - e. If the user doesn't identify the correct charge codes then...
  - f. Do I really care if?
  - g. Can I live without it?
  - h. Do I really care? Challenge requirements
- 4- Seek alternate ways to perform
  - a. How can we perform this function without taking too much risk?
  - b. How can I mitigate the risk?
  - c. Can I make the risk small enough so I don't care?
  - d.



**Creative Contract Analysis Technique**

<b>Key purpose</b>	<b>Performance Obligations</b>			<b>Risks</b>	<b>Alternatives</b>
	User	Contractor	Buyer		
Solicitation	List all items to be purchased			Will want something not already listed	Use a catalog Specify a commodity
		Verify pricing, stock, lead times		Price will vary Price will not be low Item will not be available	Published prices Market price alternate source plan B
			Control ordered items	User will order something unplanned Supplier will substitute	Limit by commodity or catalog
Contract					
Receiving	Independent review of shipment			Disagreement about shipment	Let the user decide if he got what he wanted
		Independent review			Make the supplier to be accountable to the user
			Independent review		
Invoice		Request payment		Mismatch	Evaluated receipt settlement
Write check			Cash flow	Incorrect payment	EFT
