



2014

Department of Energy
Project Management Workshop
"Meeting the Challenge—Integrated Acquisition & Project Management"

Business Systems Clauses

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Genesis of the Clauses

- DOE found that for some major projects EVMS indicators were not providing predictive information on the success of the project.
- Although projects appeared to be on track, the contractor, without sufficient forewarning from EVMS indicators, informed DOE of significant increase in cost or schedule.
- EVMS may not have been consistently managed in terms of entering data and predictive Estimates at Completion.
- Senior management asked APM to identify tools to improve DOE's contract/project management and contractor's business systems to ensure the systems provide timely, reliable information for the management of DOE projects/programs.



Genesis of the Clauses (continued)

- DOE found that in 2011, the Department of Defense (DoD) issued regulations and contract clauses to improve the effectiveness of DoD oversight of contractor business systems.
- The objective of the clauses is to give DOE the ability to rely on information produced by contractor business systems during contract performance. In the event a contractor does not have an acceptable business system, then DOE can implement reduced payments through withholdings until the contractor has acceptable business systems.
- This proposed DOE rulemaking implements contract compliance enforcement mechanisms through a business systems clause, and five related clauses on the applicable business systems, which includes payment withholding when a contractor's business system contains significant deficiencies.



Business Systems Clauses

- ❖ Adequate business systems are key to effective contract and project management.
 - Contractor business systems and internal controls are the first line of defense and reduce the risk of Government payment of unallowable and unreasonable costs.
 - Proposed clauses will clarify the definition and administration of contractor business systems.

- ❖ Covered Business Systems:
 - Accounting System
 - Estimating System
 - Purchasing System
 - Earned Value Management System
 - Property Management



Applicability

- Clauses apply to --
 - Large business fixed priced contract awarded on the basis of adequate price competition (except EVMS not applicable for fixed price); or
 - Cost reimbursement contract subject to the Cost Accounting Standards.
- Total contract value –
 - Prime contract, the total contract value exceeds \$50 million, including options; or
 - Prime contract totaling \$10 million or more, including options (but less than \$50 million) and the contracting officer determines it to be in the best interest of the Government (e.g., significant system problems are believed to exist).
- ❖ Note: The Acquisition Letter and the pending notice of proposed rulemaking does not include M&Os. M&Os will be addressed in separate rulemaking.



System Review Process

❖ System review process –

- Contractor submits documentation supporting the adequacy of systems within 60 days of award.
- CO/designee will evaluate and determine whether system complies with the system criteria described in the clause.
- CO's designee document findings and makes a recommendation to the CO.
- The report details any significant deficiencies. Significant deficiency is a shortcoming in the system that materially affects the ability of DOE to rely on information produced by the system.
- Initial determination –
 - CO notifies the contractor that the systems are acceptable and approved; or if there are significant deficiencies (does not meet system criteria)
 - Contractor has 30 days to respond if systems are not approved.
 - CO, in consultation with designee, evaluates the response and makes final determination. If system is disapproved, payment withholds will start after Contractor is notified.



Exclusions

➤ Small Business

➤ Excludes contracts for:

- Energy savings performance as required by the Energy Policy Act of 1992
- “Advisory and assistance services” as defined at 48 CFR 2.101, unless otherwise designated as applicable by the Senior Procurement Executive or the Head of the Contracting Activity
- Utilities
- Security guard services
- Housekeeping services
- Office of Deputy Administrator Naval Reactors
- National Environmental Policy Act of 1969 Support
- Interagency acquisitions in accordance with 48 CFR 17.5
- Orders against another Federal agency contract, e.g. Federal supply services
- Education and training



Business System Clauses

- Contractor to maintain acceptable and approved business systems for --
 - Accounting System;
 - Estimating System;
 - Purchasing System;
 - Earned Value Management System ; and
 - Property Management.
- Payments could be withheld on --
 - Cost reimbursement contracts;
 - Time and materials contracts and labor-hour contracts; and
 - Fixed price contracts.
- Withhold shall not exceed --
 - 5% for one or more significant deficiencies in any single contractor business system; and
 - 10% for significant deficiencies in multiple contractor business systems



Implementation

- Acquisition Letter (AL) 2013-11 was issued with the clauses to be incorporated into applicable new solicitations and existing contracts via bilateral agreement.
- The Acquisition Letter was revised in February to incorporate the DOE modified version of the DoD Data Item Description that allows data to be formatted consistent with PARS II and to take EVMS de-certification out of the clauses – process handled in DOE Order 413.3.





DoD News Items

- Bloomberg news reported that the Defense Department (DoD) withheld millions in funds from some of its largest contractors until they correct inadequate business systems.
- DoD withheld over \$200M in funds from one contractor alone.
- The actions were taken under a 2011 regulation that requires contractors to maintain adequate systems for six internal systems (DOE also included Material Systems), including EVMS, to measure a company's progress meeting cost and schedule goals for major contracts.
- The rule, intended to protect taxpayers from overbilling, focuses on systems that companies use to estimate costs for bids, purchase goods from subcontractors, manage government property and materials and track costs and schedule progress.



Feedback

- Financing
- Consistency in implementation
- Administration
- Clarity in definition of terms
- Compliance timeframes
- Acceptable existing systems



Next Steps

- The Notice of Proposed Rulemaking (NOPR) for the clauses is expected to be published in the near future.
- The public comment period is the opportunity for contractor input.
- Federal comments or questions should be identified as “Non-M&O Contractor Business Systems” and submitted to DOE_OPAMPolciy@hq.doe.gov. Refer questions to Barbara Binney at Barbara.Binney@hq.doe.gov.
- When the Notice of Proposed Rulemaking is published in the Federal Register instructions will be provided for contractors on how to submit public comments.