SPECIAL OPERATIONS FORCES ACQUISITION, TECHNOLOGY, & LOGISTICS

Trusted Experts

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BREAKOUT: TYPES OF GOVERNMENT CONTRACTS

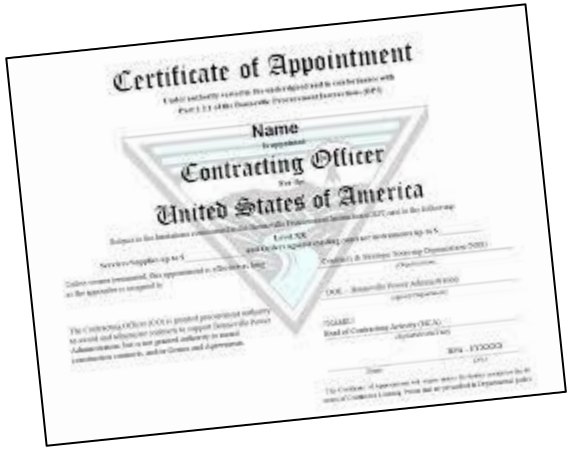
AGENDA

- **Overview of basic contract types**
- **Incentives**
- **Contract type selection & how you can influence the decision**
- **Other vehicles**

- **Success if you walk away with:**
  - **Basic understanding of cost and fixed price contracts & incentives**
  - **Knowing that you can help shape contract type through market research**
  - **Basic understanding of ordering vehicles and agreements**

A FEW BASICS

- Only warranted contracting officers may enter, change, or terminate a contract
- Contracting officers may designate others in writing to give direction under the contract
- The government & contractor are responsible for knowing what is in the contract (all of it)
  - Subcontracts may be different than the prime contract



Contract Types

- TWO Broad Types of Contracts
  - Cost Reimbursement
  - Fixed Price
- Time and Materials(?)

- Based on
  - Responsibility (performance risk)
  - Amount & nature of incentives (cost risk)

For Federal Awards

- Prohibited contract types: Cost plus a percentage of cost and percentage of construction cost type of contracts

- Only when it is not possible at the time of contract to estimate the work accurately or to anticipate costs with any reasonable degree of confidence

TRADITIONAL CONTRACT TYPES & USES

Two Basic Categories

	Cost-Reimbursement	Fixed-Price
Promise	Best Efforts	Shall Deliver
Risk to Contractors	Low	High
Risk to Government	High	Low
Cash Flow	As Incurred	On Delivery
Progress Payments	None	% of Actual
Administration	Max Government	Min Government
Fee/Profit	Fee	Profit

- **The American Recovery and Reinvestment Act of 2009 mandates that the government use a fixed-price contract whenever possible.**

TRADITIONAL CONTRACT TYPES & USES

- Risk must be viewed from each parties perspective
  - Buyer (Often the Government)
  - Seller
- Both parties seek to minimize their risk
  - Cost risk
  - Technical risk / Performance risk

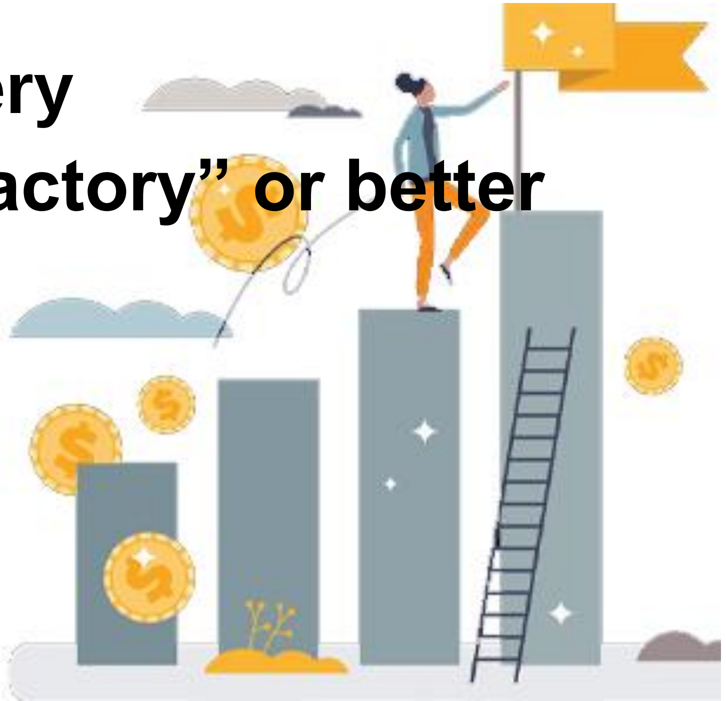
COST RISK AND CONTRACT TYPE						
Cost Risk (Government)	**High**					**Low**
Requirement Definition	**Vague**					**Well-defined**
Production Stages	Concept Studies & Basic Research	Exploratory Development	Test/ Demonstration	Full-scale Development	Full Production	Follow-on Production
Contract Type	**Varied**	**CPFF**	**CPIF, FPIF**	**CPIF, FPIF, FFP**	**FFP, FPIF, FPEPA**	**FFP, FPIF, FPEPA**

INCENTIVES

Relating the amount of profit (or fee) payable under the contract to the contractor's performance.

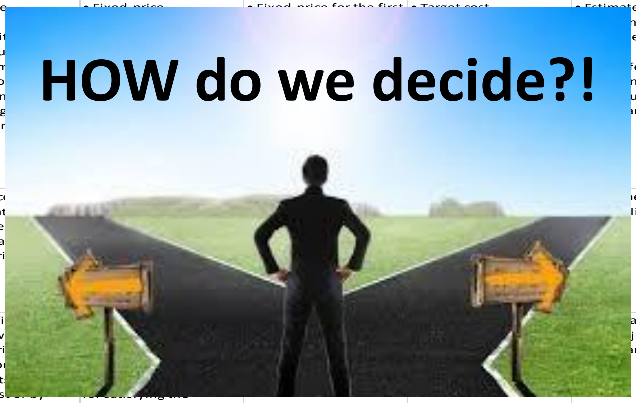
- **Cost incentives: Formula-based profit/fee adjusted for cost performance**
- **Technical/Performance: Profit/fee adjustment for objective product characteristics/service outcomes**
- **Delivery incentives: Profit or fee for specified delivery**
- **Award fee: Subjective assessment, requires "satisfactory" or better cost/schedule/technical performance**

- **Applicable to fixed-price contracts?**
  - **Yes, except cost incentives**
  - **Used when FFP is not achievable**



TRADITIONAL CONTRACT TYPES, USES, TRAITS

DAU	Firm-Fixed Price (FFP)	Fixed-Price Economic Price Adjustment (FPEPA)	Fixed-Price Incentive Firm Target (FPIF)	Fixed-Price Award Fee (FPAF)	Fixed-Price Prospective Price Redetermination (FP^3R)	Cost-Plus-Incentive-Fee (CPIF)	Cost-Plus-Award-Fee (CPAF)	Cost-Plus-Fixed-Fee (CPFF)	Cost or Cost-Sharing (C or CS)	Time & Materials (T&M)
Principal Risk to be Mitigated	None. Thus, the contractor assumes all cost risk.	Unstable market prices for labor or material over the life of the contract.	Moderately uncertain contract labor or material requirements.	Risk that the user will not be fully satisfied because of judgmental acceptance criteria.	Costs of performance after the first year because they cannot be estimated with confidence.	Highly uncertain and speculative labor hours, labor mix, and/or material requirements (and other things) necessary to perform the contract. The Government assumes the risks inherent in the contract, benefiting if the actual cost is lower than the expected cost, or losing if the work cannot be completed within the expected cost of performance.				
Use When...	The requirement is well-defined. • Contractors are experienced in meeting it. • Market conditions are stable. • Financial risks are otherwise insignificant.	The market prices at risk are severable and significant. The risk stems from industry-wide contingencies beyond the contractor's control. The dollars at risk outweigh the administrative burdens of an FPEPA.	A ceiling price can be established that covers the most probable risks inherent in the nature of the work. The proposed profit sharing formula would motivate the contractor to control costs and to meet other objectives.	Judgmental standards can be fairly applied by the fee determining official. The potential fee is large enough to both: • Provide a meaningful incentive. Goodwill is the value of the name, reputation, location, and intangible assets of the firm. • Justify related administrative burdens.	The Government needs a firm commitment from the contractor to deliver the supplies or services during subsequent years. The dollars at risk outweigh the administrative burdens of an FPRP.	An objective relationship can be established between the fee and such measures of performance as actual costs, delivery dates, performance benchmarks, and the like.	Objective incentive targets are not feasible for critical aspects of performance. Judgmental standards can be fairly applied. Potential fee would provide a meaningful incentive.	Relating fee to performance (e.g., to actual costs) would be unworkable or of marginal utility.	The contractor expects substantial compensating benefits for absorbing part of the costs and/or foregoing fee or the vendor is a non-profit entity.	No other type of contract is suitable (e.g., because costs are too low to justify an audit of the contractor's indirect expenses).
Elements	A firm-fixed-price for each line item or one or more groupings of line items.	A fixed-price, ceiling on upward adjustment, and a formula for adjusting the price up or down based on: • Established prices. • Actual labor or material costs. • Labor or material indices.	• Ceiling price • Target cost • Target profi • Delivery, qu other perform targets (optio • Profit sharin • 120% ceiling share are poir departure	• Fixed-price	• Fixed-price for the first	• Target cost	• Estimated cost ...mount, if ...e, and an award ...fee evaluation ...nd procedures ...uring ...nce against the	• Estimated cost • Fixed fee	• Total estimated cost • No fee • If CS, an agreement on the Government's share of the cost.	• Ceiling price • A per-hour labor rate that also covers overhead and profit • Provisions for reimbursing direct material costs
Contractor is Obliged to:	Provide an acceptable deliverable at the time, place and price specified in the contract.	Provide an acceptable deliverable at the time and place specified in the contract at the adjusted price.	Provide an acc deliverable at and place spe the contract a the ceiling pri				...e Government's needs within the estimated cost in the Contract, ...lies or services and prices/costs.			Make a good faith effort to meet the Government's needs with the ceiling price.
Contractor incentive (ther than maximixing goodwill, i.e. the value of the name, reputation, location, and intangible assets of the firm.)	Generally realizes an additional dollar of profit for every dollar that costs are reduced.	Generally realizes an additional dollar of profit for every dollar that costs are reduced.	Realizes profi completing w the ceiling pri earn higher pr incurring costs the target cos... meeting objective performance targets.	...performance standards.			...a higher fee by ...judgmental ...nce standards.	Realizes a higher rate of return (i.e., fee divided by total cost) as total cost decreases.	If CS, shares in the cost of providing a deliverable of mutual benefit.	
Typical Application	Commercial supplies and services.	Long-term contracts for commercial supplies during a period of high inflation.	Production of a major system based on a prototype.	Performance-based contracts.	Long-term production of spare parts for a major system.	Research and development of the prototype for a major system.	Large scale research study.	Research study.	Joint research with educational institutions.	Emergency repairs to heating plants and aircraft engines.
Principal Limitations in FAR/DFARS Parts 16, 32, 35, and 52 (Comply with any USD(A&S) (formerly AT&L), DPC (formerly DPAP), or other memoranda not yet incorporated into the DFARS, DoD Directives, or DoD Instructions.)	Generally NOT appropriate for R&D.	Must be justified.	Must be justified. Must be negotiated. Contractor must have an adequate accouting system. Cost data must support targets.	Must be negotiated.	MUST be negotiated. Contractor must have an adequate accounting system that supports the pricing periods. Prompt redeterminations.	The contractor must have an adequate accounting system. The Government must exercise surveillance during performance to ensure use of efficient methods and cost controls. Must be negotiated. Must be justified. Statutory and regulatory limits on the fees that may be negotiated. Must include the applicable Limitation of Cost clause at FAR 52.232-20 through 23.				D&F required (w/ HCA if over 3 years). Government MUST exercise appropriate surveillance to ensure efficient performance. Document any ceiling increases.
Variants	Firm-Fixed-Price Level-of-Effort.		Successive Targets (FPIS), with ceiling and floor on firm target profit.		Retroactive Redetermination			Completion or Term.		Labor Hour (LH)



https://www.dau.edu/tools/comparison-major-contract-types-chart

THE REQUIREMENT, THE MARKET, & INTERNAL RESOURCES

- **Degree to which cost/effort to completion is reasonably estimated**
  - **Commercial, non-developmental, developmental (potential solution maturity)**
- **Urgency**
- **Anticipated competition**
- **Duration of performance**
- **Vendor technical capability**
- **Finances/accounting system**
- **Extent of proposed subcontracting**
- **Acquisition history**
- **Government capacity to administer**

MARKET RESEARCH

-Industry Studies
-Past Contracts
-Commercial Practices
-Sources Sought
-Requests for Information

&

ACQUISITION PLANNING

-Requirement Refinement
-Independent Estimate
-Budgeting
-Manpower Studies
-Peer Reviews

SMALL BUSINESS ROLE IN SHAPING CONTRACT TYPE

- **Respond to relevant government inquiry (Market Research)**
  - **Address the specific request(s)**
  - **<u>Also consider</u>, offering <u>your perspective</u> on aspects you think are important**
    - **Delivery/Performance schedules**
    - **Commerciality/technical maturity**
    - **Pricing**
    - **Quantity/Level-of-effort variability**
    - **Warranties**
    - **Your accounting system adequacy (DCAA pre-audit)**
    - **Suggested contract type, CLIN structure, incentives**
    - **Reference other executive agencies/gov't entities with similar procurements**

- **Contract type *can* be negotiated; seeking a contract type and price that results in <u>reasonable contractor risk</u> and provides the contractor with the greatest <u>incentive for efficient and economical performance</u>. (FAR Part 16)**
- **Review FAR Parts 7, 10, 11 for a full understanding of what the government team considers when developing an acquisition approach**

MOST LIKELY TO EXPERIENCE WITH USSOCOM

- Fixed-price: ~ 2,600
- Cost-plus fixed fee: ~200
- Time & Materials: ~160
- Labor Hours: ~150

OTHER VEHICLES: INDEFINITE-DELIVERY CONTRACTS

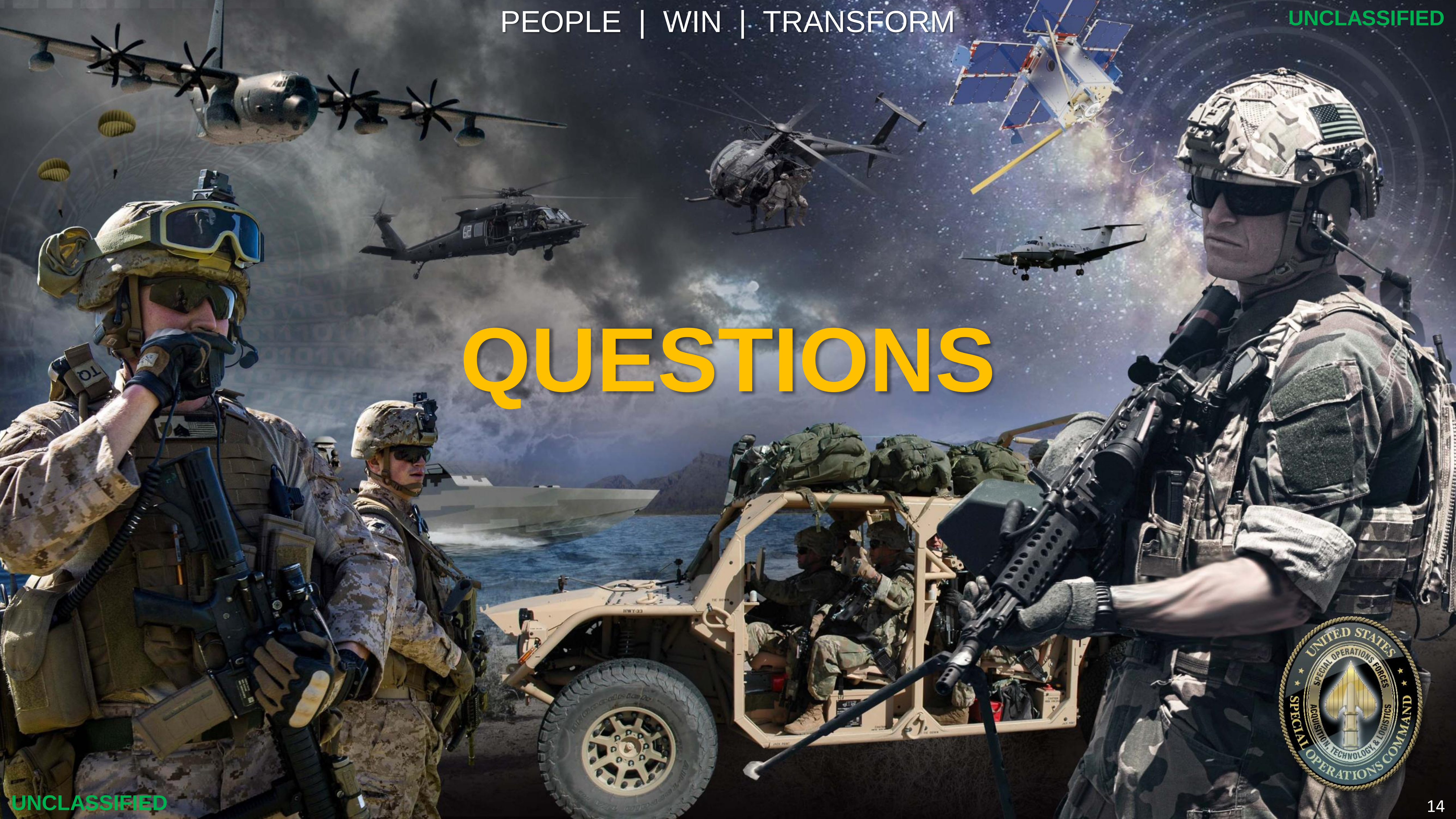
- **Three types:**

	Awardees	Quantities	Delivery/Schedule	Note
Definite Quantity	Single or multiple	Stated/defined	Unknown	Only obligated for minimum value
Requirements	Single	Estimated w/maximum	Unknown	Promise to use the contract
Indefinite Quantity	Single or multiple	Estimated w/maximum	Unknown	Only obligated for minimum value

- **Fair Opportunity applies to multiple award contracts (FAR 16.505(b)(1))**
- **Small business set asides (part or whole) may apply to the basic ID contract or orders (FAR 16.500(e) & 19.501)**
- **Performance occurs on delivery/task orders**
  - **May employ any contract type (FP or CR) authorized by the basic I-D contract**

OTHER VEHICLES

- Other Transaction Authority
- Government purchase card
- Purchase order
- Blanket purchase agreement (not a contract)
- Basic agreements (not a contract)
  - Establishes a clause framework for future contracts
- Basic ordering agreement (not a contract)
  - Similar to a basic agreement, except with detail on product/service, methods for pricing, delivery



QUESTIONS