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Performance Based Contracting Panel Discussion

Performance Based Contracting Risk

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There is a Difference Between a Risk and a Gamble!

- Understand the risks
- Mitigate the risks
- If you don't it is a gamble

Risk Impacts – Unknown Site Conditions

- Unknown contamination source(s)
- Incomplete data to determine extent of the problem

Risk Impacts – Regulatory

- Status of existing IRP
- Existing relationships between the installation and regulatory agencies
- Many influences within regulatory agencies
- Potential for regulatory re-openers
- Difficulty in obtaining TI Waiver

Risk Impacts – Contract

- Cost Cap
- Insurance
- Significant contractor payment hold backs
- CLIN Structure / Milestone Payments
 - Incremental Funding
 - Delay in funding or Non-Funding of Certain CLINs (impacts on schedule / multiple mobilization / non-reimbursed management / support cost)
 - Milestone Payments Negotiated after Award (impact on cashflow)

Risk Impacts – Contract cont.

- Bonding
- Warranty
- Unknown contaminates
- What determines when the performance objective is met
- Outcome of failing to meet the performance objective

Risk Impacts – Competitor

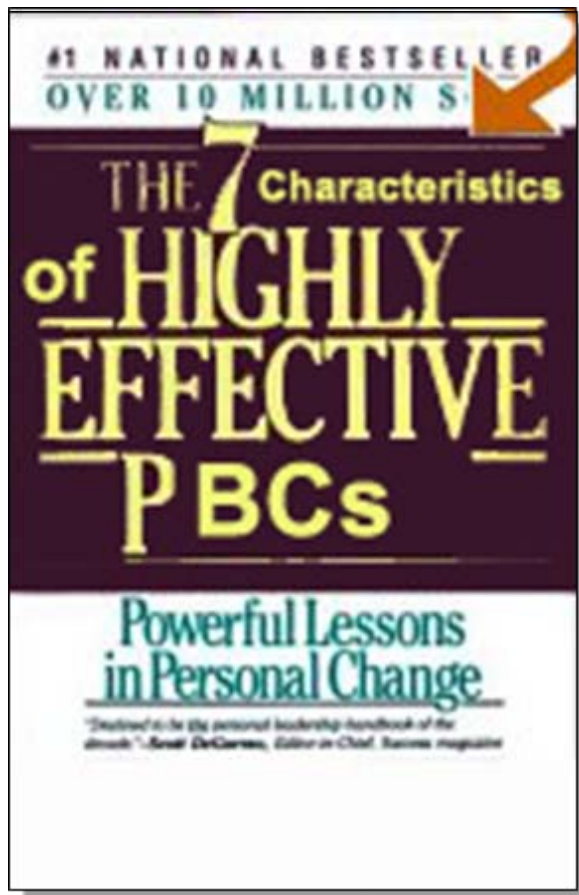
- PBC Inexperience
- Willingness to accept high risk approaches
- Bid errors

Risk Impacts – Internal Approvals

- Uncapped risk
- Bad cash flow
- Fair and reasonable profit
- Technical and regulatory predictability
- Regulatory changes

Performance-Based Contracting SAME Missouri River/Texoma Regional Conference Panel Discussion

Marty Wangensteen, PE, PG, Bay West, Inc.



1. Proposal Preparation Schedule/Data Availability
2. Degree of Site Characterization
3. Multi-Site Opportunities/Site Bundling
4. Performance Objective/Period of Performance
5. Payment Milestone Framework
6. Property Use/Classification and Risk-Based Cleanup Standards
7. Regulatory Environment/Stakeholder Communications

Proposal Preparation Time/Data Availability

- 30- to 60-day turn common → more time generally results in more competitive and responsive bids
- Information repository key (*ftp site, CD/DVD, hard copies*)
 - Ideally site data are available when RFP is let

Degree of Site Characterization

- Low-degree of site characterization results in more speculative remedies and reduces value of probabilistic estimates
 - A Contractor's bid price (including contingency) is based, in part, on degree of site characterization

Multi-Site Opportunities/Site Bundling

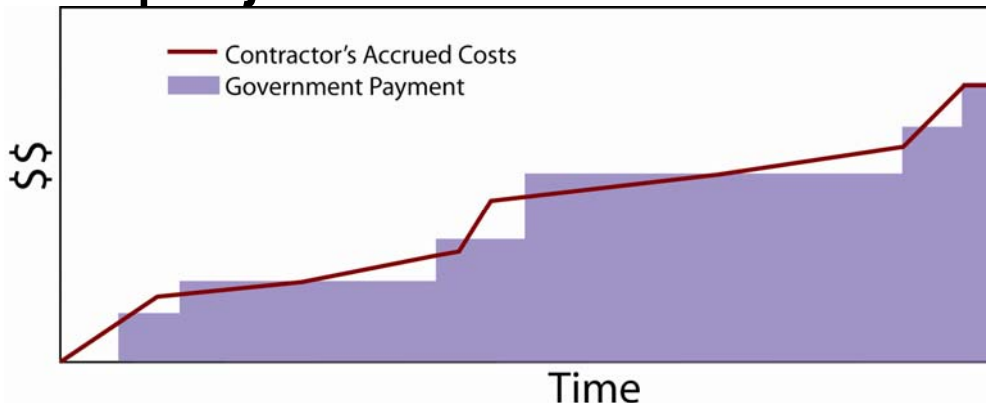
- Contractors typically prefer PBC opportunities that involve multiple sites (including “low-hanging fruit”)
 - Allows Contractors to spread the environmental, performance, and regulatory risk over multiple sites
 - Funding profile can also impact bundling strategy

Performance Objective/ Period of Performance (POP)

- Common performance objectives include:
 - Remedy in Place (RIP)
 - Site Closure (SC)/Response Complete (RC)
 - *Requires a No Further Action determination by regulator*
 - Disagreement among DoD/Regulatory agencies on “end points” can add uncertainty to project outcome
- POP driven by regulatory, funding, and DoD goals

Payment Milestone Framework

- PBC payments typically predicated on achieving a milestone (versus monthly progress payments)
- Most PBC's start with a negative cash-flow for the Contractor
- Contractor payment plans should balance definable progress towards milestones with project financial needs



Performance/Payment Milestone	
CLIN	
1.0	5% upon USACE approval of RD 20% upon mobilization for RA 50% upon completion of barrier installations 90% upon USACE acceptance of RA 100% upon USACE approval of RIP

Property Use/Classification and Risk-Based Cleanup Standards

- Property use/classification typically drives cleanup requirements
 - Uncertainty in property use/classification results in greater execution risk and drives Contractor pricing up
- Regulatory Agency's acceptance of risk-based cleanup criteria an important issue

Regulatory Environment/ Stakeholder Communications

- Regulatory environment (including document review turnaround/perception of PBC) is evaluated during Contractor's bid development process
- Contractor-Regulator interaction beneficial during bid development stage
- Installations often need to become comfortable with giving more "control" to Contractors
- Decision-based partnering can reduce regulatory "uncertainty" via decision consequence analysis

Performance Based Contracting

28 completed or
ongoing environmental
restoration under the
PBC Delivery Concept

Application of PBC

- One of many Delivery Methods
- Fully Characterized Sites
- Clear Statement of Objectives
- Manageable Risk

Discussion Points

- Unknowns
- Liquidated Damages
- Pre-Bid Data Evaluation
- Technical Input and collaboration
- Basis of Estimate
- PARTNERING

John England Biography

- Program Manager – Performance Based Contracting for Innovative Technical Solutions, Inc. (ITSI)
- ITSI is executing over \$40 million in PBC for Air Force, USACE and Navy
- Previous experience with PBC projects for USACE, Air Force and private sector clients
- Successfully completed PBC projects ranging from single phases to guaranteed closure of multiple sites