Improving Contract Quality

Presented by: Bruce Propert
Defense Pricing and Contracting

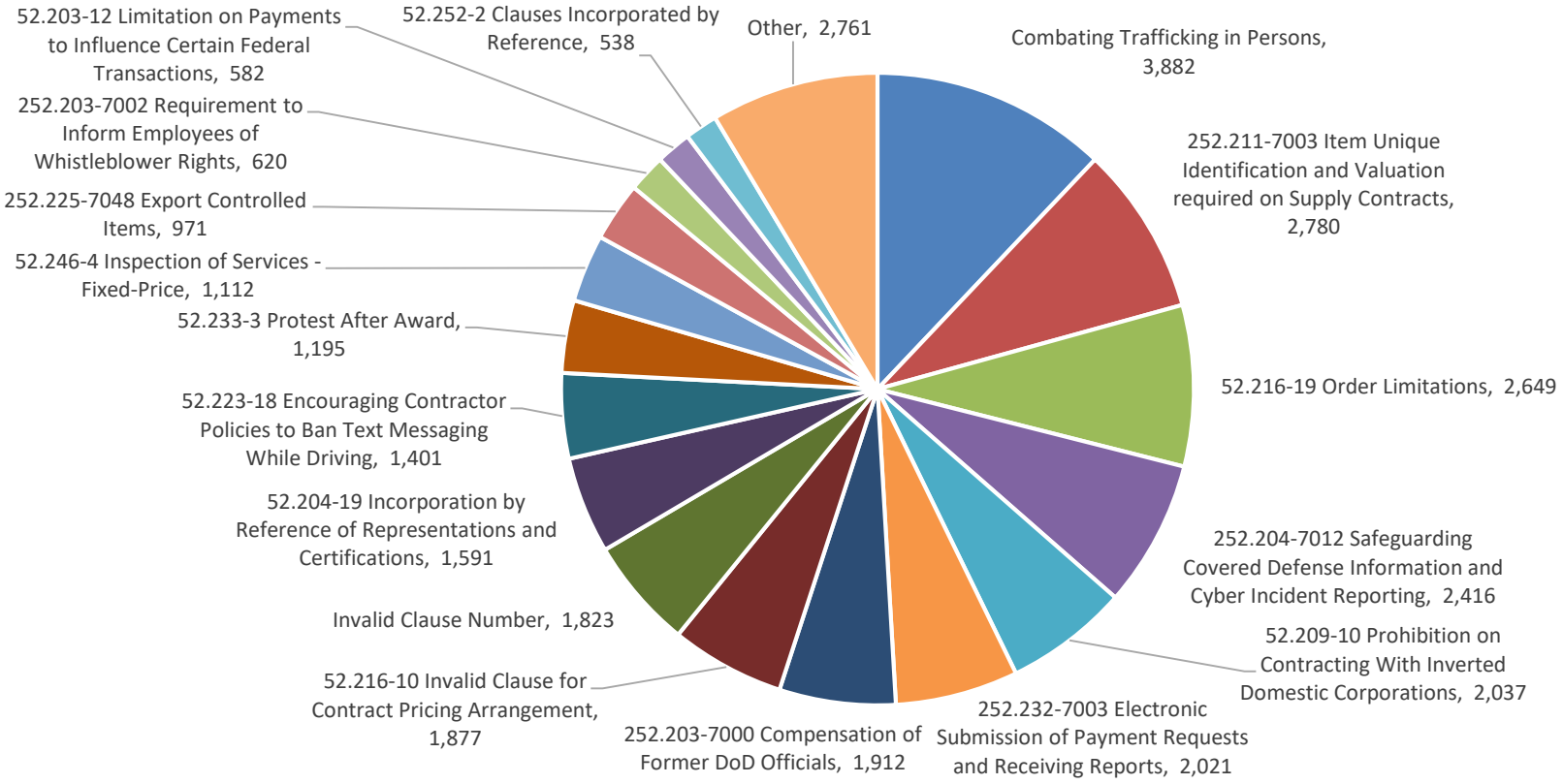
What Problem are We Trying to Solve?

- Ensure customers get what they need
- Ensure compliance with applicable law and regulation
- Support automation of payment and accounting
- Enable auditability by creating a clear trail from funding through contract to asset
- Enable analysis of contract data
- Enable automated tracking and reporting of contract funding and deliverables
- Support logistics traceability of supplies

Critical Pieces of Contract Quality

- Who? – Does the data clearly and correctly identify the issue office, admin office, pay office, and contractor?
- What? – Do the line items clearly define what is to be delivered?
- Where? – Does the line item data identify where the supplies are to be delivered or the services performed?
- How?
  - Does the contract clearly specify how compliance will be determined and by whom?
  - Is it clear how and when payment should occur?
  - Are the necessary clauses included?

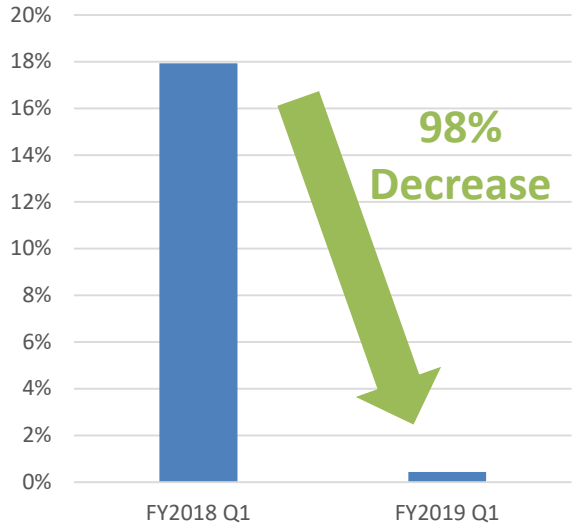
Clause Errors (Q1 FY2019*)



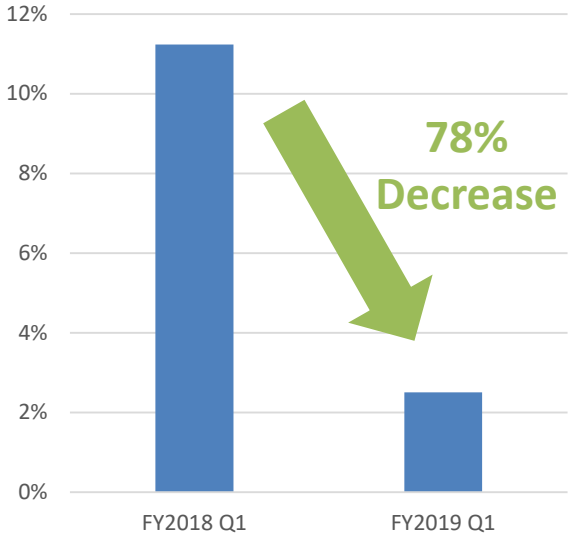
*New awards only, excludes DLA

PDS Success Stories

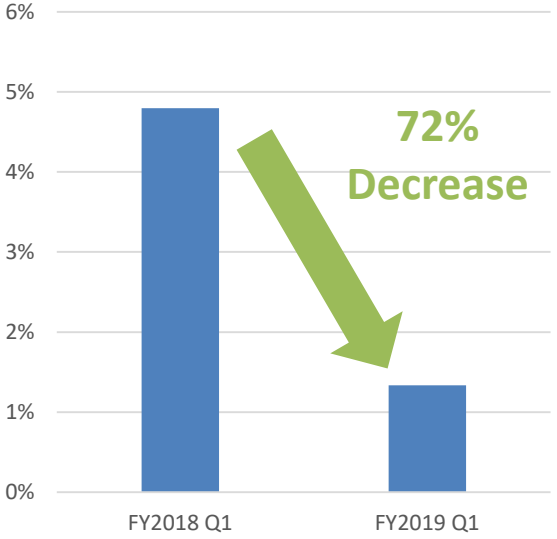
52.209-6 Protecting the Government's Interest When Subcontracting With Contractors Debarred, Suspended, or Proposed for Debarment (PDS_B_W_116)



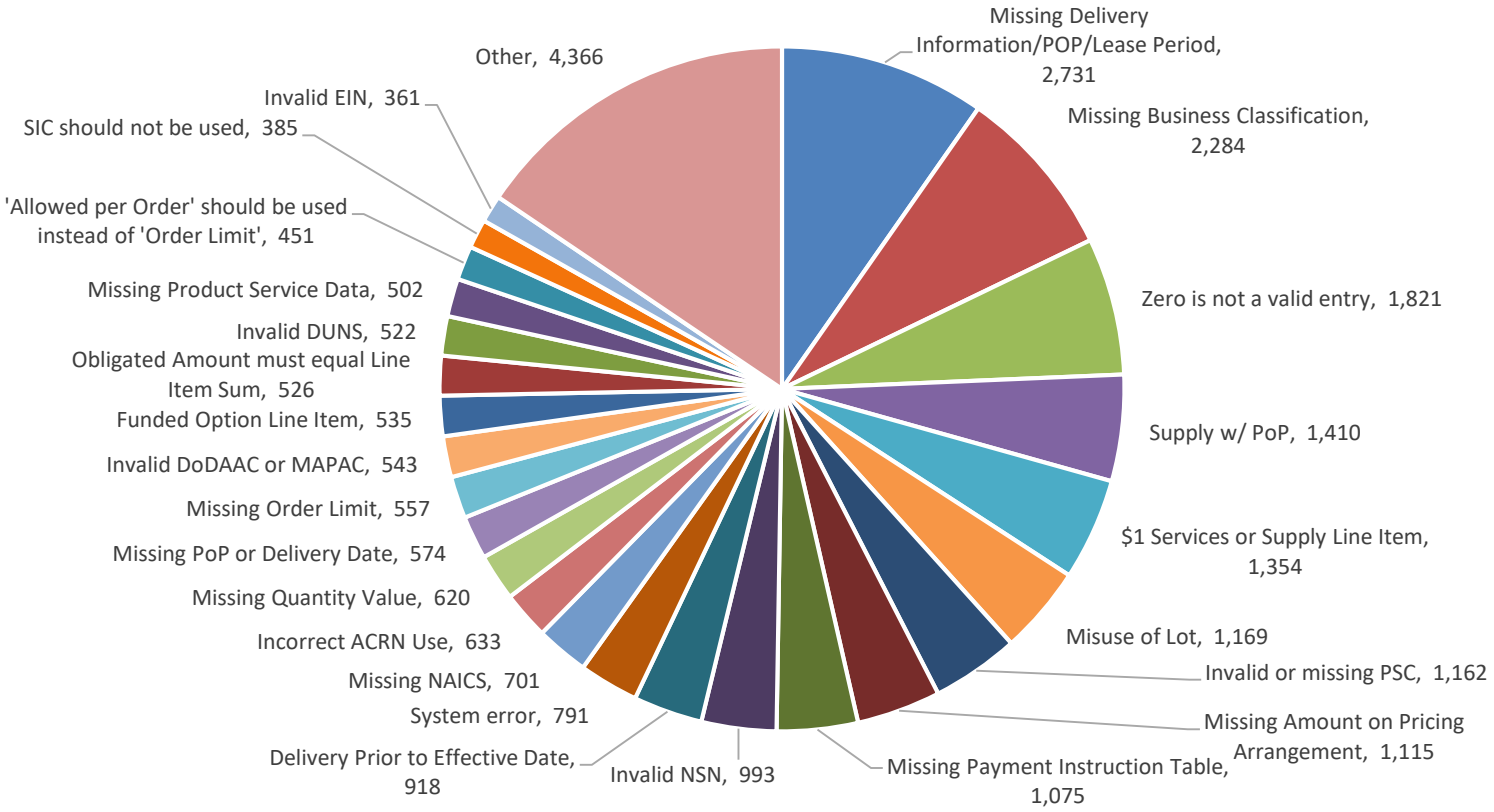
52.233-3 Protest After Award (PDS_B_W_78)



252.203-7002 Requirement to Inform Employees of Whistleblower Rights (PDS_B_W_78)



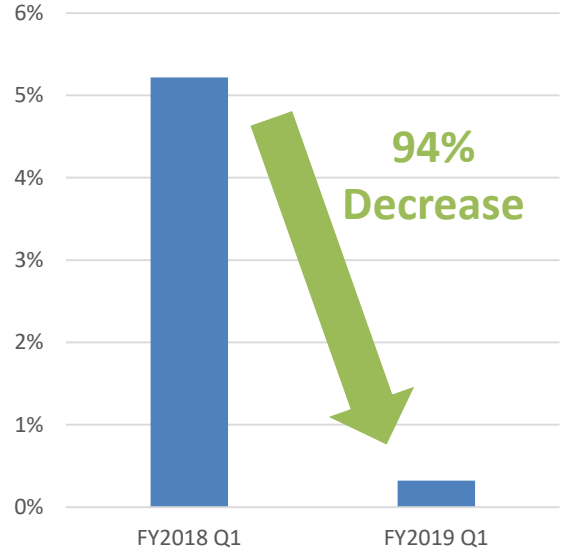
Non-Clause Errors (Q1 FY2019*)



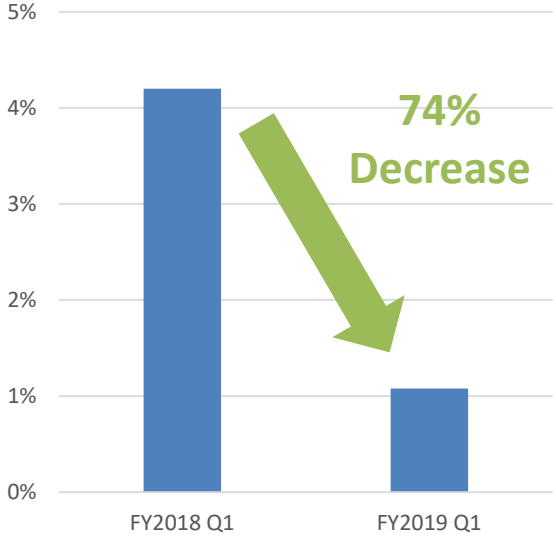
*New awards only, excludes DLA

PDS Success Stories

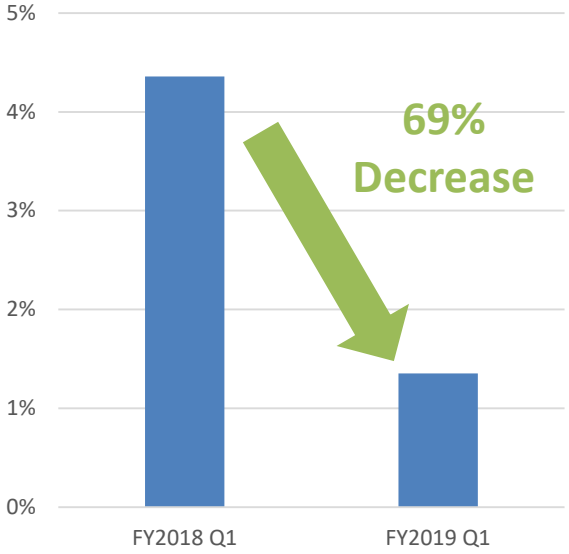
Missing PoP or Delivery Date (PDS_B_F_01)



Firm Fixed Price Contracts cannot have a price basis of 'Not to Exceed' (PDS_B_W_109)



Delivery Prior to Effective Date (PDS_V_W_84)

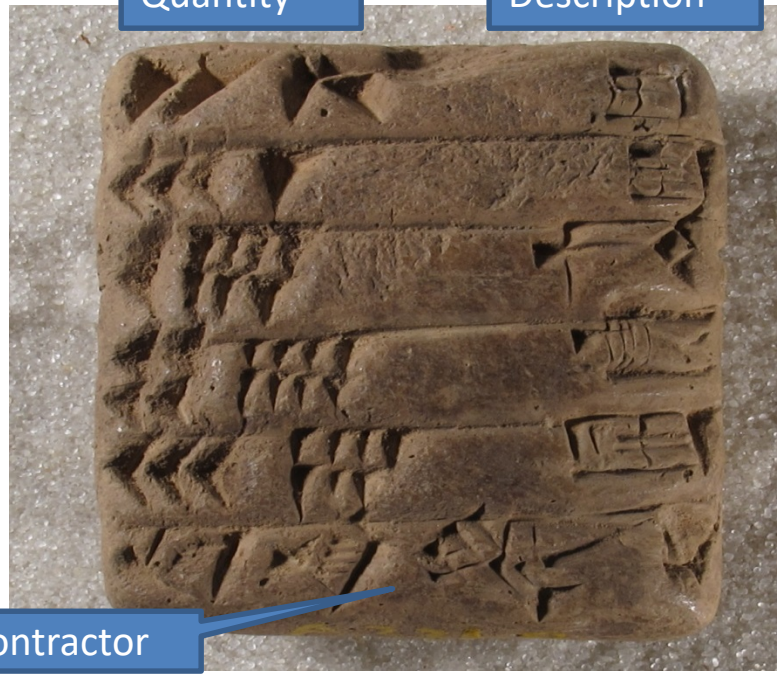


Contract Deficiency Reports

- Two of the top five reasons for Contract Deficiency Reports are:
  - Incorrect Contract Administration Office
  - Incorrect Payment Office
- DPAP is working with DCMA and Comptroller/DFAS to minimize these errors
  - Authoritative lists of CAO and associated Payment Offices are now managed and maintained in Purpose Code Management Module of PIEE
  - Further analysis of Payment Office assignment rules ongoing
- Purpose Code Management Module training available on Procurement Toolbox (https://dodprocurementtoolbox.com/)

Early Example of Use of Line Items

Administrative Tablet from the Third Dynasty of Ur (ca. 21st century BC)



Quantity

Description

Contractor

Quantity	Description
119	sheep
31	ewes
17	goats
48	she-goats
37	lambs

from Nalu — Contractor

Note: reverse reads:
Ur-kununa took (them). — Acceptor

Month 11
Year 47 Shulgi — Acceptance Date

Note the resemblance to the receiving report requirements of FAR 32.905(c).

Earliest Example of Line Items You Can Remember

Dear Santa,

I have tried to be really good this year. I was even nice to my little brother. For Christmas I would like:

- A new puppy
- A 12 speed bike
- New rollerblades (now I wear a size 13!)
- A remote controlled helicopter (red and black)
- A new baseball bat and glove
- An official Red Ryder, carbine action, two-hundred shot range model air rifle
- New Lego sets
  - Star Wars Death Star
  - X-Wing fighter
  - Millennium Falcon

Should be two line items unless wrapped as a set

Note the use of subline items

Things to Consider When Building Line Items

- Assign a quantity and unit of measure that describes how the items are going to be delivered or tasks performed
  - Consider how supplies will be packaged, shipped, and inventoried
  - Consider how often services will be accepted and paid for
  - Consider if the item is Not Separately Priced
  - Note that for the solicitation this consists of identifying what items require prices or estimated costs so the offeror knows what to fill in
- For supplies, how items are to be packaged and marked
- Ensure each line item addresses a discrete deliverable effort (i.e. not an element of cost)

Things to Consider When Building Line Items (continued)

- Where, by whom (organization), and against what criteria inspection and acceptance will occur
  - Does the acceptance DODAAC do acceptance? (WAWF Query)
- When to assign a delivery location and schedule(supplies) vs place and period of performance (services)
  - What about contracts for repair or refurbishment?
- The funding line(s) – are there more than one? Is there likely to be additional funding later?
- Any clauses or special provisions applicable to that line item and not applicable to the entire effort
- If there is the potential for separate evaluation by line item to enable separate awards, ensure this is clearly addressed in the proposal instructions and evaluation criteria

Selecting Units of Measure

- The unit of measure should describe how the item is going to be
  - Delivered
  - Accepted
  - Paid for (if fixed price)
  - Stocked – i.e. Unit of Issue
  - Managed
  - Accounted for
- Do not use units of measure that lump several things together as one lot, kit, or batch unless the item will be delivered, managed, and accounted for that way
- Market research can be used to determine standard ordering and delivery practices in an industry, including applicable units of measure
- Work with accounting to ensure the line items support accounting for the assets

Is it a Good or a Service?

- Some things are “goods-like” services – e.g. repair/refurbishment of goods. These things should be coded as a service (PSC), but given a delivery date and otherwise behave like a good.
- Some things are “service-like” goods – e.g. software licenses
- If the deliverable is tangible

Selecting Units of Measure

This is an example of the kind of information market research may uncover that may affect selection of units of measure. If this example is representative of other suppliers, buying by the foot would not be effective.

60 GAUGE CAST STRETCH WRAP – For loads up to 1,600 lbs. ORDER IN CASE QUANTITIES

MODEL NO.	SIZE	GA.	LBS./ CASE	CASES/ SKID	PRICE PER ROLL (4 ROLLS/CASE)				SKID LOTS	ADD TO CART
					4	8	16	24+		
S-3210	12" x 2,000'	60	28 lbs.	36	$18	$17	$16	$15	CALL FOR QUOTE	4 rolls ADD
S-3211	15" x 2,000'	60	35 lbs.	24	20	19	18	17		4 rolls ADD
S-3212	18" x 2,000'	60	41 lbs.	24	$18 per roll any case quantity					4 rolls ADD

Source: https://www.uline.com/BL_2966/Uline-Cast-Stretch-Wrap?keywords=xyzulinestretchwrap

Unit Price, Unit of Measure

1. When to not include a Unit Price (FAR 4.10)
2. Unit of Measure vs Unit of Issue
3. Avoidance of dollar as a unit of measure and $1 unit price
4. Rounding as applied to units and subunits

Real Contract Example of inappropriate use of a unit price of $1

ITEM NO	SUPPLIES/SERVICES	QUANITY	UNIT	UNIT PRICE	AMOUNT
0002	ODCs – Tasks 1-4 FFP	10,000	Lot	$1.00	$10,000.00

This is a line item for travel to be billed as Other Direct Costs. What is the deliverable? Why is it worth $1?

Appropriate use of $1 unit price

$1 Items

Cheeseburger
Learn more

McChicken®
Learn more

Sausage Burrito
Learn more

Any Size Soft Drink
Learn more

Screenshot from https://www.mcdonalds.com/us/en-us/full-menu/123dollarmenu.html

Think about Pricing

- Example 1 - IDIQ for training worldwide
  - Classes may be fixed price because the effort per class is well known
  - Locations may not be known at award
  - Cost for travel per class could very from negligible (e.g. same city as trainer) to large (e.g. Okinawa)
  - Separate line item for travel is appropriate
- Example 2 - Professional services contract – 5 FTEs estimated $1M (2000 hours per FTE per year at $100/hr)
  - Effort may include occasional trips to local locations and up to one conference for one person
  - Cost of conference trip approximately $2K, or 0.2% of total, equivalent to 20 hours of work
  - Travel is not associated with a specific deliverable requirement and should not be on a separate line item

Consider the contractor's cash flow

Example:

0001	Study	1	Lot	$2,200,000	$2,200,000
	FFP				
	Period of Performance 21 Months				

- How does the contractor stay solvent long enough to do the work? Consider progress payments, performance based payments, or interim deliverables as additional line items.
- Remember, the only ways we can send contractors money is through contract financing or through payment for delivery of a line item quantity.

Use of Line Item Numbers in Contract Schedule Deliveries or Performance - Services

Line item	Description	Period of Performance or Delivery Schedule	Acceptor
0001	Task Order Management Reports	Monthly beginning one month ARO	HQ1234
0002	Analyses	12 months	N12345
0003	Report on monthly data from source system	Monthly beginning one month ARO	S12345
0004	Study of process improvements	Report draft 9 Months ARO Final 12 months ARO	N12345

* Use of DOD Activity Address Codes (DODAACs) as organizational identifiers enables automated tracking and routing of data. Ensure that any DODAACs used are accurate, and, if acceptance is to be performed, registered in WAWF as an acceptance location.

Acceptance of Service

Line item	Description	Acceptance	Acceptor
0001	Task Order Management Reports	Acceptance will be based on routine inspection of the reports	HQ1234
0002	Analyses	Acceptance of the report under 0001 will be used as a basis for acceptance of the analyses	N12345
0003	Report on monthly data from source system	Acceptance will be based on routine inspection of the reports	S12345
0004	Study of process improvements	Acceptance will be based on routine inspection of the reports	N12345

Severable vs. Non-Severable

- All deliverables on a given line item must have identical requirements
- Performance or delivery must not be divisible except by the quantity, i.e. if you can deliver part of one unit separately, it needs to be a separate item
  - Thus, a delivery must contain a whole number quantity of each line item delivered*
- Supplies should generally NOT be listed as a “lot”, “batch” or similar terms
- Service contract line items must correlate to the Statement of Work (SOW) or Performance Work Statement (PWS) tasks
  - DO NOT lump all the work under one line item while specifying separate deliverables in the SOW/PWS or some other type of attachment
  - DO NOT lump a bunch of similar tasks for different customers together as one line item with informational sublines for funding

* Bulk products that are delivered by weight or volume, such as gasses and liquids, are the notable exception. It is not inherently improper to deliver and pay for 6.5 kilograms on a line item for 13.5 kilograms, provided that the delivery provisions allow for partial deliveries. It is always improper to have a line item for 1 Lot, 1 Job, 1 Kit, 1 Batch, or something similar and expect more than one delivery or payment.

Example of Line Items with More Than One Source of Funding

- Nachos 1 each
  Shared by Joe, Mark, Diane, and Carol
- Beef burrito 1 each
  Joe
- Chicken Chimichanga 1 each
  Mark
- Quesadilla
  - Diane 1 each
  - Carol 1 each
- Sangria 1 pitcher
  Shared by Joe, Mark, and Carol

Single line item with multiple funding sources

Separate subline items for funding sources

Single line item with multiple funding sources

Line item and subline item numbers used to describe multiple deliverables with multiple sources* of funding

0001	Nachos	1	each
	000101 Joe*, 000105 Mark*, 000103 Diane*, and 000104 Carol*		
0002	Beef burrito	1	each
	Joe		
0003	Chicken Chimichanga	1	each
	Mark		
0004	Quesadilla		
	0004AA Diane	1	each
	0004AB Carol	1	each
0005	Sangria	1	pitcher
	000501 Joe*, 000502 Mark*, and 000503 Carol*		

Line item and subline item numbers used to describe multiple deliverables with multiple sources of funding

0001 AN/DKT-61 Telemeters		
0001AA Navy	215	Each
0001AB Air Force	128	Each
0001AC SDAF	22	Each
0001AD FMS country 1	8	Each
0001AE FMS country 2	11	Each
0002 First Article Test	1	Lot
000201 Navy Funding		
000202 Air Force Funding		
000203 SDAF Funding		
000204 FMS country 1		
000204 FMS country 2		

10 Basic questions

1. What do we expect the contractor to deliver (list hardware, services, software, and data)?
2. Do we have a line item, sub-line item, or exhibit line item for each answer to #1? Do we have ACRNs assigned to each in section B? Do the totals by ACRN, CLIN, and line of accounting match?
3. When is each item due to be delivered?
4. How much will the contractor get paid?
5. Are there interim payments before delivery? If so, on what basis? How are billings apportioned across funding lines?
6. When will the contractor get paid? What documentation will be required to effect payment?
7. How is the timing of contract payments related to deliveries?
8. Is it clear in the line item structure and sections F - I how payments relate to delivery?
9. What constitutes acceptable performance? How is it measured?
10. How do the inspection and acceptance criteria in section E relate to the answers to 9?

If you can't affirmatively answer these questions,
do not sign the contract.

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Back Up

What is a Line Item?

- Line item definition*: An entry that appears on a separate line in a bookkeeping ledger or a fiscal budget.
- FAR Definition: “Line item” means the basic structural element in a procurement instrument that describes and organizes the required product or service for pricing, delivery, inspection, acceptance, invoicing, and payment. The use of the term “line item” includes “subline item,” as applicable.
- Using line items to describe things is a long standing and widespread practice
- Contract line items list products or services to be delivered under a contract
- Each line item can be assigned a number to facilitate reference
- Use of line items enables tracking assets to expenditures in a uniform way

**Oxford American English Dictionary (Online), Oxford University Press*

Subline items

- Subline Items
  - Subline items provide a way of organizing data for ease of administration
  - Line items and subline items can be characterized as either deliverable or informational
    - Deliverable line items denote what the contractor is supposed to deliver
    - Informational line items organize information applicable to the deliverables
  - Two informational line item use cases:
    - Parent line items to capture information common to many deliverables to avoid having to repeat it on each line item, such as the type of boots when the deliverable subline items are for different sizes
    - Informational subline item to identify parts of the deliverable for purposes of inspection or other administrative needs (e.g. contents of a kit)
    - DoD uses informational subline items to identify separate sources of funding for a single deliverable, e.g. first article test
  - Informational line items are never deliverable or billable

Subline items structured to identify parts of an item*

ITEM	SUPPLIES/SERVICE	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0003	Computer Workstation				
	(50 ea @ $2,061; $103,050 total)				
0003AA	CPU, 6.0 GHz, 8GB SDRAM	50	Each	$ 2,061.00	$104,122.00
	1GB Graphic Card				
	4TB SATA 30Gb/s				
	7200 RPM Hard Drive				
0003AB	Monitor, 17 inch Flat Panel	50	Each		NSP
0003AC	Keyboard and Mouse	50	Set		NSP
0003AD	Speakers	50	Set		NSP

* Delivery schedule and price shall be established for each identified part at the subline item level, not for the assembly at the contract line item level.

This is a good method for handling items that have components that are shipped in multiple shipments.

Example of an informational parent line item

Item 0001	QTY	Item Description Kodak Professional Portra 400 Film	Price	Total Price
0001AA	4 each	35mm 36 exposure	$ 6.99	$ 27.96
0001AB	5 each	120 size single box	$ 6.99	$ 34.95
0001AC	2 pack	120 size pro-pack	$33.99	$ 67.98
0002	1 each	Shipping and Handling	$ 5.99	$ 5.99
			Total	$136.88

Deliverable Sub-lines

Non-commercial services example
Fixed Price vs. Cost Plus

Item	Item Description	QTY	Unit Price	Total Price
0001	Perimeter Guard Services in accordance with Performance Work Statement dated 20 July 2016	12 Months	$233,688	$2,804,256

Item	Item Description	QTY	Unit Price	Total Price
0001	Perimeter Guard Services in accordance with Performance Work Statement dated 20 July 2014	12 Months		
		Estimated Cost		$2,664,000
		Fixed Fee		$ 125,000
		Total Estimated Cost and Fixed Fee		$2,789,000

Note that cost type line items do not have unit prices

Units of Measure

The Wrong Way

0001 LEGOs 1 Lot

Star Wars Death Star, X-Wing fighter, Millennium Falcon, and a bag of assorted bricks

The Right Way

0001	LEGOs	
0001AA	Star Wars Death Star	1 Kit
0001AB	X-Wing fighter	1 Kit
0001AC	Millennium Falcon	1 Kit
0001AD	Assorted bricks	1 Bag

Units of Measure

The Wrong Way

1.	Unmanned Aircraft	1 Lot
	Design, develop, test, and deliver four prototypes and support Government testing	

Note the inability to accept or pay for any performance prior to completion of entire effort. Also note the inability to assign any acquisition value to the aircraft.

The Right Way

0001 Unmanned Aircraft Prototypes	4 Each
0002 Non-recurring design and development	1 Lot
0003 Contractor Testing	1 Lot
0004 Maintenance Support for Government testing	6 Months
0005 Test Report	1 Each

Note that items 0002, 0003, and 0005 contemplate one delivery each, and on a fixed price contract would not result in any other payments except financing payments.

Use of Line Item Numbers in Contract Schedule Deliveries or Performance - Supplies

Quantity to be delivered					
	Days after award of contract				
Item	30	60	90	120	Destination*
0001	9	19	20	34	F123245
0002	70	64	62	38	WV1234
0003	39	33	35	35	N12345
0004	35	38	48	58	S12345

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Use of Line Item Numbers in Contract Schedule Inspection and Acceptance

Items 0001, 0004, 0005 – Inspection and acceptance are to be performed at the contractor's plant in accordance with the item inspection requirements set forth in attachment 1, XYZ Item Detailed Specification

Items 0002 and 0003 – Inspection and acceptance shall be performed at destination by the contracting officer's representative designated herein in accordance with the criteria in the quality assurance surveillance plan (QASP), attachment 2.

Item 0006 – Inspection of the item shall be performed at destination in accordance with standard supply procedures. Acceptance will be performed by the contracting office.

Use of Line Item Numbers in Contract Schedule Deliveries or Performance - Services

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Example – Services

ITEM	SUPPLIES/SERVICE	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0001	Task Order (TO) Management Purchase Request Number: HQ0102512345678 Purchase Request Line Item Number: 0001AA Product Service Code: D306 Firm Fixed Price ACRN: AA	15	Months	$ 1,000.00	Price: $15,000.00
0002	Data Standard Development Purchase Request Number: HQ0102512345678 Purchase Request Line Item Number: 0001AB Product Service Code: D306 Cost Plus Fixed Fee ACRN: AA	1	Lot		Estimated Cost: $368.964.00 Fixed Fee $16,500.00
0003	Data Map Updates Purchase Request Number: HQ0102512345678 Purchase Request Line Item Number: 0001AC Product Service Code: D306 Cost Plus Fixed Fee ACRN: AA	5	Each		Estimated Cost: $1,278,951.00 Fixed Fee $81,950.00