WHY ADR IS SMART BUSINESS

PANEL DISCUSSION

April 17, 2001

WHY ADR IS SMART BUSINESS

- **Corporate Contractor Perspective** – Bob Ingersoll, Vice President Contracts and Pricing, Boeing

- **Wall Street View** – Wolfgang Demisch, Managing Director, Dresdner Kleinwort Wasserstein

ADR – Tools for a Successful Settlement

- **Scheduling Analysis** – Greg Crider or Jennifer Oen, Directors at Peterson-Barrington
- **Independent Pricing in ADR** – Brian Hammer, Chief Financial Officer, Tucker Alan Inc.

Alternative Dispute Resolution

The Boeing Company

Robert J. Ingersoll
Vice President,
Contracts & Pricing
The Boeing Company

BOEING

Alternative Disputes Resolution

- *Why ADR?*
- *Gunship Experience with ADR*
- *Boeing's Commitment*
- *Key elements for ADR Success - Using ADR for a Win-Win*

Why ADR?

- No perfect contracts - unforeseen problems occur
- ADR Facilitates open information exchange
- Involves stakeholders - increases buy-in
- Focuses on facts
- Provides structured environment/process
- Reduces adversarial nature of conflict management
- Dispute cycle time reduction and cost avoidance
- Improves long-term partnering

Gunship ADR

The ADR approach facilitated moving long standing dispute issues to resolution...

- **10 years in “pouring cement” around our respective positions**
- **Affordability, cycle time and the relationship were blurred by past attitudes and litigation process**
- **3 years in FCC - once ADR identified, settlement reached in 6 months**

Why ADR Worked

- Participation by high level executives on both sides with limited prior program ties
- Environment of mutual respect & dedication at program management level
- Well-developed document base existed
- Availability of key program personnel
- Open exchanges by all involved
- Knowledgeable, well respected & truly neutral mediator

Boeing's Commitment

- Boeing ADR Agreements:
  - Initial company to execute Air Force "Overarching Agreement for ADR"
  - CPR pledge agreement signed
- Boeing working to deploy ADR approaches company-wide
  - Targeted for application on all programs
  - Engaging suppliers in use of ADR
  - Using ADR for employee/company disputes
  - Process Councils have a Stakeholder responsibility

Key Elements for ADR Success

- Commitment from Leadership
- Re-enforcing attitude & behavior
- Take the right issues into ADR
- Training and awareness
- Keep the ADR process simple (user friendly)
- Fund & resource the process
- Promote common sense resolution
- Success: win-win resolutions!

Wall Street View

Wolfgang Demisch, Managing Director,
Dresdner Kleinwort Wasserstein

Dresdner Kleinwort Wasserstein

Air Force/NDIA ADR Conference: *Why ADR Is Smart Business*

The Expert's Role in the ADR Process

Jennifer Oen, Director
Greg Crider, Director

Peterson Barrington Consulting

San Antonio, TX - April 17, 2001

Peterson Barrington
The Construction and Government Contracts Unit of Navigant Consulting

Key Elements for ADR Success

- Adequate Preparation
- Effective Presentation
- Accurate Litigation Risk Assessment

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Adequate Preparation

- **Schedule Experts:**
  - Analysis of issues
  - Identification of impact ("causal link")
  - Assessment of responsibility for delay
- **Cost Experts:**
  - Quantification of damages

Objective, independent assessments of

- ***causation***
- ***schedule impact***
- ***financial impact***

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Effective Presentation

- **Role of Schedule Expert**
  - Assessment of “As-Planned” schedule
  - Assessment of “As-Built” schedule
  - Identification of critical path
  - Analysis of issues
  - Assessment of responsibility for delay and disruption

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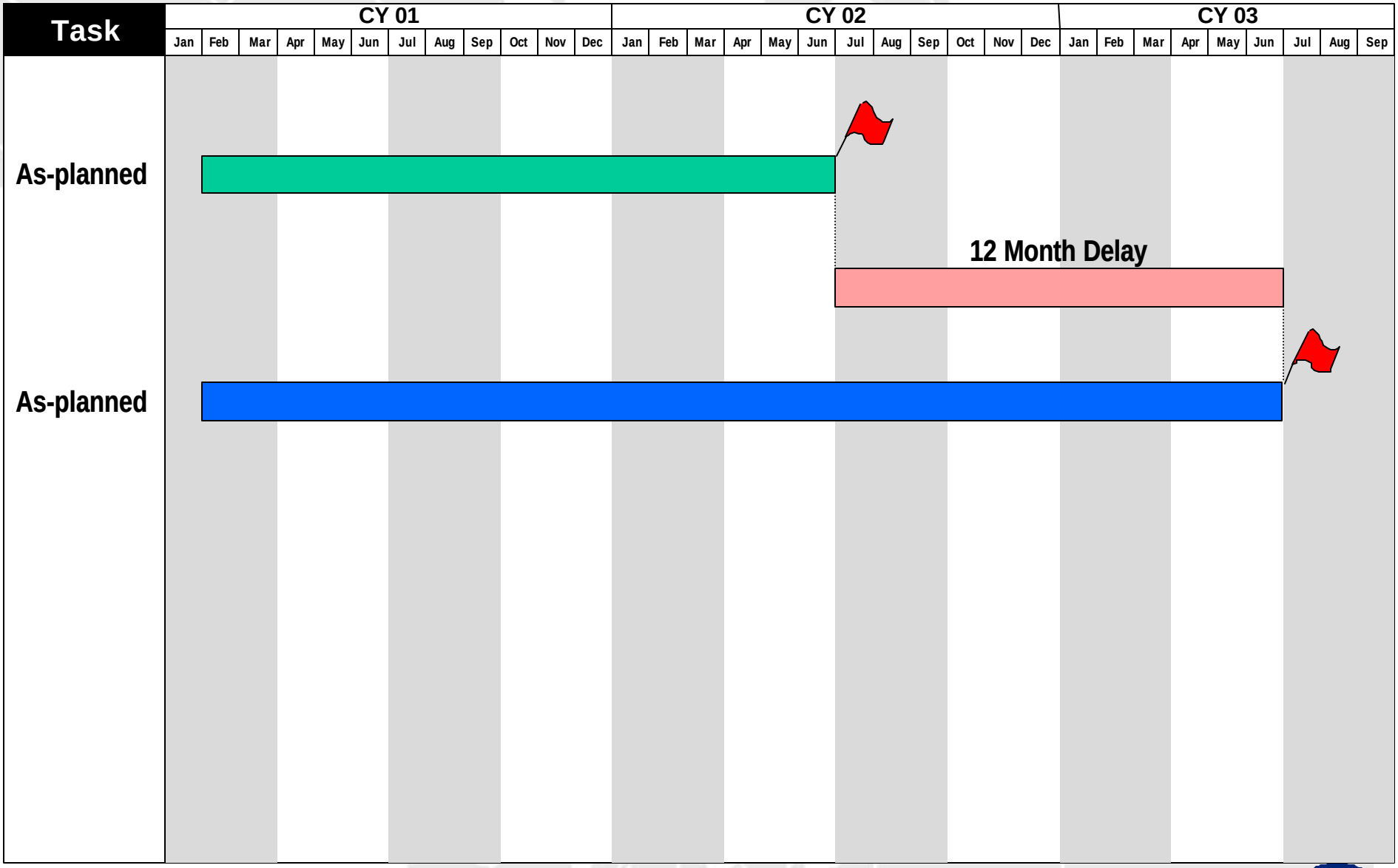
Schedule Expert's Role



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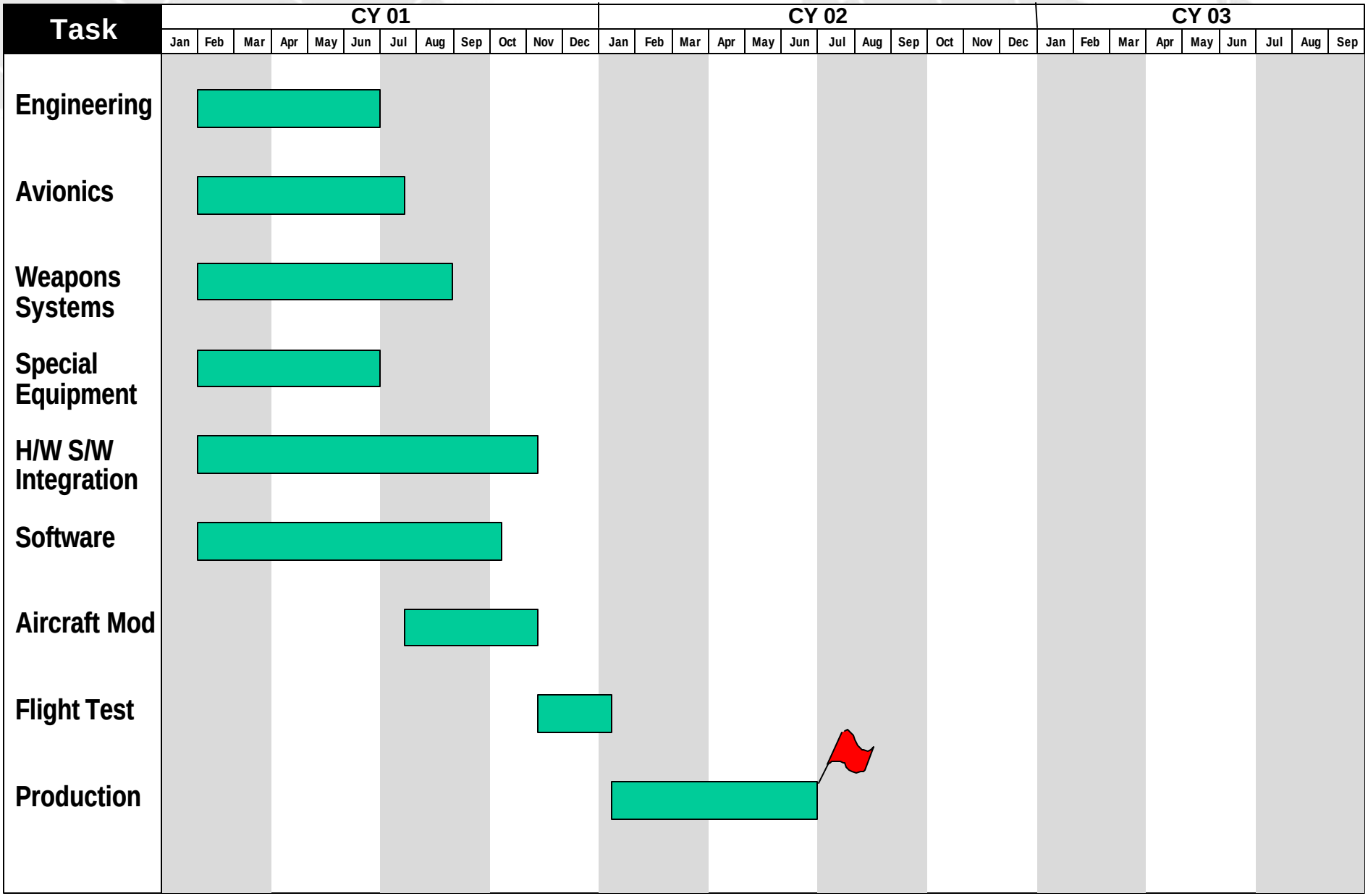
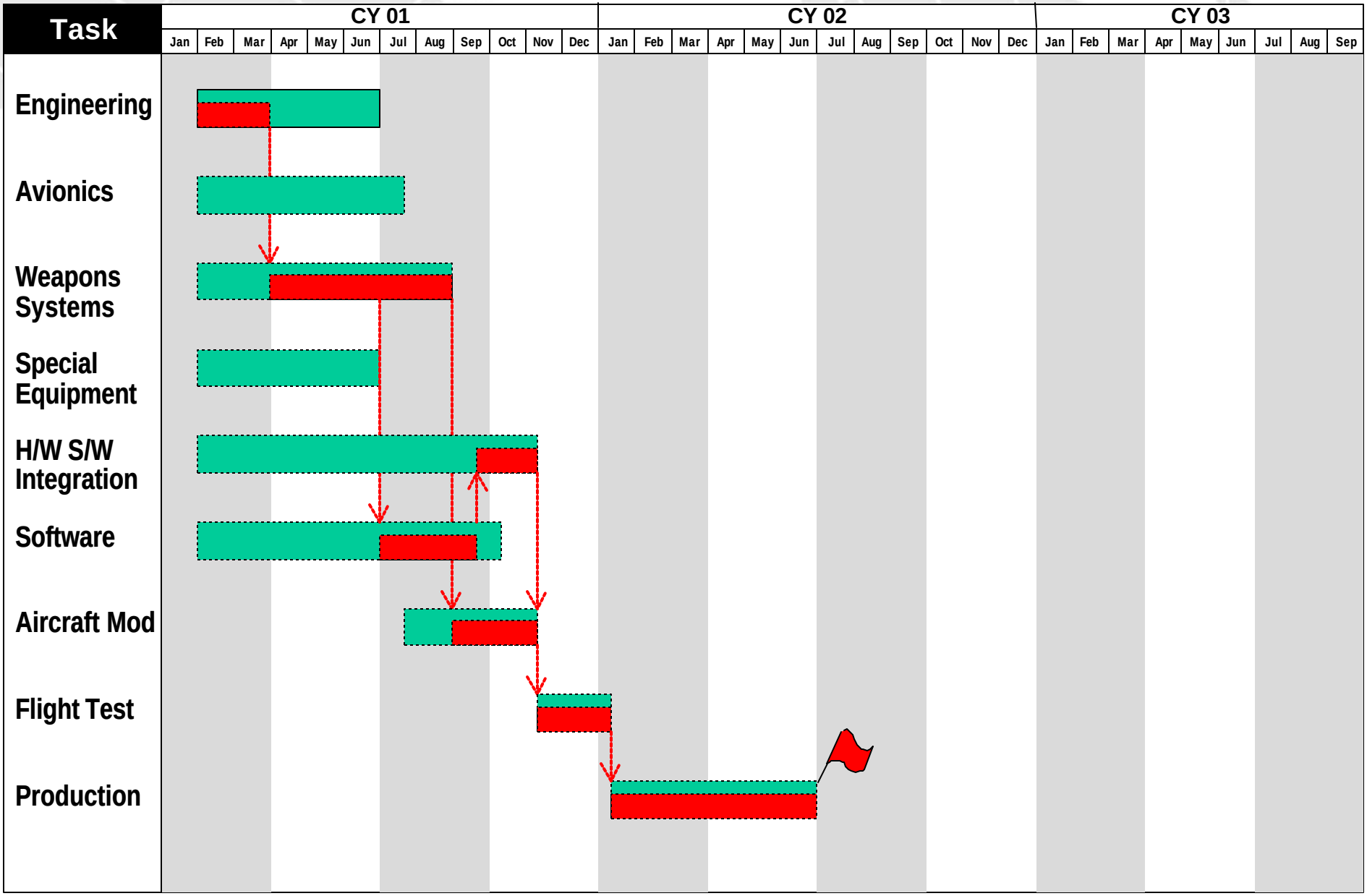
Schedule Expert's Role

As-planned



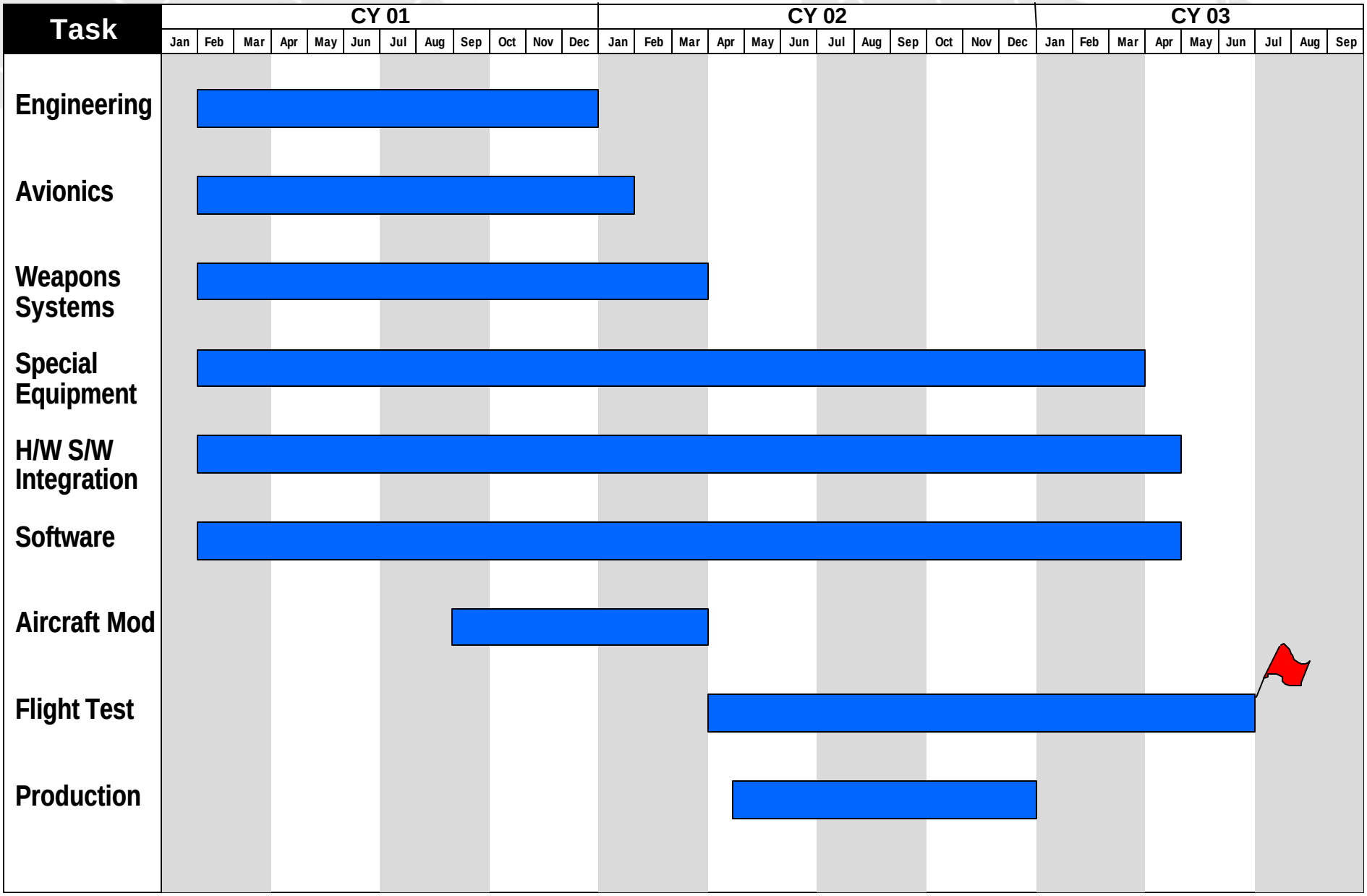
Schedule Expert's Role

As-planned Critical Path



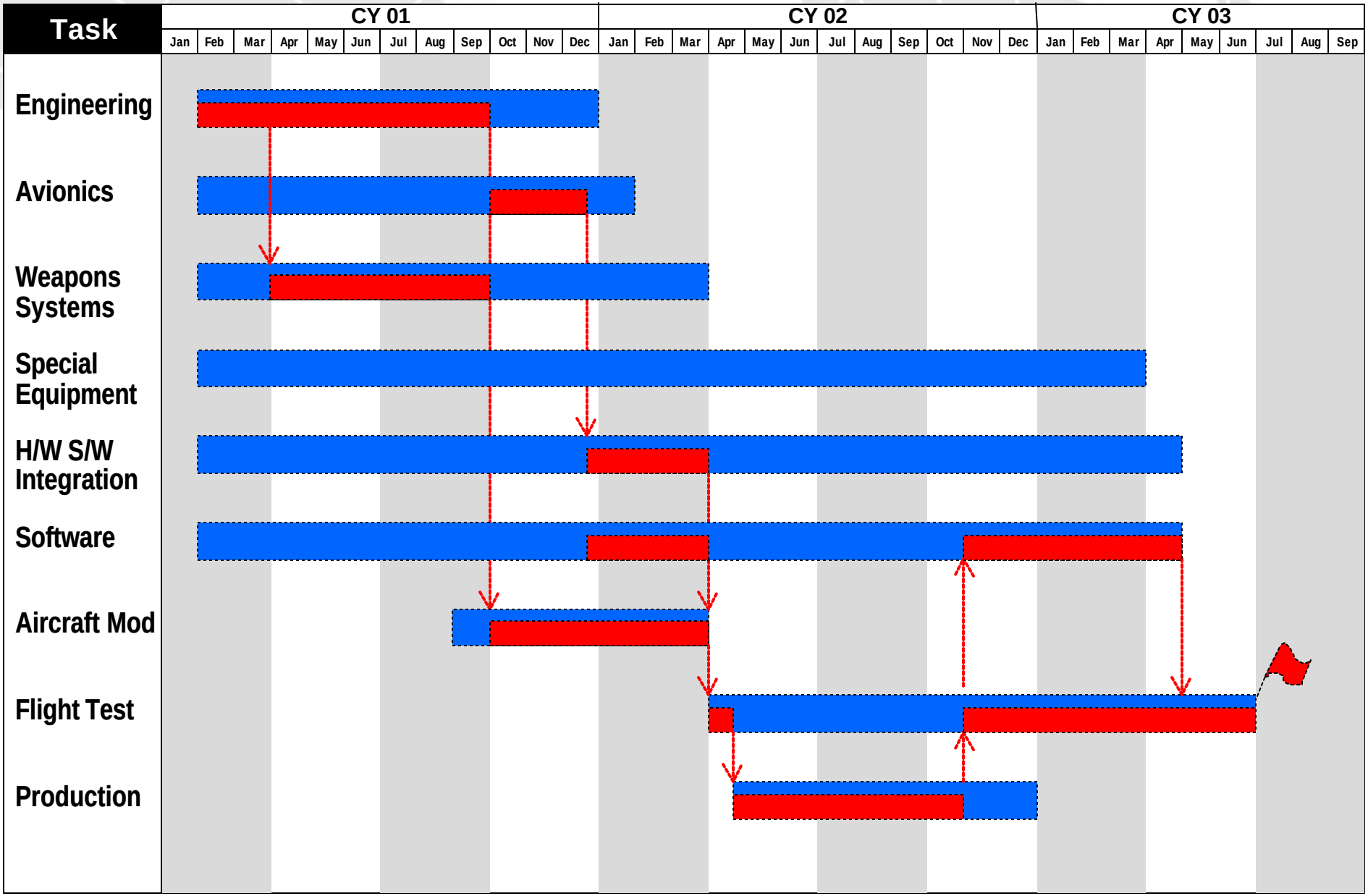
Schedule Expert's Role

As-Built



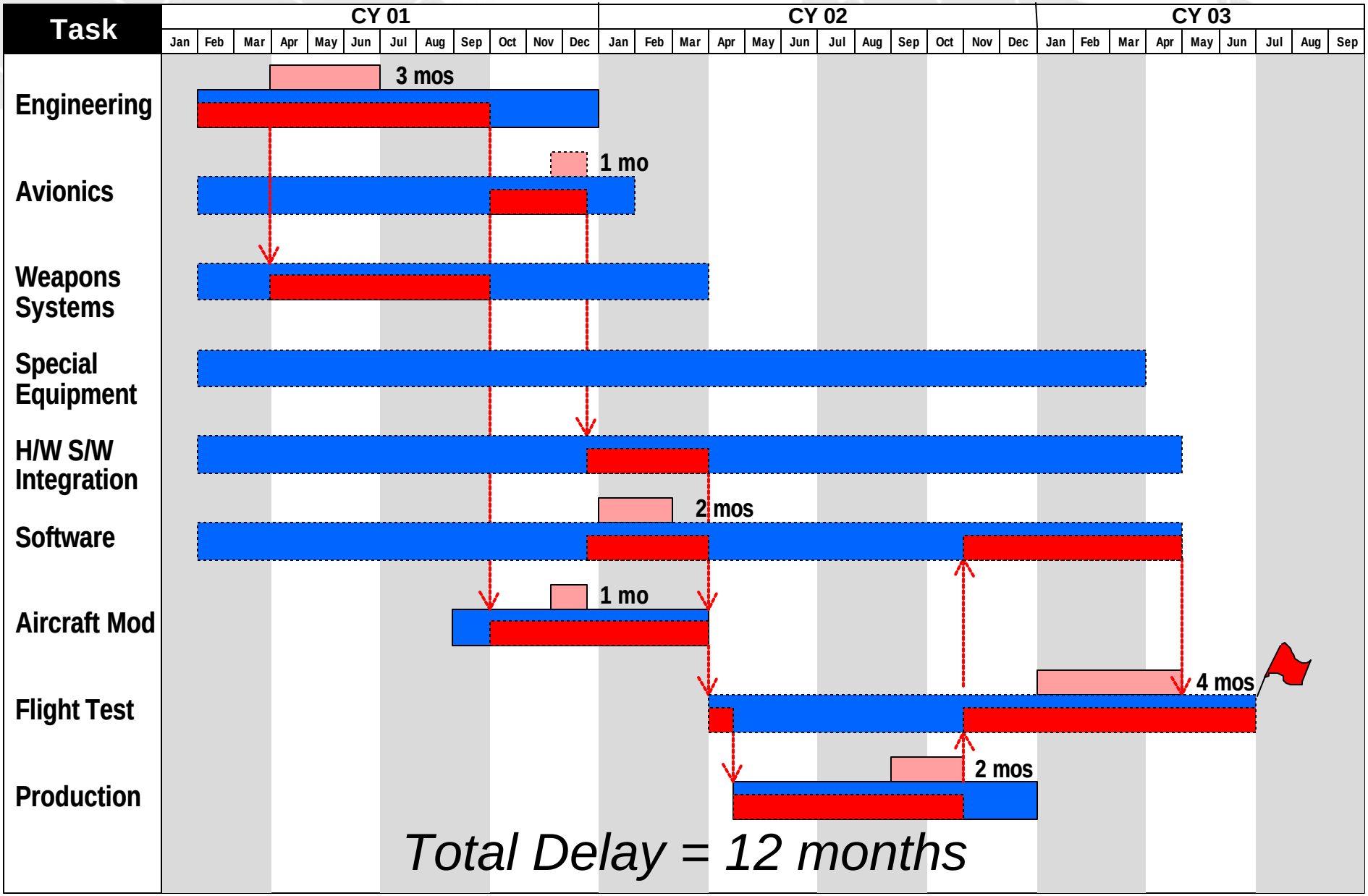
Schedule Expert's Role

As-Built Critical Path



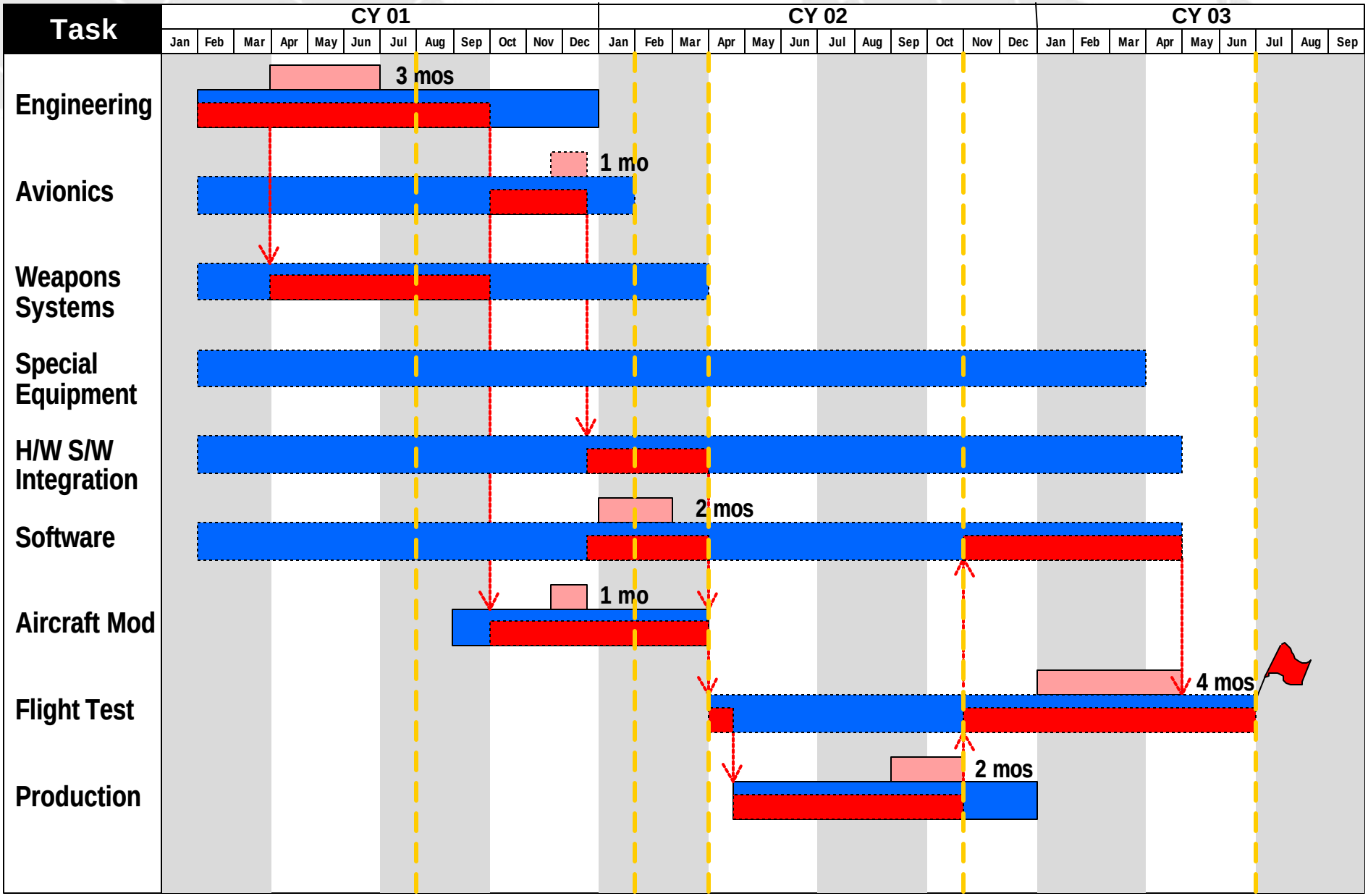
Schedule Expert's Role

As-Built Delay Quantification



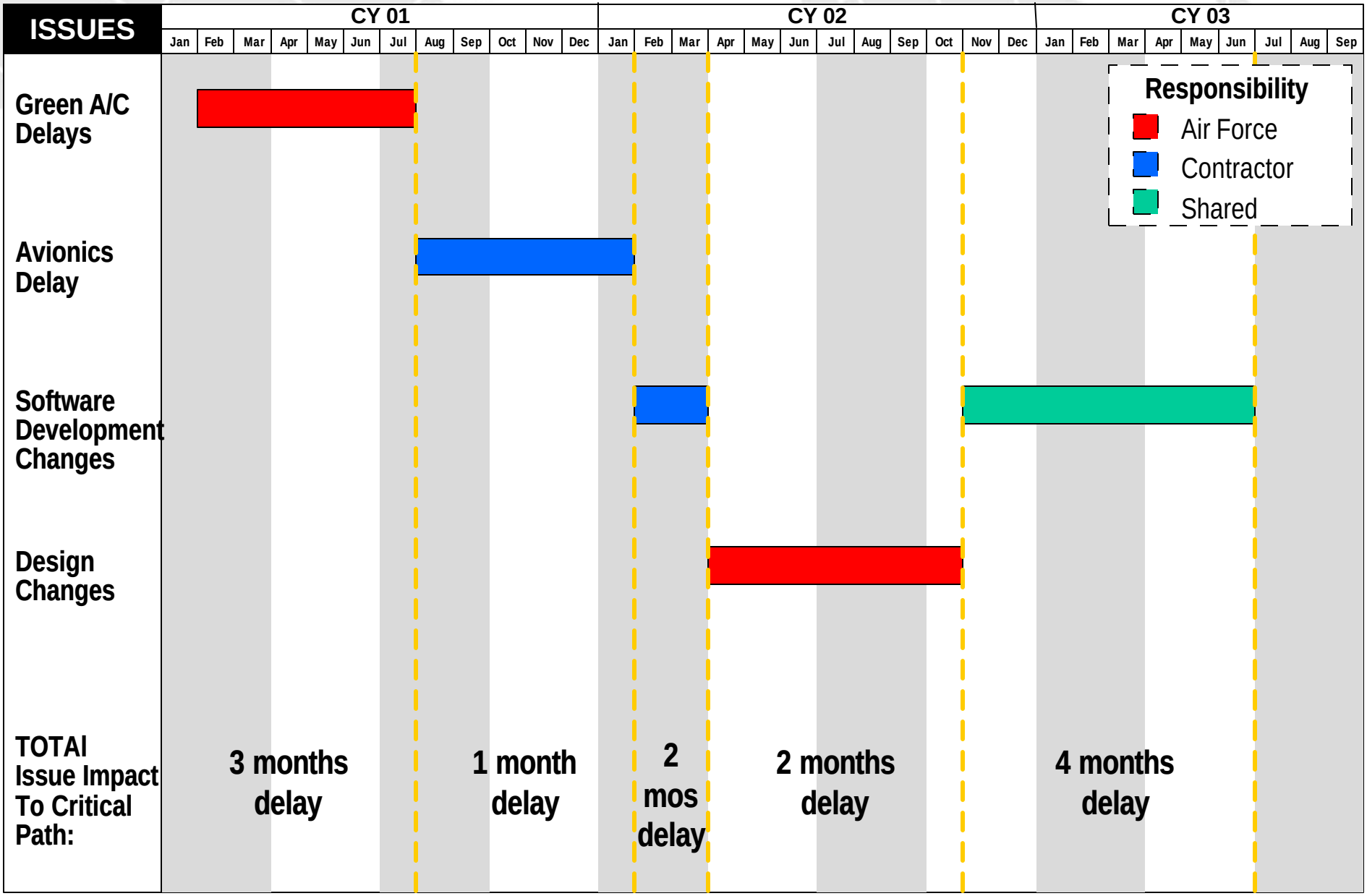
Schedule Expert's Role

As-Built Delay Quantification



Schedule Expert's Role

Issue Analysis and Causation



Accurate Litigation Risk Assessment

- Combined effort of company, counsel and outside experts
- Realistic assessment of potential litigation risk associated with each issue/cause of action
  - Legal/entitlement risk
  - Quantum/pricing risk
- Basis for making/assessing settlement offers

Peterson Barrington

Alternative Dispute Resolution

Brian M. Hammer

Chief Financial Officer

TUCKER ALAN INC.

Topics

- What Makes ADR Successful?
- How Does An Independent Assessment Benefit The ADR Process?
- Improving Linkage Between Entitlement, Causation And Pricing
- Some Differences Between Litigation And ADR

What Makes ADR Successful?

- Both Parties Willing To Have Open Discussions
- Decision Makers Are Motivated And Have Authority To Settle Case
- Sufficient Time At ADR For Each Side To Tell Its Story
- Proper Focus On Big Ticket Issues
- Neutral Mediator / Arbitrator
- Proper Timing

Using Independent Assessments In The ADR Process

- Independent Parties Can Include
  - Internal "Non-Advocate" Review Teams
  - Outside Counsel
  - Outside Consultants
- Perform Assessments Prior To ADR
- Provide An Impartial View Of Case Strengths And Weaknesses To Decision Makers

What Do Independent Parties Bring To The Process?

- ADR Experience
- An Understanding Of Litigation Risks / Likely Outcomes
- Ability To Communicate Complex Issues In Simple Terms
- Alternative Approaches And Solutions
- Independence That Can Help Break Through Communication And Trust Issues

Elements Of A Claim

Entitlement → Causation → Pricing

Linkage Between Entitlement, Causation And Pricing

- Entitlement And Causation Determine Appropriate Pricing Methodology(ies)
  - Total Cost, Modified Total Cost, Discrete, Other
- Effort Should Be Balanced Between Entitlement, Causation And Pricing Issues
- Don’t Waste Time On Issues With Little Or No Financial Impact

The Two-Pronged Approach To Improving Linkage

- Two-Pronged Approach
  - Price Issues Identified During The Legal Review
  - Quantify Cost Growth By Function, Task, Time And Determine Causes Of Growth
- Perform Overall Reconciliation Of Cost Growth, Claimed Costs And Unclaimed Costs By Element
- Don’t Miss The “$500 Million” Gorilla

Some Differences Between Litigation And ADR

- Litigation "Filters" Communications
  - ADR Allows Decision Makers To Hear Directly From Attorneys, Fact Witnesses And Experts
- Litigation Discovery Is Formal And Restrictive
  - ADR Often Allows Subject "Experts" To Discuss And Resolve Issues Face-To-Face
- Analyses Fully Supported By Time Of Trial
  - ADR Often Takes Place "Mid-Stream"
  - Requires Flexibility On Both Sides

US AIR FORCE
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