



BARDA Industry Day Boston

Contract Types

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FAR Based Contracting Vs. Non FAR Based Contracting



FAR BASED CONTRACTING

PART 16 – Types of Contacts



General



In general, contract types are grouped into two broad categories:

1. Fixed-Price

- Government pays the Contractor the agreed price

2. Cost Reimbursement

- Government pays the Contractor's actual, allowable, and allocable costs



Fixed Price

- Firm Fixed Price
- FP - Economic Price Adjustment
- FP - Incentive
- FP – Prospective Price Redetermination
- FCP – Retrospective Price Redetermination
- FFP – Level of Effort Term

Cost Reimbursement

- Cost Sharing
- Cost Plus Incentive Fee
- Cost Plus Award Fee
- Cost Plus Fixed Fee

IDIQ

IDDQ



Factors in Selecting Contract Types (FAR 16.104)



- Price Competition
- Price Analysis
- Cost Analysis
- Type and Complexity of Requirement
- Urgency of the Requirement
- Period of Performance
- Contractor's Technical Capability
- Contractor's Accounting System
- Concurrent Contracts
- Extent and Nature of Proposed Subcontracting
- Acquisition History



Contract Type Risk



High

Contractor

Low

FFP

CPFF

Low

Government

High



NON-FAR BASED CONTRACTING

Other Transactions



HHS's Other Transaction Authority



- In PAHPA,* the Secretary of HHS was granted new authority called Other Transactions. This authority previously has been granted to DoD, DoE, DHS, and others.
- OT's name comes from the statute definition
 - “Transactions other than procurement contracts, grant and cooperative agreements”

* Pandemic and All Hazards Preparedness Act of 2006



HHS's OTA Continued



- Two types have been generally defined and used
 - Other Transactions for Research (OTAR)
 - Stimulate advancement in bio-medical products and countermeasures
 - Other Transactions for Prototypes
 - Alternative to the FAR acquisition instrument
- At this time, HHS Office of the Assistant Secretary for Preparedness and Response (ASPR) Office of Acquisition Management, Contracts & Grants (AMCG) will be using OTs only for Research



Solicitation Procedure



Broad Agency Announcements (BAAs)

- Tech Watch
- White Paper/ Quad Chart
- Full Proposal



Not for Everyone



- Designed for use with nontraditional government contractors
 - CAS compliance
 - IP rights
- Cost sharing, to the maximum extent practicable, will be required.
- Each OTAR > \$5M shall include a clause that provides for the Comptroller General to examine records of any party to the agreement or any entity that participates in the performance of the OTAR.
- Any proposed OTAR > \$20M requires written determination by the HHS Senior Procurement Executive (SPE) that the use of the OTAR is essential to promoting the success of the project.



Not for Everyone



Traditional FAR based contracting is the norm. Special conditions must exist to make OTARs a viable option.



OTs Exempt from Laws/Regulations



- Generally not subject to federal procurement and assistance laws and regulations governing procurement contracts, grants and cooperative agreements
 - OTAR is not subject to Bayh-Dole Act. However, OTA Contracting Officer may still include Limited-Rights Data clause (FAR 52.227-14 Alternate II) if appropriate.



Benefits of OTARs



- The process is viewed as a win-win negotiation because OTARs:
 - Allow for Generally Approved Accounting Procedures rather than Government cost accounting standards
 - Allow for commercially friendly intellectual property provisions
 - Handling of patents
 - Handling of technical data



Benefits Continued



- Allow for the use of traditional government contractor's IR&D as investment funds (cost share)
- Allow partnering between AMCG and “teams” of entities generally called consortium
- Allow for flexibility in management of agreements
 - Innovative business arrangements
 - Open lines of communications among “team”
 - Industry's internal management
- Allow for supply chain relationships
 - Long-term strategic relationships with key suppliers



QUESTIONS?

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