Contract Types

October 2012

Eric Steinberg
eric.steinberg@hhs.gov
Contract Specialist

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
• Minimum and maximum quantity limits are specified in the basic contract as either number of units (for supplies) or as dollar values (for services)
• Delivery orders (for supplies) or task orders (for services) awarded against a basic contract for individual requirements.
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 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
Not for Everyone

• Designed for use with nontraditional government contractors and consortiaums
  – Generally Accepted Accounting Practices
  – Intellectual Property Negotiable
• Cost Sharing preference
• Fee may not be allowed

• 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.

• Other federal laws are applicable:
  
  — Fiscal laws
  
  — Laws of general applicability, e.g., Civil Rights Act and Clean Air and Water
QUESTIONS?

eric.steinberg@hhs.gov