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GovCon 101

Types of Government Contracts: *The Basics*

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Course Overview

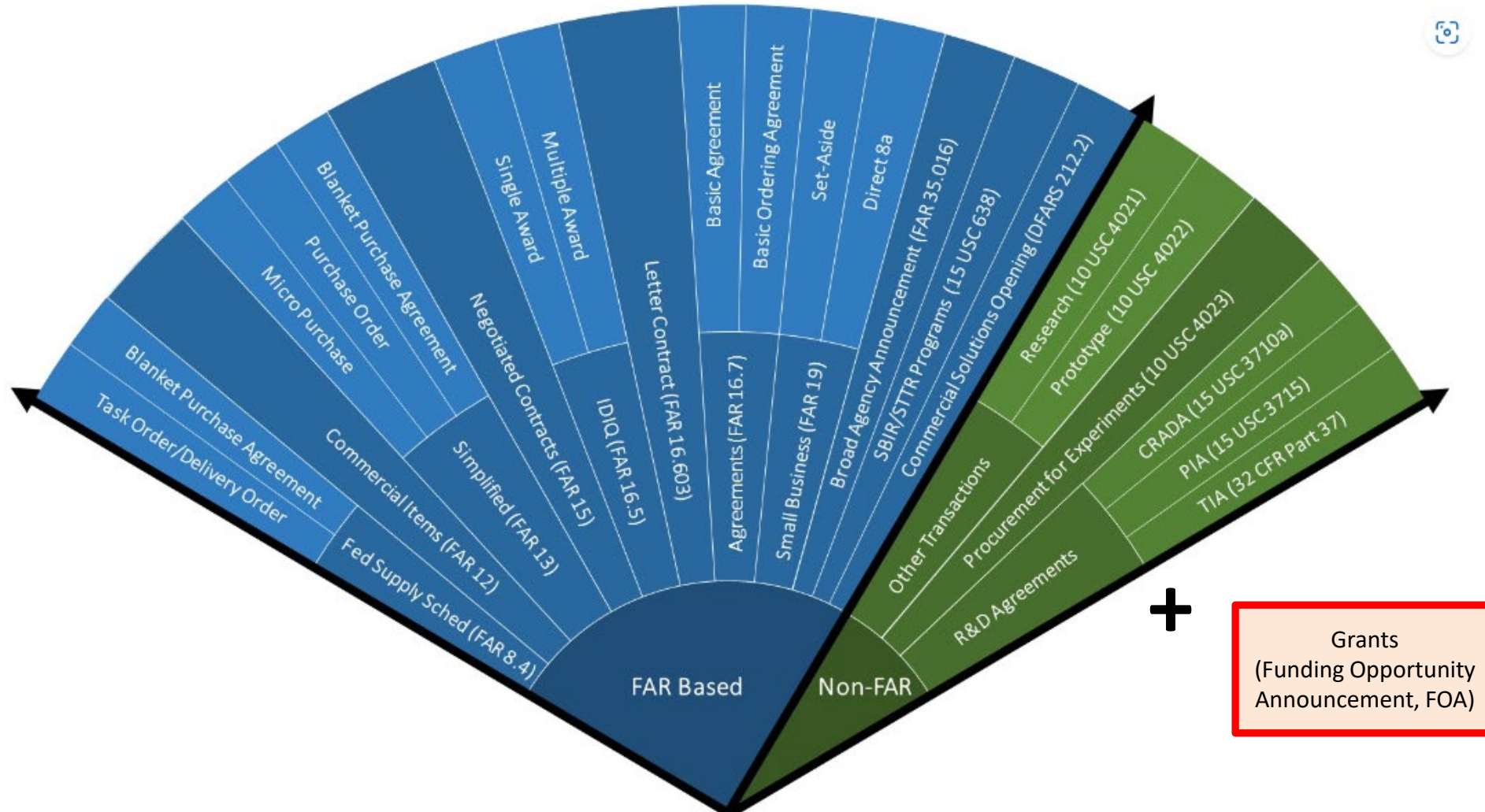
How familiar are you with all 24 FAR and non-FAR basic contracts?

- As industry, do we form a clear “picture” in our minds of what those 24 approaches mean to our organization, e.g., acquisition opportunity development or contracting for a subsequent win?
- On the Government side of the acquisition, are we aware of just how flexible the approaches are, while also aware of the risks that come with that flexibility?

To help answer these questions (and others), we provide this survey of 24 FAR and non-FAR based contract/agreement strategies and approaches.

The “Contracting Cone” – Scope of This Session - Survey

Addresses both FAR and non-FAR, diagram courtesy of Defense Acquisition University



Points of Reference

In this short period, we provide you a short and broad survey of the 24 FAR and non-FAR based contract/agreement strategies and uses

We will use selected guidance references from USC, CFR, FAR, DFAR, NDAA, etc.

- US Code
 - General and permanent federal statutes of the US. 53 titles (Titles 1–54, excepting Title 53, it being reserved for small business)
 - Published every six years by the House of Representatives, and cumulative supplements published annually ([OLRC Home \(house.gov\)](http://www.house.gov))
- Code of Federal Regulations
 - General and permanent regulations published annually in the Federal Register by the executive departments and agencies of the federal government
 - The CFR is published in an unofficial format online on the Electronic CFR website, which is updated daily ([Electronic Code of Federal Regulations \(eCFR\)](http://www.ecfr.gov))
- FAR [Part 1 - Federal Acquisition Regulations System | Acquisition.GOV](http://www.acquisition.gov)
 - DFAR, NFS (etc.) – Agency Specific Supplements
 - E.g., Is it FAR or an Agency specific supplement, e.g., DFAR for DoD, or NFS for NASA, etc. ...or is it not even FAR based?
- NDAA – National Defense Authorization Act (often NDAA, which is law, directs initial Acquisition Procedure changes – typically starting in DoD, and blazing their way into FAR over time)

Look it up! (Use the FAR! – I did not include all the wording but synopsised it)

Survey Discussion Topics...Each of 24 Areas

Intent & Authorities for Use

Contract or Agreement Types Allowed

Restrictions

Common Applications

Pros & Cons (From the Government Procurement Point of View)

Small Print!

Details are included on the slides for your reference in the future - some details will not be fully discussed in the 1-hour running time of this specific presentation

Federal Supply Schedules – FAR Part 8.4

Task Order/Delivery Order & Blanket Purchase Agreement

Intent & Authorities for Use

- FAR Part 8.4, Federal Supply Schedules, and FAR Part 38, Federal Supply Schedule Contracts, govern the operation and use of the schedule program
- Federal Supply Schedules provide agencies with a simplified ordering process for obtaining **commercial supplies and services** at volume buying prices
- Schedules have **negotiated fixed-prices for products and services** each contractor proposes to offer under the schedule (or hourly-rates for services), and then publishes the prices on the GSA Schedules e-Library ([Welcome to GSA eLibrary](#))
- Agencies can place Task Orders or Delivery Orders under GSA Federal Supply Schedule for required products or services. Additionally, agencies can establish Blanket Purchase Agreements (BPAs) under all schedule contracts
- **Task Order/Delivery Order:** each schedule contains information needed by agencies to place orders directly with schedule contractors
 - A Task Order is issued for the performance of tasks/services
 - A Delivery Order is issued for the delivery of products/supplies
- **Schedule Blanket Purchase Agreement (BPA)**
 - Agencies can establish a Schedule BPA to simplify the acquisition of recurring needs for services or products on federal supply schedules
 - The Schedule BPA might cover a single product or service, or multiple supplies or services the contractor might have on several different schedules
 - BPAs may be established with a single schedule contractor or with multiple schedule contractors for the same supplies or services (Multiple-award BPAs are preferred)

Restrictions

- Cannot use cost-type contracts
- Requires best approach determination and finding for actions that meet threshold

Common Application

- Commercial products and services
- Information Technology (IT) product and services
- Health IT services and solutions
- Cyber services and solutions
- Cloud services and solutions
- Software licenses
- Telecommunications and wireless services

Pros & Cons

Pros	Cons
GSA streamlined procedures reduce administrative burden / procurement lead time	Limitation of FFP or T&M pricing may not be appropriate / suitable to complex requirements
Can negotiate further price discounts from established schedule rates increases cost avoidance	GSA Schedule offering of only commercial services and products reduces flexibility in acquiring capabilities
Pre-negotiated prices determined fair and reasonable reduces procurement lead time	Standard schedule commercial rights and licenses increases burden on government to ensure specialized rights are explicit
Ability to customize terms and conditions increases flexibility to procure supplies and services	
Access to pre-vetted, qualified contractors reduces performance risk in execution	
GSA streamlined procedures provides opportunity to quickly meet socioeconomic goals	

Acquisition of Commercial Items – FAR Part 12

Intent & Authorities for Use

- **Supplies and services meeting the definition of a commercial item at FAR Part 2.1 may be acquired using the streamlined procedures in FAR Part 12**
 - Non-Developmental Item (NDI) and Commercial Off-the-Shelf (COTS) are considered subsets of commercial items
- **DFARS Part 212.102(a)(iii) further expands the application of commercial item procedures to supplies and services from non-traditional defense contractors and,**
 - When appropriate, from business segments of traditional contractors meeting the definition of non-traditional defense contractor, for purposes of enhancing defense innovation and investment and encouraging nontraditional vendors to do business with the government
 - As defined in 10 U.S.C. Section 2302, a **non-traditional defense contractor: an entity not currently performing and has not performed, for at least the one-year period preceding the solicitation....any contract or subcontract for the DoD subject to full coverage (\$50M currently) under the cost accounting standards (Section 1502 of Title 41)**
 - Examples nontraditional defense contractors:
 - A small business exempt from CAS requirements
 - A contractor who exclusively perform contracts under commercial procedures
 - A contractor who exclusively performs FFP contracts with adequate price competition
 - A contractor who performed less than \$50 million in CAS covered efforts during the preceding cost accounting period
 - A commercial item determination is not required when commercial item procedures are applied to procure supplies and services from non-traditional defense contractors, nor does applying commercial item procedures for such procurements mean an item is commercial

Restrictions

- Commercial item determination required (Unless Non-Traditional Defense Contractor)
- Contract types limited to Firm-Fixed-Price (FFP), Fixed-Price with Economic Price Adjustment (FPEPA), and Time-and-Materials (T&M)

Common Application

- COTS Defense Business Systems
- COTS solutions and technologies
- Commercial products and services
- Products and services provided by non-traditional defense contractors
- IT products and services
- Health IT services and solutions
- Cyber services and solutions
- Cloud services and solutions
- Software licenses
- Telecommunications and wireless services
- Mobile solutions

Pros	Cons
Commercial market pricing data reduces administrative cost and procurement lead time	Inability to tailor to unique government requirements (e.g., product customization) reduces flexibility for complex acquisitions
Use of streamlined procedures for commercial technologies provides opportunity for acquisition programs to deliver capability quickly	Limitation of FFP, fixed-price with economic price adjustment (FPEPA), or T&M pricing may not be appropriate or suitable for complex requirements
Streamlined commercial procedures and terms and conditions reduces procurement lead time	Standard commercial rights and licenses increases burden on government to ensure specialized rights are explicit
	May require integration of commercial technologies into the larger program technical baseline

Simplified Acquisition Procedures – FAR Part 13

Blanket Purchase Agreement/Purchase Order/Micro-Purchase (Inclusive of next 2 slides)

Intent & Authorities for Use

- The purpose of these simplified procedures is to provide procedural discretion and flexibility, so commercial items in this dollar range may be solicited, offered, evaluated, and awarded maximizing the efficiency and economy, and minimizing burden and administrative costs for both the Government and industry
- FAR Part 13 provides streamlined processes to acquire supplies and services, including construction, research and development, and commercial items, for which the aggregate amount does not exceed the simplified acquisition threshold (\$250k, + see FAR Part 2.101)
 - If the contracting officer reasonably expects, based on the nature of the supplies or services sought and on market research, offers will include only commercial items; FAR Part 13.5 **also** provides simplified procedures for amounts greater than the simplified acquisition threshold (\$250k) but not exceeding (including options) \$7.5 million, **or**, \$15 million, if Head of Agency has determined items are in support of a contingency as described in Part 13.500(c)
 - ...are to be used in support of defense against or recovery from cyber, nuclear, chemical, or radiological attack, or requests by State or USAID for international disaster assistance, or in response to an emergency or major disaster
- When acquiring commercial items using these procedures, the requirements of FAR Part 12 apply subject to the order of precedence provided at 12.102(c). This includes use of the provisions and clauses in Subpart 12.3

Simplified Acquisition Procedures – FAR Part 13

Blanket Purchase Agreement

Additional Intent & Authorities for Use

- A BPA is a simplified method of filling repetitive needs for open market supplies and services below the Simplified Acquisition Threshold (SAT)
 - Open market means items not available from required sources of supply, such as GSA schedule contracts, outlined in FAR Part 8.002
- BPAs can be single award or multiple award. Multiple award are preferred
 - Procedures to establish and place orders against BPAs are described at FAR Part 13.303 and DFARS Part 213.303

Restrictions

- Requirement must not be met through FAR Part 8
- Must meet Simplified Acquisition Threshold requirements

Common Application

- All types of supplies and services, to include construction
- Software licenses
- IT software and products
- Research and development
- Engineering services
- Special studies

Pros & Cons

Pros	Cons
Opportunity to combine repetitive purchase orders under a BPA reduces procurement lead time and administrative costs	Simplified acquisition threshold order limitation reduces flexibility to acquire large scale orders
Establishing agreements with multiple vendors maintains competition and reduces cost, schedule, and performance risk associated with a single vendor source	
Streamlined BPA ordering procedures reduces procurement lead time	
Establishing unique terms and conditions, to include contract types, increases flexibility in acquiring services and products	
Increases flexibility to plan for anticipated purchases without immediate funding, no required minimum guarantee, or maximum ceiling	
Offers agency wide ordering through an established BPA increases flexibility to meet various or unique mission needs quickly	
No limitations on types of products or services increasing flexibility to meet unique agency needs	

Simplified Acquisition Procedures – FAR Part 13

Purchase Order & Micro Purchase

Purchase Order Intent & Authorities for Use

- Method to acquire open market supplies and services below the Simplified Acquisition Threshold (SAT) (\$250,000)
 - Open market means items not available from required sources of supply, such as GSA schedule contracts, outlined in FAR 8.002

Purchase Order Restrictions

- Requirement must not be met through FAR Part 8
- Must meet Simplified Acquisition Threshold requirements

Micro Purchase Thresholds (DoD Example, see individual Agencies for possible exceptions) – Common GPC buys, fast

GPC Micro-Purchases			
	Function	Threshold	Authority
1	Federal-Wide Open Market	\$10,000	FAR 2.101 , FAR 13.2
2	Construction subject to 40 U.S.C. chapter 31, subchapter IV, Wage Rate Requirements (Construction)	\$2,000	FAR 2.101 , FAR 13.2
3	Services subject to 41 U.S.C. chapter 67, Service Contract Labor Standards	\$2,500	FAR 2.101 , FAR 13.2
4	GPC Contingency (Inside U.S.)	\$20,000	FAR 2.101 , DFARS 213.270(c)(3) , DFARS PGI 213.201
5	GPC Contingency (Outside U.S.)	\$35,000	FAR 2.101 , DFARS 213.270(c)(3) , DFARS PGI 213.201

Purchase Order Common Application

- All types of supplies and services, to include construction
- All types of solutions and technologies
- Research and development (R&D)

Purchase Order Pros & Cons

Pros	Cons
Streamlined procedures reduces lead time to award and administrative costs	Simplified acquisition threshold order limitation reduces flexibility to acquire large scale orders

GPC Micro-Purchases			
	Function	Threshold	Authority
6	Federal-Wide Higher Education Open Market	\$10,000 or greater	Class Deviation 2018-O0018
7	GPC Convenience Checks (General – Unrelated to Contingency and Other Emergency Uses)	\$5,000	P.L. 115-91 , National Defense Authorization Act for Fiscal Year 2018, Sec. 806(b)
8	GPC Convenience Checks for Contingency and Other Emergency Uses (Inside U.S.)	\$10,000	P.L. 115-91 , National Defense Authorization Act for Fiscal Year 2018, Sec. 806(b)
9	GPC Convenience Checks for Contingency and Other Emergency Uses (outside U.S.)	\$15,000	P.L. 115-91 , National Defense Authorization Act for Fiscal Year 2018, Sec. 806(b)

Contracting By Negotiation – FAR Part 15

Additional Intent & Authorities for Use

- FAR Part 15 describes the procedures for competitive and non-competitive open market acquisitions exceeding the Simplified Acquisition Threshold (SAT).
- Open market is defined as products or services not available from required sources of supply, such as GSA schedule contracts, outlined in FAR Part 8

Restrictions

- Requirement must not be met through FAR Part 8 – Required sources of supply or existing contract vehicle

Common Application

- All types of supplies and services, to include construction
- Defense Business Systems and enterprise resource planning systems
- Solutions and technologies
- IT software and products, to include Agile development
- IT systems
- Weapon systems
- Aircraft
- Ships
- Space systems
- Research & development
- Advisory and assistance services
- Engineering services
- Special studies

Pros & Cons

Pros	Cons
Uniquely negotiate terms and conditions, and pricing arrangements enables improved mission outcomes	Regimented processes traditionally have a longer procurement lead time to award and does not lend to quick delivery of capability
Use of competitive range or multi-step process provides time saving mechanism to negotiate with only highest rated vendor offers	Selection of appropriate terms and conditions, including data rights increases burden on Government to ensure terms are explicit
Use of change orders enables flexibility to adjust to urgent/unforeseen circumstances	Procedures require labor intensive and government resource support increasing administrative burden and costs
Provides opportunity to design and negotiate solutions that meet mission requirements from basic to large scale, complex acquisitions	
No funding thresholds exist providing maximum flexibility in acquiring capabilities for major acquisition programs	

Indefinite-Delivery Contracts – FAR Subpart 16.5

General IDIQ Contract/Government Wide Acquisition Contract/Multi-Agency Contract

Intent & Authorities for Use

- IDIQ contracts provide a method to order from existing agency indefinite-delivery contracts as well as contracts awarded by another agency (i.e., Government-wide Acquisition Contracts (GWACs) and Multi-Agency Contracts (MACs))
- **Government Wide Acquisition Contracts (GWACs)**
 - A GWAC is a task-order or delivery-order contract for information technology established by one agency for Government-wide use that is operated:
 - By an executive agent designated by the Office of Management and Budget
 - Under a delegation of procurement authority issued by the General Services Administration (GSA). The Economy Act does not apply to orders under a Government-wide acquisition contract
- **Multi-Agency Contracts (MACs)**
 - A Multi-Agency Contract (MAC) is a task-order or delivery-order contract established by one agency for use by Government agencies to obtain supplies and services, consistent with the Economy Act. MACs include contracts for information technology (established per 40 U.S.C. Section 11314(a)(2))
 - The Economy Act is applicable to orders placed under MACs, with the exception of MACs for information technology that are established per the Clinger-Cohen Act. The Economy Act applies when more specific statutory authority does not exist.
 - Examples of more specific authority are 40 U.S.C. §501 for the Federal Supply Schedules, and 40 U.S.C §11302(e) for GWACs
- Existing IDIQ contracts should be considered prior to establishing a new agency specific IDIQ vehicle
- Establishing an agency unique IDIQ contract may be an appropriate business decision to support a portfolio of programs with recurring needs
 - New IDIQs can be awarded to a single or multiple vendors (2 upcoming slides – after the next slide)

Intent & Authorities for Use Continued

- **Establishing a new GWAC or MAC** (FAR Part 17.502-1(b0), a business-case analysis must be prepared by the servicing agency and approved in accordance with the Office of Federal Procurement Policy (OFPP) – The analysis must
 - Considers strategies for the effective participation of small businesses during acquisition planning (FAR Part 7.103(u))
 - Details the administration (and roles) of the contract, including an analysis of all direct and indirect costs to the Government of awarding and administering the contract
 - Describes the impact the contract will have on the ability of the Government to leverage its purchasing power (e.g., will it have a negative effect because it dilutes other existing contracts)
 - Includes an analysis concluding that there is a need for establishing the multi-agency contract

Restrictions

- Scope determination required (work, period of performance, and ceiling)
- Fair opportunity (FAR Part 16.505(b)) required for a delivery-order or task-order exceeding micro-purchase threshold unless one of the following statutory exceptions applies:
 - The agency need for the supplies or services is so urgent that providing a fair opportunity would result in unacceptable delays
 - Only one awardee is capable of providing the supplies or services required at the level of quality required because the supplies or services ordered are unique or highly specialized
 - The order must be issued on a sole-source basis in the interest of economy and efficiency because it is a logical follow-on to an order already issued under the contract, provided that all awardees were given a fair opportunity to be considered for the original order
 - It is necessary to place an order to satisfy a minimum guarantee
 - For orders exceeding the simplified acquisition threshold, a statute expressly authorizes or requires that the purchase be made from a specified source
 - In accordance with section 1331 of Public Law 111-240 (15 U.S.C. 644(r)), contracting officers may, at their discretion, set aside orders for any of the small business concerns identified in FAR Part 19.000(a)(3). When setting aside orders for small business concerns, the specific small business program eligibility requirements identified in FAR Part 19 apply

Indefinite-Delivery Contracts – FAR Subpart 16.5

General IDIQ Contract/Government Wide Acquisition Contract/Multi-Agency Contract Continued

Common Application

- All types of supplies and services, to include construction
- Defense Business Systems
- Solutions and technologies
- IT software and products
- IT systems
- Weapon systems
- Aircraft
- Ships
- Space systems
- Research and development
- Advisory and assistance services
- Engineering services
- Special studies

Pros & Cons

Pros	Cons
<p>Access to pre-negotiated prices and labor rates reduces procurement lead time and provides opportunity for further negotiated price discounts</p>	<p>Conditions and scope limitations (work scope, ceiling, and period of performance) imposed on GWAC/MAC contract vehicle may reduce flexibility in acquiring products and services</p>
<p>Ability to use variety of pricing arrangements within scope of MAC/GWAC contract vehicle increases opportunity to deliver products and services quickly</p>	<p>Fair Opportunity order above FAR threshold is protestable</p>
<p>Wide latitude to streamline or create evaluation process reduces procurement lead time</p>	
<p>Streamlined ordering procedures within existing GWAC/MAC contract vehicle reduces lead time to award</p>	

Indefinite-Delivery Contracts – FAR Subpart 16.5

Single Award IDIQ Contract

Intent & Authorities for Use

- A new single award IDIQ contract containing the scope of products or services that can be ordered against it may be established and awarded to a single contractor
- The base contract has no funding associated with it, and lays out the terms and conditions and pricing, applicable to any orders placed against the base contract

Restrictions

- IDIQ contracts are awarded using FAR Part 15 – Contracting by Negotiation procedures
- IDIQ contract awards exceeding the threshold specified in FAR Part 16.504(c)(ii)(D) (\$100M) to a single source are prohibited unless head of the agency determines:
 - Task or delivery orders expected under the contract are so integrally related that only a single source can reasonably perform the work
 - The contract provides only for FFP (see FAR Part 16.202) task or delivery orders for products for which unit prices are established in the contract or services for which prices are established in the contract for the specific tasks to be performed;
 - Only one source is qualified and capable of performing the work at a reasonable price to the Government; or
 - It is necessary in the public interest to award the contract to a single source due to exceptional circumstances
 - Other conditions exist for >\$100M or it is Contract Advisory & Assistance >3 years, and over \$15M (other than incidental to the contract)

Common Application

- All types of supplies and services, to include construction
- Defense Business Systems
- Solutions and technologies
- IT software and products; IT systems
- Weapon systems
- Aircraft
- Ships
- Space systems
- Research and development
- Advisory and assistance services
- Engineering services
- Special Studies

Pros & Cons

Pros	Cons
Ability to establish set prices for products and services with single vendor significantly reduces procurement lead time at the ordering level	Award to single vendor increases potential for vendor lock
Single vendor solution reduces burden on government to perform integration function	Award to single vendor increases risk to cost, schedule, and performance risk if vendor is under-performing
Ability to offer agency wide ordering through an established IDIQ increases flexibility to meet various or mission needs quickly	Processes to establish IDIQ traditionally have long procurement lead time to award
Ability to establish streamlined ordering procedures for future requirements reduces lead time to award	

Indefinite-Delivery Contracts – FAR Subpart 16.5

Multiple Award IDIQ Contract

Intent & Authorities for Use

- A new multiple award IDIQ contract containing the scope of products or services that can be ordered against it may be established and awarded to multiple vendors
- When the need arises to place orders against the multiple award contract, all awardees holding a base contract are requested to submit a proposal to provide each contractor a fair opportunity to be considered for each order
- For DoD, GSA, and NASA: In August 2020, FAR was updated to implement Section 825 of the FY17 NDAA amending 10 U.S.C. 2305(a)(3)
 - At the Government’s discretion, solicitations for multiple-award contracts that will be awarded for the same or similar services AND state the Government intends to award a contract to each qualifying offeror do not require price or cost as an evaluation factor for contract award
 - When price or cost is not evaluated during contract award, the contracting officer considers price or cost as a factor for the award of each order under the contract
 - See exemptions at FAR 4.1005-2(a)(2), evaluation factors and significant sub-factors at FAR 15.304(c), and ordering at FAR 16.505(b)(2)(i)(G)
 - This exception does not apply to solicitations for multiple-award contracts that provide for sole-source orders pursuant to 8(a) of the Small Business Act (15 U.S.C. 637(a))
 - Consider price or cost as an evaluation factor for the award of certain multiple-award task-order contracts

Restrictions

- IDIQ contracts are awarded using FAR Part 15 – Contracting by Negotiation procedures
- Fair opportunity is required for all task orders and delivery orders unless one of the following exceptions applies:
 - The agency need for the supplies or services is so urgent that providing a fair opportunity would result in unacceptable delays
 - Only one awardee is capable of providing the supplies or services required at the level of quality required because the supplies or services ordered are unique or highly specialized
 - The order must be issued on a sole-source basis in the interest of economy and efficiency because it is a logical follow-on to an order already issued under the contract, provided that all awardees were given a fair opportunity to be considered for the original order
 - It is necessary to place an order to satisfy a minimum guarantee
 - For orders exceeding the simplified acquisition threshold, a statute expressly authorizes or requires that the purchase be made from a specified source
 - In accordance with section 1331 of Public Law 111-240 (15 U.S.C. §644(r)), contracting officers may, at their discretion, set aside orders for any of the small business concerns identified in FAR 19.000(a)(3). When setting aside orders for small business concerns, the specific small business program eligibility requirements identified in FAR Part 19 apply

Common Application

- All types of supplies and services, to include construction
- Defense Business Systems
- Solutions and technologies
- IT software and products
- IT systems
- Weapon systems
- Aircraft
- Ships
- Space systems
- Research and development
- Advisory and assistance services
- Engineering services
- Special Studies

Pros & Cons

Pros	Cons
Establishes unique contract terms and conditions increases flexibility for all types of acquisition programs	Multiple vendors increases burden on government to perform integration function
Continuous competition reduces risk for vendor lock and keeps pressure on pricing	Fair opportunity requirement increases lead time to award through evaluations at the ordering level
Fair opportunity enables selection of best of breed solutions	Fair opportunity orders above FAR threshold are protestable
Offers agency wide ordering through an established IDIQ increases flexibility to meet various or mission needs quickly	Multiple-award IDIQs increases administrative cost and contract management complexity
Establishes streamlined ordering procedures for future requirements provides opportunity to reduce procurement lead time	Processes to establish IDIQ traditionally have long procurement lead time to award

Letter Contracts – FAR Subpart 16.603

Intent & Authorities for Use

- Letter contracts (aka. Un definitized Contract Actions (UCA)) are a means to authorize a contractor to immediately begin delivering supplies or performing services before the terms and conditions of the contract can be agreed upon
- This strategy is used only when negotiating a definitive contract is not possible in sufficient time to meet the requirement, and the Government’s interest demands that the Contractor start immediately

Restrictions

- Requires statement of urgency from requiring organization
- May be used only after the head of the contracting activity or a designee determines in writing that no other contract is suitable
- May not commit the government to a definitive contract in excess of the funds available at the time the letter contract is executed
- May not be entered into without competition when competition is required by FAR Part 6 (Competition Requirements)
- May not be amended to satisfy a new requirement unless that requirement is inseparable from the existing letter contract
- Must be definitized by 180 days or before completion of 40% of work

Common Application

- Supplies, products, or services used in support of a contingency operation or humanitarian / peacekeeping operation

Pros & Cons

Pros	Cons
Provides opportunity to rapidly meet urgent mission requirements	Undefined terms and conditions and limited ability to control cost increases risk to the Government
Letter Contract/UCA procedures reduce time to execute for an immediate authority to proceed	Reporting requirements increases burden on program office and contracting activity
	Initial proposals may not meet government standards resulting in prolonged negotiations increasing risk to definitization schedule
	Elevated level of approvals and government oversight and increases burden on program office and contracting activity

Agreements – FAR Subpart 16.7

Basic Agreement

Intent & Authorities for Use

- Agreements are a written understanding containing contract clauses (not an actual contract), applying to future contracts
 - They may contemplate separate future contracts; descriptions of supplies or services to be provided; and/or methods for pricing, issuing, and delivering future orders
- **Basic Agreement:**
 - A written understanding (not a contract) containing pre-negotiated contract clauses applicable to future procurements during the term of the agreement
 - The basic agreement contemplates separate future contracts that will incorporate the required and applicable clauses agreed upon in the basic agreement

Restrictions

- Does not cite appropriations or obligate funds
- Does not state or imply future orders
- Cannot be used to restrict competition
- Contracts incorporating basic agreements shall include a scope of work and price, delivery, and other appropriate terms
- Contract modifications incorporate the most recent basic agreement, applicable only to work added by the modification

Common Application

- Supplies or services
- Substantial number of separate contracts anticipated
- Significant recurring negotiating problems have been experienced with contractor

Pros & Cons

Pros	Cons
Ability to on-ramp new agreement holders any time increases flexibility to meet various mission requirements	May be changed only by modifying agreement itself, not by a contract incorporating the agreement
Ability to modify or discontinue agreement and not affect existing contracts incorporating agreement increases flexibility to program offices	

Agreements – FAR Subpart 16.7

Basic Ordering Agreement

Intent & Authorities for Use

- Agreements are a written understanding containing contract clauses (not an actual contract), applying to future contracts
- They may contemplate separate future contracts; descriptions of supplies or services to be provided; and/or methods for pricing, issuing, and delivering future orders
- **Basic Ordering Agreement:**
 - A written instrument of understanding (not a contract) containing pre-negotiated contract clauses that will be applicable to future procurements between the parties during the term of the agreement.
 - It includes a description of the product or services and the method for determining pricing, issuing, and delivering of future orders.

Restrictions

- Does not state or imply future orders
- Cannot be used to restrict competition
- Describes method for determining prices
- Includes delivery terms and conditions
- Lists one or more gov agencies authorized to issue orders
- Specifies point at which each order becomes a binding contract
- Failure to reach agreement on price for any order issued before price is established is a dispute under the Disputes clause
- Contracting officer cannot authorize contractor to begin work on an order under a BOA until prices have been established unless order establishes a ceiling AND procedures for pricing identified OR urgent and compelling government need

Common Application

- Uncertain supplies or services requirements
- Expedite contracting when specific items, quantities, and prices are not known at time agreement is executed
- Substantial number of requirements covered by the BOA are anticipated to be purchased from the contractor

Pros & Cons

Pros	Cons
Ability to establish pricing methodology for products and services reduces procurement lead time at the ordering level	May be changed only by modifying agreement itself, not by a contract incorporating the agreement
Ability to on-ramp new BOA holders any time increases flexibility to meet various mission requirements	
Ability to modify BOA without impacting previously issued orders provides maximum flexibility to acquisition programs	
Provides maximum flexibility to meet mission needs through competitive process with no minimum quantities or maximum ceiling limitations	

Small Business Programs – FAR Part 19

Small Business Set-Aside (FAR Subpart 19.5)

Intent & Authorities for Use

- Set-asides are a method for reserving acquisitions for exclusive participation by small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business (8(a)), and women-owned small business concerns
- **Small Business Set-Aside:**
- Set-asides are a method to reserve a total acquisition or a portion of an acquisition exclusively for small businesses. Qualifying small business concerns include one or more of the following categories:
 - Small Business; Service-Disabled Veteran-Owned Small Business; Historically Underutilized Business Zone (HUBZone) Small Business; Small Disadvantaged Business (8(a) Business Development Program; Women-Owned Small Business
- There is no order of precedence among the 8(a) Program (subpart 19.8), HUBZone Program (subpart 19.13), Service-Disabled Veteran-Owned Small Business (SDVOSB) Procurement Program (subpart 19.14), or the Women-Owned Small Business (WOSB) Program (subpart 19.15). In determining which socioeconomic program to use, the contracting officer should consider:
 - Results of market research that was done to determine if there are socioeconomic firms capable of satisfying the agency's requirement
 - Agency progress in fulfilling its small business goals

Restrictions

- Acquisitions below the Simplified Acquisition Threshold must be reserved exclusively for small businesses unless the contracting officer determines there is not a reasonable expectation of obtaining offers from two or more responsible small business concerns which are competitive in terms of fair market prices, quality, and delivery
- Acquisitions over the Simplified Acquisition Threshold, must set aside if there are two or more small businesses that could do the work and award will be made at fair market prices

Common Application

- All types of supplies and services
- Defense Business Systems
- Solutions and technologies
- IT software and products
- Research and development
- Advisory and assistance services
- Engineering services
- Special studies

Pros & Cons

Pros	Cons
Small businesses provide culture of flexibility and innovation offering acquisition programs unique solutions to solving capability gaps	Many small businesses do not have approved cost accounting systems limiting selection of contract types
Set-asides increase chance to provide maximum opportunity to use small businesses in acquisitions	
Providing opportunities to small businesses grow the industrial base and strengthen the economy	

Small Business Programs – FAR Part 19

Direct 8(a) Awards (FAR Subpart 19.8)

Intent & Authorities for Use

- Set-asides are a method for reserving acquisitions for exclusive participation by small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business (8(a)), and women-owned small business concerns
- **Direct 8(a) Awards:**
- Direct 8(a) awards are a method to use sole source procedures to award to a single contractor under the 8(a) business development program if the following conditions apply:
 - Determination that the qualified small business is responsible
 - The resulting contract can be awarded at a fair market price
 - The anticipated total value of the contract doesn't exceed the designated threshold for manufacturing requirements or threshold for all other requirements (There's an exception to this rule for an Indian tribe or an Alaska Native Corporation)
 - See below for DoD versus others (\$25M)
- Effective March 17, 2020, Class Deviation 2020-O0009, implementing Section 823 of the National Defense Authorization Act for Fiscal Year 2020 (Pub. L. 116-92), authorizes sole source 8(a) awards valued at \$100 million or less without a justification and approval.
 - The deviation establishes the \$100 million threshold in lieu of \$22 million at FAR Part 6.302-5(b)(4), 6.303-1(b), 6.303-2(d), and 19.808-1(a)
 - Additionally, in lieu of the approval requirements at FAR Part 6.304(a), the approval authority for justifications of 8(a) sole source awards exceeding \$100 million is the head of the procuring activity

Restrictions

- Requires Small Business Administration (SBA) approval
- Justification & Approval required for sole source awards exceeding \$100 million

Common Application

- All types of supplies and services
- Defense Business Systems
- Solutions and technologies
- IT software and products
- Research and development
- Advisory and assistance services
- Engineering services
- Special studies

Pros & Cons

Pros	Cons
Ability to award directly to an 8(a) program qualifying vendor within FAR threshold reduces procurement lead time	Many small businesses do not have approved cost accounting systems limiting selection of contract types
Small businesses provide culture of flexibility and innovation offering acquisition programs unique solutions to solving capability gaps	Effort remains 8(a) set-aside designation for future re-compete activities unless the Small Business Administration agrees to remove the requirement from the program

Broad Agency Announcement – FAR Subpart 35.016

Intent & Authorities for Use

- BAAs are used to obtain proposals for basic and applied research and development to advance or evaluate cutting edge technologies, not related to a specific system or hardware requirement
- BAAs should be used when meaningful solutions can be expected. BAAs are typically “open”, and proposals accepted for a specified period of time (days to months to years)
- Proposals submitted in response to BAAs may or may not lead to contracts.
- BAAs may be used for the award of science and technology proposals for the following:
 - Basic research (budget activity 6.1)
 - Applied research (budget activity 6.2)
 - Advanced technology development (budget activity 6.3)
 - Advanced component development and prototypes (budget activity 6.4)
- BAAs may be used to award FAR-based contracts or non-FAR based agreements

Restrictions

- Limited to basic and applied research
- Must be funded using RDT&E funds
- Cannot be used for specific system or hardware solution
- Cannot be used for systems engineering and advisory services
- Cannot be used for production

Common Application

- Research & Development (R&D) studies
- Prototypes
- Small Business Innovation Research (SBIR) efforts
- Science & Technology (S&T) initiatives
- Technology maturation

Pros & Cons

Pros	Cons
Increases knowledge in areas of strategic importance and technical capability to programs	Limitations on use of BAAs increases burden on government to transition capability to acquisition programs
Streamlined evaluation process based on technical merit increases flexibility to select innovative capability solutions	Intellectual property and data rights increases burden on government to ensure rights are explicit during transition to acquisition programs
	Cannot acquire products in quantity

Small Business Innovation Research (SBIR) & Small Business Technology Transfer (STTR) – 15 USC Section 637c

Intent & Authorities for Use

- **Small Business Innovation Research (SBIR)** is a competitive program that encourages small businesses to engage in Federal Research and Development (R&D) with the potential for commercialization to stimulate innovation
- **Small Business Technology Transfer (STTR)** is another program to facilitate cooperative R&D between small business concerns and non-profit U.S. research institutions with the potential for commercialization of innovative technological solutions
- Federal agencies with R&D budgets exceeding \$100 million are required to allocate a percentage of their R&D budget to these programs. Participating agencies determine relevant R&D topics for their programs
- SBIR/STTR is a gated process with three (3) phases executed through BAA contracts, grants, or agreements:
 - **Phase I Concept Development:** Explore technical merit and feasibility of an idea or technology and determine the quality of performance of the small business prior to providing further Federal support in Phase II. Contracts are no more than 6 months in duration and are funded by the SBIR/STTR program. Typically, Phase I awards are typically less than \$150,000
 - **Phase II Prototype Development:** Continue R&D efforts initiated in Phase I and evaluate commercialization potential. Contracts are no more than 24 months, are funded by the SBIR/STTR program, and typically are less than \$1 million. Award amounts are based on Phase I results and scientific and technical merit for commercialization
 - **Phase III Commercialization:** Work that derives from, extends, or completes R&D efforts under prior SBIR/STTR Phase I/II and enables a small business to pursue commercialization. Phase III work may be for products (including test and evaluation), production contracts, and/or R&D activities. There is no limit on the number, duration, type, or dollar value of Phase III award. Phase III awards cannot be funded by the SBIR program. Agencies may enter into a Phase III SBIR contracts, grants, or agreements at any time (competitively or non-competitively) with a Phase I or Phase II awardee
- **Non-FAR Based Application** - Although agencies primarily use procurement contracts, grants, or agreements in the SBIR program, the use of Prototypes Other Transactions (OTs) is authorized

Restrictions

- SBIR/STTR data rights protection: Applies to all phases and restricts the Government from disclosing SBIR data outside the Government. Government cannot compete technologies containing SBIR data
- Sole source Phase III awards may not be appropriate in all cases if multiple sources exist in the open market for similar product

Common Application SBIR Phase I and II

- Research & Development (R&D) studies
- Prototypes
- Science & Technology (S&T) efforts
- Technology maturation

Common Application SBIR Phase I and II

- Solutions and technologies
- IT software and products
- R&D studies; Prototypes
- S&T efforts
- Technology maturation

Pros & Cons

Pros	Cons
Ability to award sole source to SBIR Phase I/Phase II vendors for Phase III work reduces procurement lead time	SBIR/STTR data rights protection limits Government's IP strategy
Phase III SBIR award procedures provide opportunity for acquisition programs to deliver capability quickly	Technology insertion/transition process into program of record increases risk of project failure
Ability to uniquely negotiate terms and conditions, and pricing arrangements enables improved mission outcomes	

Commercial Solutions Opening (CSO) Pilot Program – GFY22 NDAA, 10 USC 3458

Intent & Authorities for Use

- Section 803 of the FY22NDAA provided the DoD with permanent CSO authority, codified in 10 U.S.C. §3458 – Authority to Acquire Innovative Commercial Products and Commercial Services using General Solicitation Competitive Procedures
- CSO competitive process to obtain solutions or new capabilities that fulfill requirements, close capability gaps, or provide potential technological advance
- CSO procedures are like those for Broad Agency Announcements (BAAs), with the exception that a CSO can be used to acquire innovative commercial items, technologies, or services that directly meet program requirements, whereas BAAs are restricted to basic and applied research
- The CSO program may also be used to acquire R&D solutions from component development through operational systems development
- For CSO purposes, innovation is defined as any technology, process, or method, including research and development that is new as of the date of proposal submission or any application of a technology, process, or method that is new as of proposal submission
- **Non-FAR Based Applications:**
 - CSO procedures are also used to award non-FAR based agreements
 - Specific limitations and requirements apply when using the CSO evaluation procedures and is dependent upon the non-FAR based strategy
- [PIRC CSO Guide 6818.pdf \(gsa.gov\)](#)

Restrictions

- Limited to fixed-price or fixed-price incentive contract arrangements
- Awards exceeding \$100 million require approval from USD A&S or military service acquisition executive

Common Application

- Commercial products and services
- Information Technology (IT) product and services
- R&D studies for commercial technology
- Commercial Technology maturation

Pros & Cons

Pros	Cons
Enables the rapid selection of innovative commercial solutions	Data rights and licenses of commercial technology increases burden on government to ensure specialized rights are well understood within the context of the commercial product life cycle
Ability to use streamlined procedures for commercial technologies provides opportunity for acquisition programs to deliver capability quickly	
Shorter evaluation timelines for solution briefs significantly reduce procurement lead times	

Other Transactions – 10 USC Sections 2371 & 2371b

Other Transactions (OT) are contractual instruments other than standard procurement contracts, grants, or cooperative agreements

- OTs can include flexible business arrangements to acquire research and development activities to advance new technologies, and prototypes or models to evaluate technical or manufacturing feasibility or military utility of new or existing technology
- This may apply to processes, concepts, end items, and systems from non-traditional defense contractors* (as well as from traditional defense contractors when statutory requirements for small business participation or cost sharing arrangements are satisfied) allowing the government access to cutting edge solutions. OTs provide opportunities to structure agreements that may leverage commercial business practices and remove barriers to entry such as cost accounting system (CAS) compliance and intellectual property rights requirements, to encourage non-traditional defense contractors to do business with the government

OTs typically use RDT&E funding, but the statute does not prohibit use of other appropriations

- The nature of the activity and overall effort it will support should be considered when determining appropriate funding sources
- OT agreements may be fixed-price, expenditure based, or hybrid

Agencies must be explicitly authorized by Congress to use OTs (NASA, DoD, FAA, DOT, DHS, TSA, DHHS, DoE, NIH, DNDO, ARPA-E)

Most laws and regulations governing federal contracts do not apply to OTs (i.e., Federal Acquisition Regulation (FAR) and the Competition in Contracting Act (CICA)), however, the Procurement Integrity Act applies, and competitive practices are applicable

- OTs may be protested to the U.S. Court of Federal Claims, and GAO has limited jurisdiction to review OT decisions

*As defined in 10 U.S.C. Section 2302(9), a non-traditional defense contractor is an entity that is not currently performing and has not performed, for at least one-year period preceding the solicitation of sources for the other transaction, any contract or subcontract for the DoD that is subject to full coverage under the cost accounting standards (CAS) (\$50M)

Research Other Transactions – 10 USC Section 2371

Intent & Authorities for Use

- Research OTs are appropriate for basic (BA 6.1), applied (BA 6.2), and advanced research (BA 6.3) projects related to weapons systems or other military needs. Research OTs may be used to pursue research and development of technology with dual-use application (commercial and government). Unlike Prototype OTs, Research OTs do not include authority for transition to follow-on production contracts or transactions
- Research OTs should include a cost sharing arrangement that, to the maximum extent practicable, do not require funds provided by the government to exceed funds provided by other parties. There is latitude for the final share ratio to be other than 50/50 based on considerations such as the party's resources, prior investments in the technology, commercial vs. military relevant, unusual performance risk, and nature of the project.
- Although CICA is not applicable, competition should be pursued to the maximum extent practicable to incentivize high quality and competitive pricing
- Research OTs are also used to execute Technology Investment Agreements (TIAs) when the government seeks to retain intellectual property rights that deviate from the Bayh-Dole Act (35 U.S.C. Chapter 18 and 37 CFR Part 401) which permits a university, small business, or non-profit institution to pursue ownership of an invention made using government provided funds

Restrictions

- FAR/DFARS are not applicable
- 50/50 cost share arrangement to maximum extent practicable
- Agencies must be explicitly authorized by Congress to use OTs (NASA, DoD, FAA, DOT, DHS, TSA, DHHS, DoE, NIH, DND, ARPA-E)
- Contracting Officer must have Agreement Officer authority to execute

Common Application

- R&D activities to advance new technologies and processes to evaluate feasibility or utility of a technology
- To address perceived obstacles to doing business with the government by non-traditional defense contractors to include intellectual property rights and compliance with cost accounting standards
- For flexibility to tailor agreements to reach non-traditional defense contractors with innovation research development solutions
- For negotiable funding arrangements, payment milestones, and length of agreement to achieve research projects

Pros & Cons (Next Page)

Research Other Transactions – 10 USC Section 2371

Continued

Pros & Cons

Pros	Cons
Attributes of an OT can enable faster development and potential fielding of capability	Pursuit and execution of an OT requires highly experienced and empowered staff; lack of guidance, structure, and processes can challenge and intimidate inexperienced staff
Reduces barriers to entry for non-traditional vendors; allows greater government access to commercial innovators that do not typically do business with the government	Government assumes increased risks without the process, precedent, and protection of the FAR
Standard cost accounting requirements are not required under an OT, enabling greater access to commercial innovators that previously did not want to share cost data with the government	Flexible arrangements in intellectual property and cost accounting data can have long-term negative implications for the government
OTs offer flexible approach to managing intellectual property, enabling greater access to commercial innovators that do not comply with traditional government data rights	
Agencies that have been designed with OT authority have options for OT implementation to include Commercial Solution Opening pilot program, use of existing consortia OTs, or the development of a unique internal OT	
OTs are not subject to traditional GAO protests, unless the application of an OT is challenged to be inappropriate (they can be challenged in the court of federal claims)	

Prototype Other Transactions – 10 USC Section 2371b

Intent & Authorities for Use

- Prototype OTs are appropriate for research and development and prototyping activities to enhance mission effectiveness of military personnel and supporting platforms, systems, components, or materials. Prototype OTs may be used to acquire a reasonable number of prototypes to test in the field before making a decision to purchase in quantity. Prototype OTs provide a streamlined path to award a non-competitive follow-on Production OT or FAR contract.
- For OTs, a “prototype project” is defined as a prototype project addressing a proof of concept, model, reverse engineering to address obsolescence, pilot, novel application of commercial technologies for defense purposes, agile development activity, creation, design, development, demonstration of technical or operational utility, or combinations of the foregoing. A process, including a business process, may be the subject of a prototype project
- Although the Competition in Contracting Act (CICA) is not applicable to OTs, competition should be pursued to the maximum extent practicable to incentivize high quality and competitive pricing. Additionally, competitive procedures are required in order to leverage the authority for transition to follow-on production contracts or transactions without subsequent competition
- Sometimes there is a reference to a 3rd type of OT – Production
 - Resulting from a follow-on to a Prototype project completion, whereas the first award was competed, and competitors notified as part of that competition of intent for a follow-on direct award of a FAR or non-FAR based production contract
 - In cases where the first phase is a direct award, the Production Award is competed

Restrictions

- FAR/DFARS are not applicable
- Agencies must be explicitly authorized by Congress to use OTs
- Contracting Officer must have Agreement Officer authority to execute OTs
- Cost sharing requirements apply if no significant participation by non-traditional defense contractors
- Limited to requirements that have a prototyping element
- OTs can only deliver limited quantities of prototypes
- Prototype project must address anticipated follow-on activities, competitive procedures must be used to award prototype project, and successful completion of prototype project required to transition to follow-production vehicle
- May not exceed \$500M without USD R&E or USD A&S approval

Common Application

- R&D activities to advance new technologies and processes and prototyping or models to evaluate feasibility or utility of a technology
- To address perceived obstacles to doing business with the government by non-traditional vendors to include intellectual property rights and compliance with cost accounting standards
- For flexibility to tailor agreements to reach non-traditional vendors with innovation research development and demonstration (RD&D) solutions
- For negotiable funding arrangements, payment milestones, and length of agreement to achieve research and prototype projects

Pros & Cons (Next Page)

Prototype Other Transactions – 10 USC Section 2371b

Continued

Pros & Cons

Pros	Cons
Attributes of an OT can enable faster development and potential fielding of capability	Pursuit and execution of an OT requires highly experienced and empowered staff; lack of guidance, structure, and processes can challenge and intimidate inexperienced staff
Reduces barriers to entry for non-traditional vendors; allows greater government access to commercial innovators that do not typically do business with the government	Government assumes increased risks without the process, precedent, and protection of the FAR (e.g., EMD to LRIP/FRP challenge)
Provides a potential avenue to access to third party funding (e.g., venture capital)	Flexible arrangements in intellectual property and cost accounting data can have long-term negative implications for the government
OTs offer flexible approach to managing intellectual property, enabling greater access to commercial innovators that do not comply with traditional government data rights	
A path has been established to allow for a streamlined, non-competitive follow-on production contract or agreement (production OT, FAR contract, etc.)	
Agencies that have been designed with OT authority have options for OT implementation to include Commercial Solution Opening pilot program, existing consortia OTs, or development of a unique internal OT	
May leverage COTS for prototyping solutions	
OTs are not subject to traditional GAO protests, unless the application of an OT is challenged to be inappropriate (they can be challenged in the court of federal claims)	
Standard cost accounting requirements are not required under an OT, enabling greater access to commercial innovators that previously did not want to share cost data with the government	

Procurement for Experimental Purposes – 10 USC Section 2373

Intent & Authorities for Use

- Procurement for Experimental Purposes authorizes the government to acquire quantities necessary for experimentation, technical evaluation, assessment of operational utility, or to maintain a residual operational capability
- This authority currently allows for acquisitions in the following nine areas:

Ordnance	Signal	Chemical Activity
Transportation	Energy	Medical
Space-Flight	Aeronautical Supplies	Telecommunications

- 2373 can be competitive or non-competitive and awarded using a contract or agreement
- FAR and DFARS are not applicable; therefore, formal competitive procedures do not apply, and any resulting contract is not required to include standard provisions and clauses required by procurement laws
 - Instead, a contract could be written using commercial terms
 - Another option is to use an Other Transaction-like agreement, similar to the agreements written under the OT authorities
- A Determination & Finding (D&F) identifying the following information is required to execute a 2373 award:
 - A description of the item(s) to be purchased and dollar amount of purchase
 - A description of the method of test/experimentation
 - The quantity to be tested
 - A definitive statement that use of the authority at 10 USC. Section 2373 is determined to be appropriate for the acquisition

Restrictions

- FAR/DFARS are not applicable
- SECDEF delegation required (currently delegated to DARPA, Navy, and selectively within Air Force and Army)
- Contracting Officer must have Agreement Officer authority to execute
- Purchases limited to quantities necessary for experimentation, technical evaluation, assessment of operational utility, or safety or to provide a residual operational capability
- Appropriate for use in select situations to prevent inappropriate use/abuse and potential revocation of authority

Common Application

- Purchase ordnance, signal, chemical activity, transportation, energy, medical, space-flight, aeronautical supplies, and telecommunications including parts and accessories and designs thereof, necessary for experimental or test purposes to develop best supplies for national defense
- Testing new capabilities for fielding (i.e., weapons, combat vehicle modifications, test aircraft)

Pros & Cons (Next Page)

Procurement for Experimental Purposes – 10 USC

Section 2373 *Continued*

Pros & Cons

Pros	Cons
Ability to use in conjunction with science and technology OTs (10 USC Section 2371) or incentive prize competitions (10 USC Section 2374a) enable rapid transition of emerging technologies into fielded systems for testing and evaluation	Pursuit and execution of this provision, especially when used in combination with an OT, requires highly experienced and empowered staff; lack of guidance, structure, and processes can challenge and intimidate inexperienced staff
Potential to use this authority to procure higher quantities of supplies; definitions in statutory language can be broadly interpreted	Government may be in a sole-source or limited-source negotiation with vendor; may lose negotiation leverage on pricing and favorable terms and conditions
Provides a flexible and fast vehicle to use to acquire products outside the US	Use of this authority is still relatively unknown; lack of guidance and established precedent increases risk to the government
Can be executed quickly and non-competitively; does not require a sole source J&A but only a D&F signed by the Contracting Officer or Head of Contracting Activity, depending on dollar value	Although a J&A is not required, some Competition Advocates are unfamiliar with this authority and prefer to have input/coordination on the D&F or insist on a J&A
Can be “stacked” with other statutory authorities if long-term, critical thinking is applied to acquisition strategy across acquisition phases	An agreement under this authority is NOT an Other Transaction agreement and this authority is not synonymous with Other Transaction authority; interchangeable use of terms and definitions confuse potential contractors and make it harder to determine compliance with the correct statute
May be used in Rapid Prototyping; may transition to an Other Transaction for Prototype for additional Rapid Prototyping or a FAR-based Production contract for Rapid Fielding	May not be used as a predecessor to an Other Transactions for Production; currently only a successfully completed Other Transaction for Prototype may transition to an Other Transaction for Production

Cooperative Research and Development Agreement (CRADA) – 15 USC Section 3710a

Intent & Authorities for Use

- Authorizes federal labs to enter into agreements with other federal agencies, state/local government, industry, non-profits, and universities for licensing agreements for lab developed inventions or intellectual property to commercialize products or processes originating in federal labs
- Labs may seek an industry partner with resources to successfully market invention or commercialize
- Labs may seek an industry partner to stimulate a market for new technology
- Non-federal/industry partner may seek government lab to further develop unique resources

Restrictions

- Limited to government owned or government owned, contractor operated labs
- Government may contribute wide variety of resources, but no funds
- Collaborating partner may contribute funds to the effort, as well as personnel, services and property
- May not provide for research that duplicates research being conducted under existing programs carried out by DoD

Common Application

- Research Development & Demonstration (RD&D) collaboration and technology advancement efforts

Pros & Cons

Pros	Cons
Can be adapted to a variety of types of collaborative efforts between federal and non-federal organizations to transfer federally funded R&D to private sector	High risk / high reward environment reduces opportunity for technology transition to program of record
Enables industry to collaborate with government to jointly research and develop technologies with both commercial and military applications	
Streamlined process reduces time to establish agreement	
Enables government to acquire expertise without monetary payments to the collaborating partner	

Partnership Intermediary Agreement (PIA) – 15 USC Section 3715

Intent & Authorities for Use

- Contract, agreement, or memorandum of understanding with non-profit partnership intermediary to engage academia and industry on behalf of government to accelerate tech transfer and licensing

Restrictions

- Partnership intermediary means an agency of a state or local gov, or a nonprofit entity owned in whole or in part by, chartered by, funded in whole or in part by, or operated in whole or in part by or on behalf of a State or local Government, that assists, counsels, advises, evaluates, or otherwise cooperates with small business firms and institutions of higher education

Common Application

- Services to facilitate technology transfer to private sector
- Used by government labs to increase likelihood of success in conducting cooperative or joint activities with small business firms and institutions of higher education to make use of technology-related assistance from a government lab

Pros & Cons

Pros	Cons
Enables Government to pay for services to support technology transfer	Authority available only to government labs
Partnership intermediaries can function as objective third-party brokers between government and industry to increase opportunity for commercialization of new capability	Complexity to negotiate and execute increases time to establish agreement
Partnership intermediaries can engage in proactive marketing of lab technologies to industry to enable tech transition/tech insertion	

Technology Investment Agreement (TIA) – 32 CFR Part 37

Intent & Authorities for Use

- TIA is an instrument used to stimulate or support commercial firm involvement in pursuing best technologies for defense research. TIAs are appropriate when research objectives are unlikely to be achieved using other types of contract instruments
- TIAs may be executed as a cooperative agreement or a type of assistance transaction other than a grant or cooperative agreement, such as a Research Other Transaction (OT)
 - TIAs are executed as cooperative agreements in accordance with the DoD Grant and Agreement Regulations (DoDGARs) – 32 CFR Part 21 when the government does not intend to deviate from the Bayh-Dole Act (35 U.S.C Chapter 18 and 37 CFR Part 401) which permits a university, small business, or non-profit institution to pursue ownership of an invention made using government provided funds
 - Research OTs are used to execute TIAs when the government seeks to retain intellectual property rights that deviate from the Bayh-Dole Act.
- **Cost Sharing:** To the maximum extent practicable, the non-Federal parties carrying out a research project under a TIA are to provide at least half of the costs of the project. Obtaining cost sharing, to the maximum extent practicable, is a statutory condition for any TIA under the authority of 10 USC Section 2371, and is a matter of DoD policy for all other TIAs
- **Competition:** DoD policy is to award TIAs using merit-based, competitive procedures, as described in 32 CFR Part 22.315, in every case where required by statute; and to the maximum extent practicable in all other cases
- **Justification:** Before deciding that a TIA is appropriate, you also must judge that using a TIA could benefit defense research objectives in ways that likely would not happen if another type of assistance instrument were used (e.g., a cooperative agreement subject to all of the requirements of 32 CFR Part 34)

Restrictions

- Requires delegated authority from SECDEF or Service Secretary
- Contracting Officer must have Agreement Officer authority to execute
- 50/50 cost sharing arrangements must be considered to the maximum extend practicable
- TIA recipients do not receive fee or profit

Common Application

- Reduce barriers to commercial firms' participation in defense research to provide access to the broadest possible technology and industrial base
- Permit involvement of commercial firms or business units of firms that would not otherwise participate in the project
- Promote new relationships between the federal government and commercial firms
- Enable firms to pursue new business practices to execute research for new technologies

Pros & Cons

Pros	Cons
Fosters research of best technologies for future defense needs	Requires knowledgeable and skilled contracting officer to negotiate and execute
May be expenditure-based or fixed-support 32 CFR Part 37.300	Must justify using TIA rather than another type of contract instrument

Funding Opportunity Announcement – (Grants & Cooperative Agreements) – OMB Uniform Guidance

Intent & Authorities for Use

- A **Funding Opportunity Announcement (FOA)** is the document all federal agencies use to announce the availability of grant (and cooperative agreement) funds to the public (www.grants.gov is the “beta.sam.gov of Grants and Cooperative Agreements”)
- Both cooperative agreements and grants are “a legal instrument of financial assistance between a Federal awarding agency or pass-through entity and a non-Federal entity” (defined in OMB Uniform Guidance Section 200.24 for cooperative agreements and Section 200.51 for grant agreements)
- A **grant** is funding (or anything of value) provided to advance a cause as opposed to “buying something” and is the way the government funds ideas and projects providing public services and stimulating the economy. Grants support critical recovery initiatives, innovative research, and other programs
- A **cooperative agreement** is different than a grant in that it provides for substantial involvement (think “side-by-side” execution) between the Federal awarding agency and the non-Federal entity in carrying out the activity contemplated by the Federal award
- **Agencies authorized to award:** USAID, AmeriCorps, USDA, DoC, DoD, DOE, DoEd, HHS, DHS, HUD, DOJ, DOL, DOT, DoTreas, VA, EPA, IMLS, NASA, NARA, NEA, NEH, NSF, SBA, SSA
 - IMLS-Institute of Museum & Library Services, NARA-National Archives and Records Administration, NEA-National Endowment for the Arts, NEH-National Endowment for the Humanities
- The **Grant Lifecycle:**
 - **Pre-Award Phase (search opportunities, register & apply, and application review):** Again, search starting with grants.gov, the FOA provides all information and requirements for you to assess eligibility and interest. Registration can involve 1-3 weeks to complete (do not miss application due dates) – may be several steps including DUNS, SAM.gov, Grants.gov accounts. Help is available online for both registration and proposal development (start at grants.gov). Agency review is Initial screening to ensure application is complete, Programmatic review and assessment of the substance of the applications, Financial review of proposed budgets

- The **Grant Lifecycle Continued:**

- **Award Phase (decisions and notifications):** Award decisions rest solely in the hands of the federal agency staff with fiduciary responsibility and legal authority to enter binding agreements. Federal staff review and make award recommendations based on the programmatic and financial reviews of the applications. These recommendations are reviewed by a series of levels in the agencies to ensure high-quality, fair, and unbiased decisions. Once the award decision is made, a Notice of Award is made to the awardee.
- **Post Award (implementation, reporting, audit, closeout):** Implementation: The awardee’s job is to faithfully and diligently carry out the grant program. The awarding agency has a grants management officer and program officer designated to each grant, both of which you will work with throughout the life of the grant to review reports and conduct site visits. Reporting: The specific reporting requirements, schedules, and systems can vary for each grant. Audit: A non-Federal entity expending \$750,000 or more in Federal awards during its fiscal year may be required to have a single audit conducted for that year. Closeout: The award recipient, must submit the final financial and programmatic reports within 90 days after the grant award expires or is terminated. The awarding agency will review these reports to ensure compliance with all the grant terms and conditions as well as to make sure you spent all the funds appropriately.

Restrictions

- Per FOA, Grant, Cooperative Agreement and OMB Uniform Guidance Section 200.24 for cooperative agreements and Section 200.51 for grant agreements

Common Application (Again to advance a cause, not to procure)

- Ideas and projects to provide public services and stimulate the economy
- Critical recovery initiatives
- Innovative research

Why Not at Least Look?

Summary

We reviewed the 24 FAR and non-FAR basic contract approaches/types

- Intent & Authorities for Use
- Contract or Agreement Types Allowed
- Restrictions
- Common Applications
- Pros & Cons

Note: Mapping of these 24 of these approaches to FFP, FPEPA, FPIF, FFP-LOE, Cost, CPIF, CPAF, CPFF, T&M must include “a deeper dive” on approaches presented today, including mapping to acquisition strategy and application (what is being procured) – this is available in other PCI’s class series

Q&A

3 Poll questions
Then Open Q&A

Question 1:

Across the FAR, FAR areas, and Grant areas you will find ____ types of contracts and contracting approaches/

- A. 17
- B. 23
- C. 24
- D. 25

• **Answer: C**

Question 2:

The flexibility of each type of contract/approach is defined via its (Mark only those that apply):

- A. Intent & Authorities for Use
- B. Contract or Agreement Types Allowed
- C. Restrictions
- D. Government Pros & Cons

- **Answer: All: A, B, C, D**

Question 3:

Funding Opportunity Announcements (resulting in Grants) Authorities for use are covered by (select the best answer):

- A. FAR
- B. Non-FAR
- C. www.Grants.gov
- D. OMB Uniform Guidance

- **Answer: D**

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