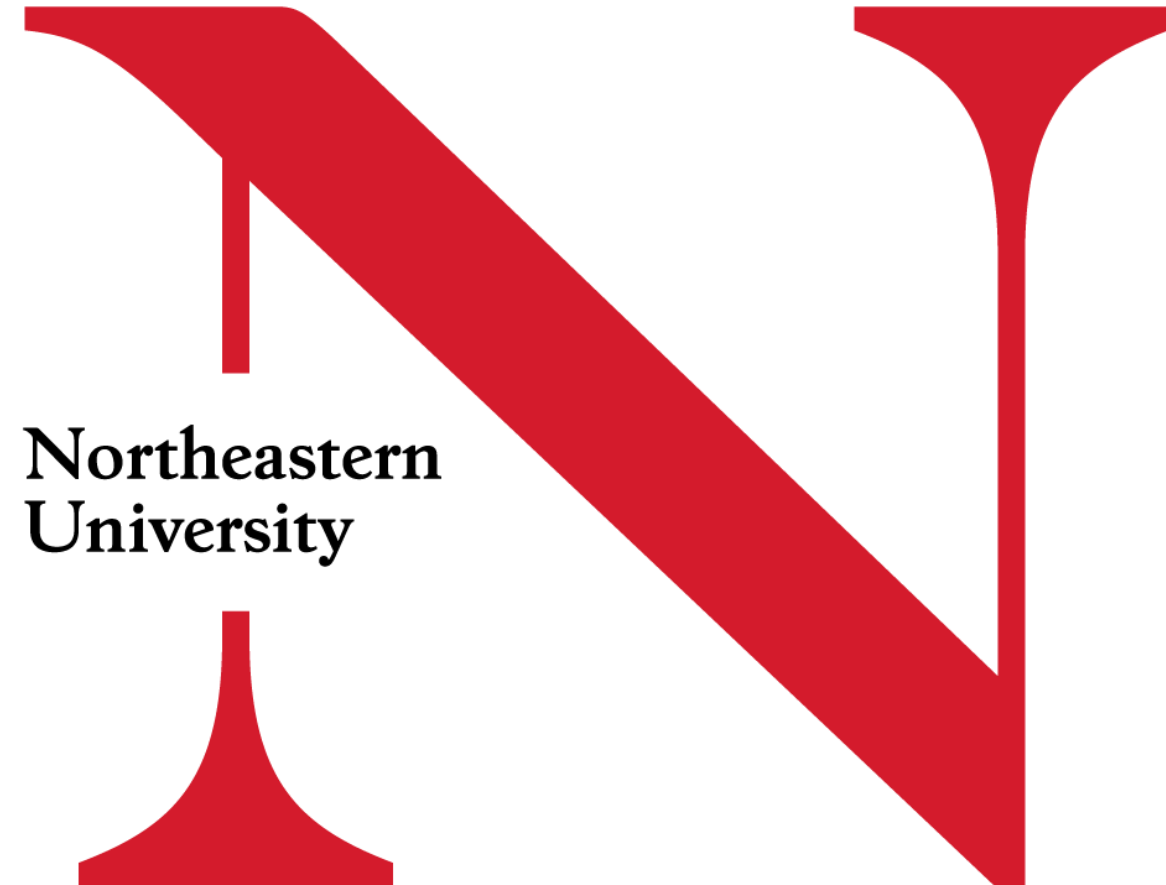


Government Contracts Overview



**Northeastern
University**

27MAY2021

Purpose/Objective

- Review various types of awards/agreements, and some Government considerations in selection
- Once determined that the award will be a contract, review some characteristics and attributes specific to contracts

Types of Agreements

- Agreements awarded based on the purpose of the expenditure
 - Grants
 - Cooperative Agreements
 - Procurement Contracts
 - Cooperative Research and Development Agreements
 - STTR/SBIR agreements
 - “Other Transactions”

Contracting/Agreements Officer's Perspective

- How do you decide between soliciting a contract, grant, or cooperative agreement?
 - Significant because this decision establishes which “rules” control
 - Contract = Federal Acquisition Regulation
 - Grant or Cooperative Agreement = Uniform Guidance

Federal Grant and Cooperative Agreement Act

- 31 U.S.C. §§ 6301—6308
- Principal Purpose Test:
 - To acquire property or services for the direct benefit or use of the United States Government?
 - 31 U.S.C. § 6303 Using Procurement Contracts.
 - To transfer a thing of value to carry out a public purpose of support or stimulation authorized by a law of the United States?
 - 31 U.S.C. § 6304 Using Grant Agreements.

Contracting/Agreements Officer's Perspective

- Principal Purpose Test (Acquisition or Assistance?)
 - Is the principal purpose for the Government to acquire good or services ***FOR ITS DIRECT BENEFIT OR USE?***
 - Contract is appropriate
 - Is the principal purpose to ***FURTHER PUBLIC GOOD?***
 - Grant or Cooperative Agreement is appropriate

35.003 Policy.

(a) *Use of contracts.* Contracts shall be used only when the principal purpose is the acquisition of supplies or services for the direct benefit or use of the Federal Government. Grants or cooperative agreements should be used when the principal purpose of the transaction is to stimulate or support research and development for another public purpose.

Contracting/Agreements Officer's Perspective

- Other considerations
 - Is the Government providing specifications?
 - Is the Government providing technical direction?
 - Is the work classified?

Contracting/Agreements Officer's Perspective

- Award Process (stay tuned...)
 - Process for awarding contracts is very structured
 - Competition in Contracting Act mandates competition unless a permissible exception exists
 - Selection for Grants and Cooperative Agreements is more merit based.
 - Competition to the extent practicable, but multiple agreements are often awarded based upon the merit of applicants.
 - Protests
 - Are a very significant consideration in the award process for contracts.
 - No ability to file protests in the award process for Grants and Cooperative Agreements.

Contracting/Agreements Officer's Perspective

- Cost/Price consideration
 - Is a MANDATORY evaluation factor for contracts.
 - Best value tradeoff v. Lowest Price Technically Acceptable (LPTA).
 - Are paid under Grants and Cooperative Agreements if reasonable, allowable, allocable, and consistently treated.

Federal Acquisition Regulation (FAR)

- Once the Government has decided that a contract is the award vehicle, the FAR controls.
- Overall premise is flexibility
- Each agency has their own supplemental regulations
 - Depending upon agency, there may also be departmental regulations
 - DoD=DFARS (252s)
 - Within DoD Army=AFARS (5152s), Air Force=AFFARS (5352s), etc.

Federal Acquisition Regulation (FAR)

- FAR is broken down into parts, subparts and sections
 - Parts are general topics, subparts and sections are more specific information to that topic
 - FAR 15.101-1=Source Selection Tradeoff
 - Part 15=Contracting By Negotiation
 - Subpart 15.1=Source Selection Processes and Techniques
 - Section 01=Best Value (02=Oral Presentations)
 - Subsection 1=Tradeoff (2=LPTA)

Characteristics of Government Contracts

Deliverables

- Most important concept to keep in mind is that the Government is expecting a “deliverable” under a contract.
- Will review for substance of what is provided. Government may, or may not, pay based on the substance of what is submitted

Characteristics of Government Contracts (Deliverables)

FAR 52.246-8 Inspection of Research & Development-Cost Reimbursement

(f) At any time during contract performance, but no later than 6 months (or such other time as may be specified in the contract) after acceptance of all of the end items (other than designs, drawings, or reports) to be delivered under the contract, the Government may require the Contractor to replace or correct work not meeting contract requirements. Time devoted to the replacement or correction of such work shall not be included in the computation of the above time period. Except as otherwise provided in paragraph (h) of this clause, the cost of replacement or correction shall be determined as specified in the Allowable Cost and Payment clause, but no additional fee shall be paid. The Contractor shall not tender for acceptance work required to be replaced or corrected without disclosing the former requirement for replacement or correction, and, when required, shall disclose the corrective action taken.

Characteristics of Government Contracts

Source Selection

- Very structured
- Contracting Officer could use Part 8 (Required Sources of Supplies), Part 12 (Acquisition of Commercial Items), Part 13 (Simplified Acquisition Procedures), Part 14 (Sealed Bidding), Part 15 (Contracting By Negotiation) or Part 35 (Research and Development Contracting)

Characteristics of Government Contracts (Source Selection)

35.006 Contracting methods and contract type.

(a) In R&D acquisitions, the precise specifications necessary for sealed bidding are generally not available, thus making negotiation necessary. However, the use of negotiation in R&D contracting does not change the obligation to comply with [part 6](#).

(b) Selecting the appropriate contract type is the responsibility of the contracting officer. However, because of the importance of technical considerations in R&D, the choice of contract type should be made after obtaining the recommendations of technical personnel. Although the Government ordinarily prefers fixed-price arrangements in contracting, this preference applies in R&D contracting only to the extent that goals, objectives, specifications, and cost estimates are sufficient to permit such a preference. The precision with which the goals, performance objectives, and specifications for the work can be defined will largely determine the type of contract employed. The contract type must be selected to fit the work required.

(c) Because the absence of precise specifications and difficulties in estimating costs with accuracy (resulting in a lack of confidence in cost estimates) normally precludes using fixed-price contracting for R&D, the use of cost-reimbursement contracts is usually appropriate (see [subpart 16.3](#)). The nature of development work often requires a cost-reimbursement completion arrangement (see [16.306\(d\)](#)). When the use of cost and performance incentives is desirable and practicable, fixed-price incentive and cost-plus-incentive-fee contracts should be considered in that order of preference.

Characteristics of Government Contracts

Contract Types

- Identified in FAR Part 16
 - 16.2=Fixed Price
 - 16.3=Cost Reimbursement
 - 16.5=Indefinite Delivery

Characteristics of Government Contracts (Contract Type)

- Fixed Price contracts are the preferred contract type from the Government's perspective
 - Risk borne by the contractor
- CPFF are preferred by contractor
 - No loose situation...all costs plus guaranteed profit
 - NU usually does not agree to fee in contracts
 - Fee usually akin to profit
 - Would require some very significant changes related to Cost Accounting Standards (CAS) in order to start charging fee

Characteristics of Government Contracts (FFP)

- There are benefits to FFP if specific project allows for it
 - DO NOT need to return unused funds
 - You would not need to seek prior approval for property
 - You would not need to seek prior approval if issuing a FFP subcontract under the SAT, or for DoD/NASA for less than 5% of total estimated costs

Characteristics of Government Contracts

Changes Clause

52.243-2 Changes-Cost-Reimbursement.

As prescribed in [43.205\(b\)\(1\)](#), insert the following clause. The 30-day period may be varied according to agency procedures.

CHANGES-COST-REIMBURSEMENT (AUG 1987)

(a) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:

(1) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the Government in accordance with the drawings, designs, or specifications.

(2) Method of shipment or packing.

(3) Place of delivery.

(b) If any such change causes an increase or decrease in the estimated cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, or otherwise affects any other terms and conditions of this contract, the Contracting Officer shall make an equitable adjustment in the-

Characteristics of Government Contracts

Disclosure of Information

DFARS 252.204-7000

DISCLOSURE OF INFORMATION (OCT 2016)

(a) The Contractor shall not release to anyone outside the Contractor's organization any unclassified information, regardless of medium (e.g., film, tape, document), pertaining to any part of this contract or any program related to this contract, unless—

(1) The Contracting Officer has given prior written approval;

(2) The information is otherwise in the public domain before the date of release; or

(3) The information results from or arises during the performance of a project that involves no covered defense information (as defined in the clause at DFARS [252.204-7012](#)) and has been scoped and negotiated by the contracting activity with the contractor and research performer and determined in writing by the contracting officer to be fundamental research (which by definition cannot involve any covered defense information), in accordance with National Security Decision Directive 189, National Policy on the Transfer of Scientific, Technical and Engineering Information, in effect on the date of contract award and the Under Secretary of Defense (Acquisition, Technology, and Logistics) memoranda on Fundamental Research, dated May 24, 2010, and on Contracted Fundamental Research, dated June 26, 2008 (available at DFARS PGI [204.4](#)).

Characteristics of Government Contracts (Disclosure of Information)

- DoD has a specific policy that addresses importance of fundamental research
- Really need the written determination NSSD 189 calls for
- Otherwise we are agreeing to restraint on academic freedom

Characteristics of Government Contracts

DFARS 252.204-7012 Safeguarding Covered Defense Information and Cyber Incident Reporting

- Significant expectations if Covered Defense Information (CDI) is present.
- CDI is NOT akin to classified. It is Controlled Unclassified Information
- Categories of CUI is in Controlled Unclassified Information Registry (www.archives.gov/cui/registry/category-list)
 - Includes Controlled Technical Information, Export Controls, etc.

Characteristics of Government Contracts (252.204-7102)

- Cyber incidents reported within 72 hours
- Provide support to DoD investigations into incidents
- Provide malicious software to DoD Cyber Crime Center
- Clause needs to be in every contract and flowed down to all subcontractors/

Government Contracts Overview

Questions???