A Translation of the Contracting Alphabet: From BAAs to OTAs

February 18, 2016

Rebecca Willsey
Chief, Contracting Policy Branch
Air Force Research Lab, Rome NY
“It is the policy of the Government to provide maximum practicable opportunities in its acquisitions to small businesses … concerns.

Such concerns must also have maximum practicable opportunity to participate as subcontractors in the contracts awarded by any executive agency…”

Source: FAR Part 19.201 (a)
CONTRACTING METHODS

- Traditional contracts ("FAR-based")
- Instruments that support and stimulate research for the public good ("DoD Grant Regulations")
- Other Transactions for Prototypes ("non-FAR based")

...A whole new ball game
WHAT IS THE “FAR”? 

• Federal Acquisition Regulation
• Establishes policies and procedures
• Supplemented by DoD and Air Force
• Rules the Government follows to:
  ➢ Deliver “best value” products and services
  ➢ Maintain public trust
  ➢ Fulfill public policy objectives (e.g., small business goals)
  ➢ Conduct business with integrity, fairness, openness

Source: http://farsite.hill.af.mil/
TYPES OF SOLICITATIONS

1. Request for Proposals (RFP)

- Government knows its specific needs

- Gov’t prepares a Statement of Work (SOW) that describes the work to be performed & required deliverable items, including documentation

- Variation on a SOW: “Statement of Objectives (SOO)” where the Gov’t prepares a short statement of objectives, and companies respond with their own SOW that satisfies the objectives

Source: FAR Part 15.3
TYPES OF SOLICITATIONS

• RFP (continued)

➢ Evaluation criteria are stated in the solicitation against which interested “offerors” compete

➢ Examples: Technical excellence, management capability, personnel qualifications, prior experience, and cost/price

➢ Follows structured process for determining “best value”
  ➢ Tradeoffs are considered
  ➢ Not just lowest price wins, we look for the best deal
  ➢ Won’t pay significantly higher price for only slightly better technical features

Source: FAR Part 15.3
TYPES OF SOLICITATIONS

2. Broad Agency Announcements (BAAs)

- Similar concept as a SOO, describes the agency’s areas of research interest

- For scientific study/experimentation directed toward advancing the state-of-the-art or increasing knowledge

- Not used for R&D related to specific weapon systems or hardware development unless to demonstrate a concept (e.g., exploratory development models)

Source: FAR Part 35.016
TYPES OF SOLICITATIONS

• BAAs (continued)
  ➢ Does not limit ideas and/or approaches for solutions, Gov’t expects varying approaches; offerors prepare a Statement of Work tailored to their proposed solution to the problem
  ➢ Offerors can respond to all or part of the areas of interest
  ➢ Can be “Open” (up to 5 years) or “Closed” (cut off date)
  ➢ Can be “One-Step” (just proposals) or “Two-Step” (first white papers, then proposals)

Source: FAR Part 35.016
TYPES OF SOLICITATIONS

• BAAs (continued)

- Evaluation is based on overall technical merit, benefit to mission, and a reasonable, realistic price
- Open BAA: Not necessarily evaluated against other offers at the same time
- Closed BAAs: Offers are evaluated at the same time
- Awards are dependent upon funding availability
- BAA will state what type of awards can be made (grants, cooperative agreements, contracts and/or other transactions)

Source: FAR Part 35.016
Small Business Innovation Research (SBIR)

- Essentially a DoD-wide BAA reserved for small business
- Strengthening the role of small business in meeting DOD R&D needs
- Fostering and encouraging participation by minority and disadvantaged persons in tech innovation
- Increasing commercial application of DOD-supported R&D
Other Transaction Authority (OTA)

- Created to obtain leading edge R&D and prototypes from commercial sources, especially “non-traditional DoD contractors”
- The FAR and certain procurement statutes do not apply
- Accordingly, the OTA gives agencies the flexibility necessary to develop agreements tailored to a particular transaction
- Competitive procedures are still preferred
EXAMPLE: AIR FORCE OTA

- Other Transaction for Prototype (OTP)
  - Air Force OTP for Cyber, Command, Control, Intelligence, Surveillance, and Reconnaissance (C4ISR) technologies for DoD info systems
  - “Open System Acquisition Initiative”
  - Consortium for System of Systems Security (SOSSEC)

http://sosseccconsortium.com

“As an alternative to the often complex FAR, which might discourage small non-traditional entities from seeking to work with the Government, SOSSEC provides its members and eligible Federal agencies a user-friendly partnership path.” - SOSSEC

Source: SOSSEC website
EXAMPLE: AIR FORCE OTA

- OTP (continued)
  - Fixed-price Project-Level Agreements (PLAs) will be used to acquire individual projects
  - Watch for Project Announcements asking for white papers or proposals
  - Focus will be on specific “mission threads” from Gov’t agencies
  - Rights are negotiable

http://sossecconsortium.com

Source: SOSSEC website
Words of Caution

• No DoD commitments can be made outside a contractual arrangement

• Only a warranted “Contracting Officer” or “Agreements Officer” can obligate Gov’t funds

• Gov’t technical reps can discuss potential opportunities & Gov’t requirements/needs, and must be fair

Source: FAR Part 1.6
Intellectual Property: Myth-Busting

In general, follow the money…

However, everything is negotiable!

As a minimum, rights must satisfy the Government’s minimum needs, e.g.,:

- Form, fit and function data
- Data necessary for install, operations, operation, maintenance, or training purposes (not detailed mfg or process data)
- 1 copy of software plus backup
Intellectual Property: Myth-Busting

Gov’t gets a **license** to use tech data and computer software

- Royalty free, world-wide, nonexclusive, irrevocable license rights

The Contractor still **owns** the data/SW

- Retains the copyrights & ability to commercialize
Data Rights Spectrum

- Unlimited Rights
- Govt Funding
- GPR (after 5 years, reverts to Unlimited Rights)
- Mixed Funding
- SBIR Data Rights – “GPR with more teeth”
- Limited/Restricted Rights
- Privately Funded

Restrictions

Least Most
Primary Paths to Procurement

1. **Very Mature Technology** = Commercial item

- Minor modifications are okay IF they do not significantly alter the nongovernmental function or essential physical characteristics of an item or component, or change the purpose of a process.

- Gov’t simply buys the item, and gets standard commercial license.

- Parties can mutually agree on rights, to meet user’s needs or to make license consistent with Federal procurement law.

**Appropriate path depends on stage of technical maturity**

Source: FAR Part 12
Primary Paths to Procurement

Emerging Technologies = Already partially developed at private expense, but needs further development to mature

- BAAs, SBIR Program, OTP could all be used
- Combination of private and Gov’t funding = “Government Purpose Rights (GPR)”
- Gov’t gets a license to use software/tech data for Gov’t purposes only
- Company retains the right to commercialize

Appropriate path depends on stage of technical maturity.

Source: FAR Part 12, DFARS Part 227
Primary Paths to Procurement

3 New Capabilities – Not developed at private expense, Gov’t funds the entire project

- RFP, BAA, SBIR, or OTP could be used
- Gov’t funding = typically “Unlimited Rights”
- Gov’t gets a license to use software/ttech data for any purpose, including commercialization
- Company retains copyrights, but anyone can commercialize

Appropriate path depends on stage of technical maturity.

Source: FAR Part 12, DFARS Part 227
The Trust Factor: “Let’s Make a Deal”

“Specifically Negotiated License Rights”

- All rights are negotiated **prior** to award, and are included as an attachment to the contract/agreement
- Segregate software components as much as possible so each part can retain its rights
- Result: No surprises, all needs met, a clear meeting of the minds
“Let’s Make a Deal”

“Specifically Negotiated License Rights”

• Examples:
  - GPRs that never expire
  - Expand the definition of “Restricted Rights” to allow the Gov’t to use software on multiple computers within the Government
  - GPRs that exclude use for competitive procurement, unless technology is “abandoned”
  - Government-wide use but advance notice must be given to contractor re. locations and purpose
AFRL Mission

• 711th Human Performance Wing - OH
• Aerospace Systems Directorate – OH, CA
• Air Force Office of Scientific Research (AFOSR) – VA
• Directed Energy Directorate - NM
• Information Directorate – NY
• Materials and Manufacturing Directorate – OH, FL
• Munitions Directorate – FL
• Sensors Directorate – OH
• Space Vehicles - NM

Source: www.af.mil
Connect with AFRL

Air Force Research Laboratory
Information Directorate
Rome, NY

Small Business Office
(315) 330-3311

www.af.mil
(Search for “AFRL”)