Federal Contracts for Departmental Administrators

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Introduction

• What is a federal contract (procurement)?
  – An award of federal funds for the purpose of buying goods and services for the government’s use

• How is a contract different from a grant or cooperative agreement (financial assistance)?
  – A grant is an award of federal funds for the purpose of supporting a public need
  – A cooperative agreement is the same as a grant except that the government intends to participate or “cooperate” in the conduct of the project
Solicitation

• What is a solicitation?
  – A document that describes what the government wants to buy and how potential contractors can compete for the contract.
  – A solicitation will include instructions for preparing the proposal and often includes the award terms that the contractor will receive if selected.
  – Contract solicitations are often called requests for proposals (RFP) or requests for quotes (RFQ).

Solicitation Caveats

• The proposal cover page may also be the award cover page (e.g., Form SF 33).
  – In this case signature on the proposal cover page equates to acceptance of the award terms.
  – Any unacceptable terms must be identified at the proposal stage and submitted along with the proposal. Otherwise, there will be no opportunity to negotiate terms later.
• Proposal preparation instructions will be in Section L, but other important proposal information may be spread throughout the RFP

Review NASA RFP to provide examples
Solicitation Caveats

- Contractors do not have the ability to terminate federal contracts, so it is important to get it right at the proposal stage
- Make sure the appropriate institutional offices have a chance to review the contract solicitations – bring them into the discussion as soon as your PI informs you.

Uniform Contract Format

Part I - The Schedule
- A. Solicitation/contract form
- B. Supplies or services and prices/costs
- C. Description/specifications/work statement
- D. Packaging and marking
- E. Inspection and acceptance
- F. Deliveries or performance
- G. Contract administration data
- H. Special contract requirements

Part II - Contract Clauses
- I. Contract clauses

Part III - List of Documents, Exhibits, and Other Attachments
- J. List of attachments

Part IV - Representations and Instructions
- K. Representations, certifications, and other statements of offerors or quoters
- L. Instructions, conditions, and notices to offerors or quoters
- M. Evaluation factors for award
OMB Circulars and the FAR

Overview of Requirements

<table>
<thead>
<tr>
<th>Type of Award</th>
<th>Cost Principles</th>
<th>Admin. Requirements</th>
<th>Audit Requirements</th>
</tr>
</thead>
<tbody>
<tr>
<td>Educational</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Assistance</td>
<td>A-21</td>
<td>A-110</td>
<td>A-133</td>
</tr>
<tr>
<td>Procurement</td>
<td>A-21</td>
<td>FAR</td>
<td>A-133</td>
</tr>
<tr>
<td>Non-Profit</td>
<td></td>
<td></td>
<td></td>
</tr>
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<td>A-122</td>
<td>A-110</td>
<td>A-133</td>
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<td>A-122</td>
<td>FAR</td>
<td>A-133</td>
</tr>
<tr>
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<td></td>
<td></td>
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<td>A-133</td>
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<td>45 CFR 74-E</td>
<td>FAR</td>
<td>A-133</td>
</tr>
<tr>
<td>State &amp; Local</td>
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<td></td>
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<td>A-102</td>
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<td>FAR</td>
<td>A-133</td>
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</tbody>
</table>
Prior Approval Requirements

- A-110 does not apply to contracts – this means
  - No Expanded Authorities
    - No cost extension
    - Pre-award costs
    - Title to equipment
  - No prior approval of items in budget
- Only requirements/restrictions specified in contract apply
- PIs often don’t distinguish and may assume that contracts follow the same rules as grants
Subcontracts

• Subcontracts vs. Subawards
  – There is no distinction between subawards and vendor agreements in the FAR
    • Such distinction only exists in A-110...
    • All contractual agreements issued under a federal contract are considered “subcontracts”
  – All buyer-type processes must be applied to all subcontracts
    • Cost/Price Analysis
    • Open competition/sole-source determination

Subcontracts

• Prior Consent/Notification
  – Approval of your budget is not approval of the subcontract or subcontractor in your budget, only of the need to subcontract
  – ACO prior approval, or at least notification, may be required depending on the subcontracts clause
  – Required by 52.244-2
    • 44.201-1: Consent
    • 44.201-2: Notification
Subcontracts

• Prior Consent/Notification
  — Determined by
    • Approved purchasing system (CPSR)
    • Specific listing of subcontracts in paragraph (d) of 52.244-2
    • Type and amount of subcontract to be issued
    • Alternate I to 52.244-2 – notification required regardless of need for prior approval
  — See Decision Tree...

Reporting Requirements

• Material Inspection & Receiving Report
  — Each deliverable (including reports)
  — Usually required by DoD – 252.246-7000
• Limitation of Funds/Costs
  — Notification to CO when contract expenditures will, in the near future, reach a percentage of obligated funds
  — Usually 2 months/75%
  — 52.232-20 and 52.232-22
Reporting Requirements

- Invention Reports
  - Not required by 52.227-11, but can be added by agency supplemental clauses or special requirements
  - 252.227-7039
    - Annual and Final Report of Inventions & Subcontracts
    - DD Form 882
- Property Reports
  - Generally required at end of contract
  - Required even if property vests in contractor
  - 52.245-1 and Alternate I

Reporting Requirements

- Financial Reports
  - NASA Financial Management Reporting
    - 1852.242-73
    - NASA Form 533
    - Quarterly/Monthly
- Travel Reports
  - Usually required when foreign travel required prior approval
  - Usually with NASA and DOE
Contract Privity

- “Privity of contract” means that only the entities who entered into a contract (and who are privy to it) are entitled to enforce it.
- The subcontractor does not have recourse to bypass the prime contractor and approach the funding agency – the subcontractor must deal with the prime, and vice versa.
- The same applies to a subcontractor’s subcontractor relative to the prime contractor’s terms.
- Designed to protect the relationships between contracting parties.

Exceptions to Privity

- When one party gives another party permission, such as if subcontractor needs to talk directly to funding agency, and the prime contractor agrees.
- When the government reserves rights, such as with intellectual property.
Closeout

• Closeout triggers release of final payment, thus prime contractor and government acceptance of subcontractor’s deliverables is of critical importance
• Government policy is to follow Part 4.804
• Agencies are encouraged to use the Quick Closeout procedures at Part 42.708

Closeout

• Closeout often includes
  – Completion of all deliverables, including final reports and resolution of pending issues
  – Return of any prime or government-owned equipment and other property
  – Submission of final invoices and closeout documents
  – Submission of audit/rate information, as applicable
Closeout

- PI usually responsible for deliverables, such as reports, and oversight of return of property
- Department Administrator will be the one called to provide proof of deliverables and property return
- Timelines for subcontractor closeout are usually tight
- Make sure to retain records for the requisite period of time (minimum 3 years after final payment), or your institutional requirements, which ever is longer

QUESTIONS?