



OFFICE OF THE VICE CHANCELLOR
FOR RESEARCH

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Programs-Post-Award



FEDERAL CONTRACTS

A Post-Award Central Office Perspective

Categories of Federal Outlays Acquisition vs. Assistance (1)

31 USC Chapter 63

❖ Acquisition

❑ Purpose

➤ Acquire (by purchase, lease, or barter) property or services for the direct benefit or use of the United States Government

❑ Instrument

➤ Procurement Contract

Categories of Federal Outlays

Acquisition vs. Assistance (2)

31 USC Chapter 63

❖ **Assistance**

☐ Purpose

- Transfer a thing of value to the State or local government or other recipient to carry out a public purpose of support or stimulation

☐ Instrument

- **Grant or Cooperative Agreement**

ASSISTANCE VS. ACQUISITION MATRIX

	GRANT	CONTRACT	COOP AGREEMENT
Type	Assistance Program	Acquisition	A form of Assistance Program
Flexibility	Lots of Flexibility <ul style="list-style-type: none"> No or marginal sponsor involvement 	Zero Flexibility <ul style="list-style-type: none"> Total sponsor involvement 	Less Flexibility <ul style="list-style-type: none"> Substantial sponsor involvement
Financial Report	SF-425	SF-2706 Annual Service Contract Inventory Report	SF-425
Programmatic Report	Annual Research Performance Progress Report (RPPR)	Multiple reports with various frequencies	Annual Research Performance Progress Report (RPPR)
Regulations	Uniform Guidance (2 CFR 200)	Federal Acquisition Regulation (FAR or 48 CFR)	Uniform Guidance (2 CFR 200)
Contact	Grants Mgmt Spec/ Grants Mgmt Officer	Contracting Officer (CO) /Representative (COR)	Grants Mgmt Spec/ Grants Mgmt Officer
F&A	Rate as of award time through life	Latest negotiated rate	Rate as of award time through life
Banner Type	8	6	7
CFDA	Y	N	Y

AWARD/CONTRACT

2. CONTRACT (*Proc. Inst. Ident.*) NO.
W81XWH2010029

❖ Award Information

- 1. Department of Defense Awarding Office: USAMRAA
- 2. Award number/Project title: W81XWH2010029/Novel breast cancer tumor suppressor pathways
- 3. Type of Award: Grant

❖ Award is NOT A CONTRACT, if

- Governed by 2 CFR 200 (Uniform Guidance)
- Contacts are grant specialist, grant officer
- CFDA number is given
- Federal Financial Report (SF425) is required
- Annual technical report, such as Research Performance Progress Report (RPPR), is required.

Clues to Identify Federal Contracts

The award is a contract if reference is made to:

- ❖ Federal Acquisition Regulation (FAR) or 48 CFR 1
 - ❖ DFARS (DOD contracts), HHSAR (HHS), etc.
- ❖ Contact Info: Contract management specialist (CMS), contracting officer (CO), contracting officer representative (COR)
- ❖ Contracting Officer Authorization (COA)
- ❖ Base Year
- ❖ Option Year
- ❖ Task Order (TO)
- ❖ Work Order (WO)
- ❖ Item #
- ❖ Property Report
- ❖ Absence of CFDA #
- ❖ Small business reporting

Contract Types

FAR 16 identifies a dozen types and subtypes of contracts. Yet, the most commonly used fall under these categories:

- ❖ Firm fixed-price
- ❖ Cost-reimbursement
- ❖ Time and materials
- ❖ Labor cost

Contracting Methods

Multiyear Contract (FAR 17.1)

❖ Single award contract

- buys more than 1 year's requirement (of a product or service) without having to exercise an option for each program year after the first
- May provide for cancellation payment if appropriations are not made for 2nd and subsequent years

Multiple Year Contract (FAR 16.506)

❖ Multiple award contract, also called ID/IQ contract

- provides for indefinite delivery or indefinite quantity (ID/IQ), within stated limits, of supplies or services during a fixed period

❖ Required provisions and clauses, solicitations include:

- Period of contract, including all options;
- Minimum and maximum quantities or dollar value of supplies or services to be acquired under the ID/IQ contract;
- General statements of work, specifications, etc.
- Ordering procedures

Multiyear vs. Multiple Year Contract Administration

Multiyear Contract

- Set up single grant code
- Set up single CFOP for duration of contract
- Restrict end of year balance

Multiple Year Contract

- Set up Single grant code
- Set up Separate fund code for each task order
 - Minimum guarantee
 - Base year
 - Options
- Restrict each task order year contract balance

Indefinite Delivery / Indefinite Quantity Obligations as a Percentage of Total Contract Obligations, Fiscal Years 2011-2015 (fiscal year 2015 dollars)

Dollars (in billions)



Source: GAO analysis of Federal Procurement Data System - Next Generation data. | GAO-17-329

Multiple Year or IDIQ Contract

Generally, IDIQ contracts **do not exceed five years** and **provide for**

- ❖ **Minimum** and **maximum** amounts
- ❖ **Minimum Guarantee**
 - if no task orders are awarded, contractor earns the minimum guarantee
 - If task orders are awarded, minimum rolls over to contract
- ❖ **Base year**
 - Generally up to 1 year
- ❖ **Option years**
 - Up to four (4)

Applicable Cost Principles

- ❖ FAR 31.3 - Contracts with Educational Institutions
 - ☐ Contracts that refer to this [subpart 31.3](#) for determining allowable costs under contracts with educational institutions (defined as institutions of higher education in the OMB Uniform Guidance at 2 CFR part 200, subpart A, and [20 U.S.C. 1001](#)) shall be deemed to refer to, and shall have the allowability of costs determined by the contracting officer in accordance with, the OMB Uniform Guidance at 2 CFR part 200, subpart E and appendix III, in effect on the date of the contract.
- ❖ 2 CFR 200.403 Factors affecting allowability of costs
- ❖ 2 CFR 200.404 reasonable costs
- ❖ 2 CFR 200.405 Allocable costs
- ❖ 2 CFR 200 Appendix III - Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Institutions of Higher Education (IHEs)

Applicable Indirect Cost Rate(s)

Unlike grants, contracts do not necessarily stick with one F&A rate throughout the life of the award. F&A costs charged are charged based on negotiated rates currently in effect.

Predetermined Indirect Cost Rates are used

- ❖ Based on rate agreements in effect on the date of contract (**FAR 52.216-15**)

- ❖ The Contracting Officer (or cognizant Federal agency official) and Contractor shall negotiate rates for subsequent periods (**FAR 52.216-15**)

- ❖ Rates are applicable for a period of not more than four years. (**FAR 48.705(b)(6)**)

F&A Alert to OSP Post-Award

Beware of risk of F&A under-recovery

- ❖ Indirect cost rate should always be updated to current rate in effect
- ❖ As soon as new negotiated rate is available, update banner, and send copy of agreement to contracting officer
- ❖ Make catch-up adjustment in banner to true-up F&A

Selected Agencies & Invoice Format

Generally, contracts bill monthly, unless otherwise agreed with CO. Below are a sample of agencies and invoice formats they accept.

❖ **Argonne National Laboratory (ANL)**

- Banner-generated invoices

❖ **Dept. of Defense/Navy**

- Some contracts call for sf-1034/1035 Public vouchers

- Banner-generated invoices

❖ **NIH/Biomedical Advanced Research Development Authority (BARDA)**

- (RC)-1 Invoice/Financing Request

- (RC)-4 Invoice/Financing Request and Contract Financial Reporting

- Both are manual invoices

Federal Contract Administration

Invoice NIH (RC)-4 Challenges

- ❖ This invoice template combines 2 forms:
 - ☐ (RC)-1 Invoice/Financing Request
 - ☐ SF-2706 financial report of individual project/contract

❖ A Cumbersome Process

- ☐ Involves lots of interactions with department for cost justification and documentation
- ☐ Additional information may be required
 - In **some extreme cases**, **timesheets** are required
 - In BARDA's case, **invoices** are done **on calendar month basis**.
- ☐ **Invoice package** for BARDA or NIAID contracts can be **up to 100 pages long**
- ☐ Contracting officer scrutinizes invoices
 - vs. proposal, deliverables/technical reports, periodic meetings
 - vs. regulations and invoicing guidelines for
 - ✓ Unallowable costs
 - ✓ Contracting Officer Authorization for specific purchases or services—i.e., consultants, etc.
 - ✓ adequate documentation re threshold on particular line items, such as supplies, etc

What Happens After CO's Review?

Compliant or “proper” invoices are routed for payment, subject to “**Invoice Contract Financing, Prompt Payment (FAR 32.9)**”

- ❖ Payment due with 30 days of submission of proper invoice
- ❖ Late payments on invoices subject to automatic interest penalty

Improper invoices can either be sent back for correction or suspended

- ❖ Invoice Re-issue
 - The 30-day payment clock is reset to zero
- ❖ **Suspension**
 - Invoices can be suspended for material breach, disallowed costs, or other reasons at CO's discretion
 - Suspension can be total or partial
 - Invoice may be re-submitted upon CO's approval

Limitation of Costs (FAR 52.232.20) or Limitation of Funds (FAR 52.232.22)

- ❖ Contractor must give written notice to the Contracting Officer (CO) when they have reason to believe that:
 - *Inception-to-date costs expected to be incurred in the next 60 days will exceed 75 percent of the estimated cost specified in the task order; or*
 - *Total costs at completion will be greater than or substantially less than previously estimated costs.*
- ❖ Notice must indicate whether available funds are sufficient or not to complete the task order
- ❖ *If funds are not sufficient, contractor must provide within 60 days of end of contract written estimate of additional funds needed to complete the work.*

In other words, if $\frac{3}{4}$ through the contract you estimate you're going into overdraft, don't start charging your departmental funds. Instead, prepare proposal for additional funding.

Federal Contract Administration

Unobligated Balance

❖ Each Task Order (TO) stands alone

- Unobligated balance on one task order cannot be used to cover overdraft on another task order
- Each task order balance should be restricted

Federal Contract Administration & False Claims Act (31 U.S. Code § 3729)

Any person who knowingly submitted false claims to the government

- is liable for double the government's damages
- plus a penalty of \$2,000 for each false claim

The Payment clauses at [FAR 52.212-4\(i\)\(5\)](#), 52.232-25(d), 52.232-26(c), and 52.232-27(l)

- require that, if the contractor becomes aware that the Government has overpaid on a contract financing or invoice payment, the contractor shall remit the overpayment amount to the Government. A **contractor may be suspended and/or debarred** for knowing failure by a principal to timely disclose credible evidence of a significant overpay.

Federal Contract Administration Closeout

There is a long list of required forms to close out a federal contracts and the time varies depending on the contract--

Reference FAR 4.804-1(a) -- closeout schedule

Small Purchase - upon receipt & payment

Firm Fixed Price Contract - within 6 months

Cost/Fixed Price Incentive/Time & Materials

Contracts (any contract requiring settlement of indirect cost rates) - **within 36 months**

All Other contracts (labor hour) - within 20 months

Exceptions: litigation / appeal / termination

Federal Contract Administration Quick Closeout

- ❖ **48 CFR 42.708** Quick Closeout Procedure applies when
 - Total unsettled indirect cost (TUIC) allocated to any one contract does not exceed \$1,000,000
 - TUIC is less than 15% of contract value
 - Contracting officer deems quick closeout appropriate, based on risk assessment

Food for Thought

- ❖ Weigh the risks and benefits of contract types:
 - ☐ Cost-reimbursement vs. firm fixed-price
(Administrative burden vs. risk of increased performance costs)
- ❖ When reviewing/negotiating the contract, be sure the awarded budget is consistent with the proposed budget as far as methodology—e.g., if salary is proposed based on % of effort, make sure the awarded budget is not based on hourly wages.
- ❖ Make sure you have a system in place to mitigate the risk of the “Limitation of Costs” clause—i.e., track the rate of expenditure vs. contract value up to the 75% threshold.

Resources

❖ Federal Acquisition Regulation (FAR)

- <https://www.acquisition.gov/browse/index/far>

❖ Uniform Guidance 2 CFR 200

- Subpart E – Cost Principles (200.400)
- https://www.ecfr.gov/cgi-bin/text-idx?SID=7ba4c7c94d3650dd41df28350db83173&mc=true&tpl=/ecfrbrowse/Title02/2cfr200_main_02.tpl

❖ University of Illinois - Sponsored Projects Cost Principles

- Section 16-Grants and Research Contracts/Sponsored Projects Cost Principles
- <https://www.obfs.uillinois.edu/bfpp/section-16-grants-research-contracts/cost-principles>

Questions/Discussion

