The background image shows a grand, curved interior space, likely a dome or a large hall, with a high ceiling. A prominent feature is a large, curved relief sculpture depicting a historical scene with figures in classical attire. The architecture is highly ornate, with decorative moldings and a series of small, square windows or niches along the wall. The overall tone is formal and institutional.

Federal Contracts and Other Transaction Agreements (OTAs)



Jamie Sprague

Associate Director, Federal Team
Office of Sponsored Programs
Cornell University

What is a contract?

- Contract is both term of art and a legal document.
- Grants, Cooperative Agreements, and “Contracts” are all legally binding agreements that fit under the umbrella of legal contracts.



What is a legal contract?

- A legally binding agreement involving two or more parties that sets forth what the parties will or will not do.
 - Parties can be individuals (typically adults of sound minds) or businesses (usually represented by an authorized official).
- A contract is formed when competent parties mutually agree to provide each other some benefit.
 - This benefit is called consideration and can be anything of value to the parties.
- A contract normally requires one party to make a reasonably detailed offer to do something and the other party to accept without significant change.
- Most contracts must be in writing to be enforceable.

Types of Federally Sponsored Agreements

Assistance	Procurement
<p>Grant</p> <ul style="list-style-type: none">• Accomplishing a public purpose of support• Little involvement between sponsor and recipient is anticipated <p>Cooperative Agreement</p> <ul style="list-style-type: none">• Accomplishing a public purpose of support• Substantial involvement of the Sponsor in the contemplated work is anticipated	<p>Federal Contract</p> <ul style="list-style-type: none">• Used in relationship between the Sponsor and Contractor when the goal of relationship is to acquire property or services for the direct benefit or use of the Sponsor• Governed by the Federal Acquisition Regulation (FAR), a highly regulated set of strict terms and conditions

Brief History of Federal Contracts & OTAs

1940s

Armed Services
Procurement Act
& Armed Services
Procurement
Regulation (ASPR)

1950s

The Grants Act of
1958

National
Aeronautics and
Space Act of 1958,
which included
OTA authority

1960s

1970s

NIH is awarded
OTA authority
(1972)

ASPR becomes
the Defense
Acquisition
Regulation (1977)

Federal Grant &
Cooperative
Agreement Act
(1978)

1980s

DARPA is granted
OTA authority as a
pilot for DOD
(1989)

1990s

Federal
Acquisition
Streamlining Act
(1993)

DARPA's OTA
authority is
expanded to
include prototype
projects.

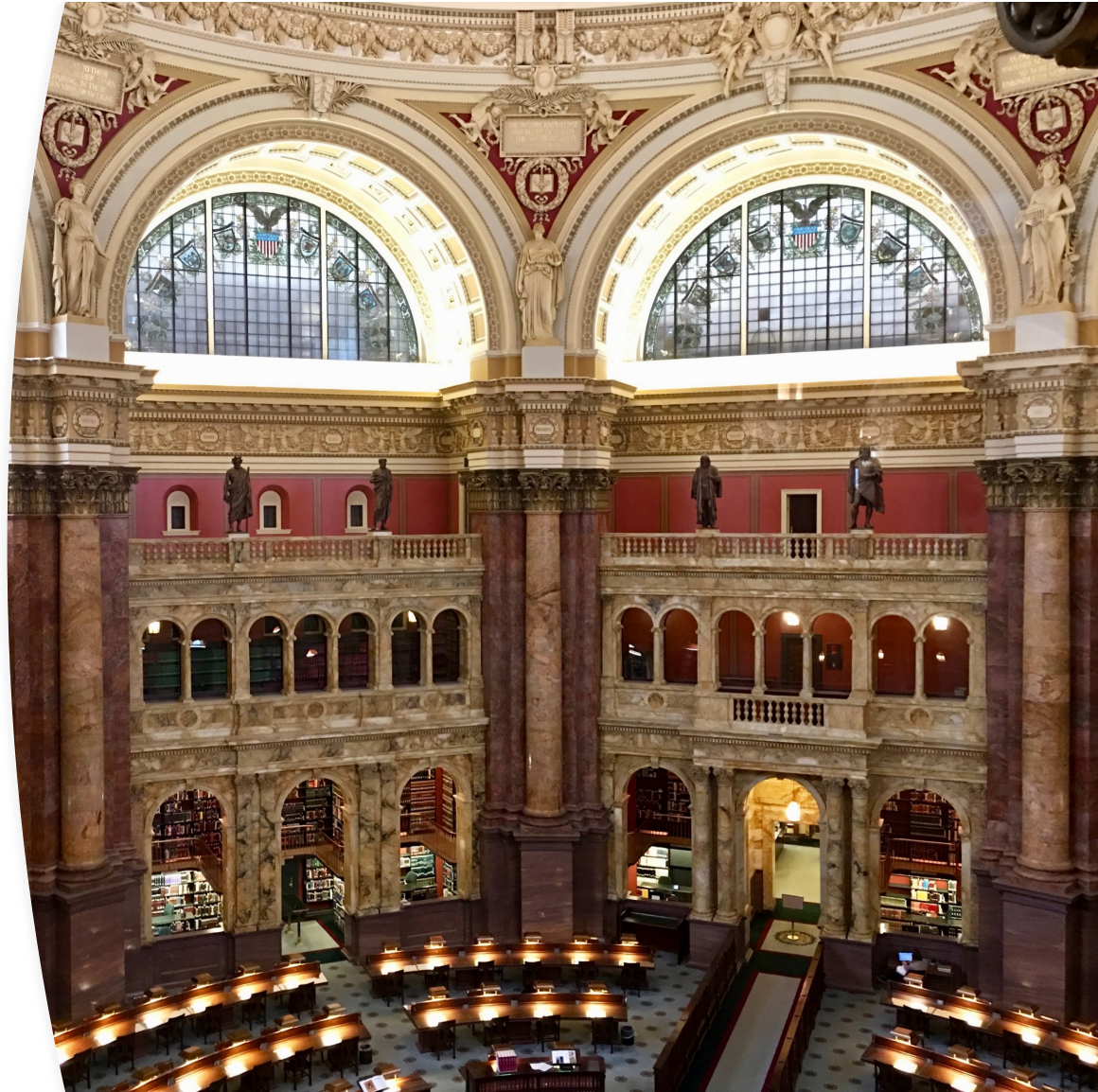
2000s+

Expansion of OTA
authority to
include BARDA
(2006), ARPA-E
(2011), and ARPA-
H (2022)



Federal Acquisition Regulation (FAR)

- 48 CFR Parts 1-53
 - Parts 1-51 are instructions to the federal Contracting Officer and cover things like policies, requirements, exceptions, practices, and procedures
 - Part 52 is the FAR clauses (i.e. award terms and conditions) in the format 52.XXX-XX
- Federal agencies have their own implementation of the FAR (codified in 48 CFR Chapters 2-99), and some subagencies have their own modifications to both FAR and agency FAR terms



Types of Federally Sponsored Agreements

Assistance	Procurement	Other Funded Actions
Grant <ul style="list-style-type: none">• Accomplishing a public purpose of support• Little involvement between sponsor and recipient is anticipated Cooperative Agreement <ul style="list-style-type: none">• Accomplishing a public purpose of support• Substantial involvement of the Sponsor in the contemplated work is anticipated	Federal Contract <ul style="list-style-type: none">• Used in relationship between the Sponsor and Contractor when the goal of relationship is to acquire property or services for the direct benefit or use of the Sponsor• Governed by the Federal Acquisition Regulation (FAR), a highly regulated set of strict terms and conditions	Other Transaction Agreement (OTA) <ul style="list-style-type: none">• Legal contract with the federal government that is not a grant, cooperative agreement, or a federal contract• Used to streamline research and development, prototype development, and other projects with nonprofit research institutions

Plus other unfunded agreements like Cooperative Research and Development Agreements (CRADAs) and Partnership Intermediary Agreements (PIAs)

Other Transaction Agreement s (OTAs)

- Congress must specifically authorize an agency the ability to issue an OTA. This permission is currently held by: DHHS (including NIH and APRA-H), DOD, NASA, FAA, DOT, DHS, TSA, DOE, ARPA-E
- Used by the federal government to quickly contract with non-federal entities outside of the FAR and other regulations
- Not subject to FAR, OMB Uniform Guidance, or Bayh-Dole unless explicitly stated in the OTA

Why OTAs?

- Federal contracting process can be too slow and bureaucratic, and sometimes doesn't effectively meet commercial entity needs
 - Example: Cost-based pricing system is cumbersome, requiring specialized accounting and audit systems and, from some perspectives, represents excessive oversight
 - Example: Government's approach to IP and technical data rights can be overreaching and some FAR regulations are aging quickly or are otherwise out of date
 - Ultimately, the government needs to stay competitive
- A note on OTA Consortia...

Why does the
type of
agreement
matter proposal
preparation?





Varied and Intense Proposal Requirements

- These are not assistance agreements!
- Each solicitation is unique
- Defined Q&A period to ask questions to the federal contacts
- High level of detail required
- Submission is done via email or an uncommon eRA system, and may not have a 5pm deadline
- Negotiation of award terms and conditions is routinely a part of the proposal

Types Federal Contracts

Contract by Negotiation

FAR Part 15

- Research and Development (R&D) contracts, as contemplated in FAR Part 35, almost always follow the procedures of FAR Part 15.
- FAR Part 16 contemplates types of contracts that can be awarded, with R&D contracts typically resulting in:
 - Fixed-price (Subpart 16.2)
 - Cost-reimbursable (Subpart 16.3)
 - Indefinite Delivery Indefinite Quantity (IDIQ) (Subpart 16.5)

Commercial Contracts

FAR Part 12

- Used for the *acquisition* of supplies or services that meet the definitions of "*commercial product*" or "*commercial service*" as defined by Subpart 2.101.
- Required terms and conditions can be difficult for research institutions to accept

Contracting by Negotiation

Uniform Contract Format – FAR 15.204-1*

Section	Title	Description
A	Solicitation/contract form	See next slide
B	Supplies or services and prices/costs	Brief description of supplies/services, including incidental deliverables
C	Description/specifications/statement of work	Description of agency's needs
D	Packaging and marking	Packaging, packing, preservation, and marking requirements, if any
E	Inspection and acceptance	Inspection, acceptance, quality assurance, and reliability requirements
F	Deliveries or performance	Requirements for time, place, and method of delivery or performance.
G	Contract administration data	Accounting and appropriation data, and any required contract administration information or instructions other than those in Section A.
H	Special contract requirements	Any special contract requirements that are not included in other Sections
I	Contract clauses	Clauses required by law or FAR/FAR supplements, and any additional clauses expected to be included in any resulting contract.
J	List of attachments	The catch all!
K	Representations, certifications, and other statements of offerors or respondents	Provisions that require representations, certifications, or the submission of other information by offerors.
L	Instructions, conditions, and notices to offerors or respondents	How to prepare proposals
M	Evaluation factors for award	

*FAR Part 15 – Contracting by Negotiation

SOLICITATION AND OFFER - NEGOTIATED ACQUISITION				PAGE	OF	PAGES
I. SOLICITATION						
1. SOLICITATION NUMBER		2. DATE ISSUED		3. OFFERS DUE BY		4. OFFERS VALID FOR 60 DAYS UNLESS A DIFFERENT PERIOD IS ENTERED HERE
5. ISSUED BY		6. ADDRESS OFFER TO (If other than item 5)				
7. INFORMATION CALL (No collect calls)						
A. NAME		B. TELEPHONE		C. E-MAIL ADDRESS		
AREA CODE		PHONE NUMBER				
8. BRIEF DESCRIPTION						
9. TABLE OF CONTENTS						
(X)	SEC.	DESCRIPTION	PAGE(S)	(X)	SEC.	DESCRIPTION
PART I - THE SCHEDULE				PART II - CONTRACT CLAUSES		
	A	SOLICITATION/CONTRACT FORM			I	CONTRACT CLAUSES
	B	SUPPLIES OR SERVICES AND PRICES/COSTS		PART III - LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACH.		
	C	DESCRIPTION/SPECIFICATIONS/WORK STATEMENT			J	LIST OF ATTACHMENTS
	D	PACKAGING AND MARKING		PART IV - REPRESENTATIONS AND INSTRUCTIONS		
	E	INSPECTION AND ACCEPTANCE			K	REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF OFFERORS
	F	DELIVERIES OR PERFORMANCE			L	INSTRS., CONDS., AND NOTICES TO OFFERORS
	G	CONTRACT ADMINISTRATION DATA			M	EVALUATION FACTORS FOR AWARD
	H	SPECIAL CONTRACT REQUIREMENTS				
II. OFFER						
The undersigned agrees to furnish and deliver the items or perform services to the extent stated in this document for the consideration stated. The rights and obligations of the parties to the resultant contract shall be subject to and governed by this document and any documents attached or incorporated by reference.						
10A. PERSONS AUTHORIZED TO NEGOTIATE		10B. TITLE		10C. TELEPHONE		
				AREA CODE NUMBER		
11. NAME AND ADDRESS OF OFFEROR		12A. SIGNATURE OF PERSON AUTHORIZED TO SIGN				
		12B. NAME OF SIGNER				
		12C. TITLE OF SIGNER				
		12D. DATE				
		12E. TELEPHONE				
		AREA CODE NUMBER				
OPTIONAL FORM 308 (9-97) Prescribed by GSA - FAR (48 CFR) 53.215-1(f)						

https://www.gsa.gov/system/files/OF_308.pdf

SOLICITATION, OFFER, AND AWARD				PAGE	OF	PAGES
1. This Contract is a Fixed Order under the Defense Priorities and Allocations System (DPAS) - Code of Federal Regulations - at 15 CFR 700.				RATING		
2. CONTRACT NUMBER		3. SOLICITATION NUMBER		4. TYPE OF SOLICITATION		5. DATE ISSUED
				<input type="checkbox"/> SEALED BID (SB) INVITATION FOR BID <input type="checkbox"/> NEGOTIATED (RFQ) REQUEST FOR PROPOSAL		6. REQUISITION/PURCHASE NUMBER
7. ISSUED BY		CODE		8. ADDRESS OFFER TO (If other than item 7)		
NOTE: In sealed bid solicitations "offer" and "offeror" mean "bid" and "bidder".						
SOLICITATION						
9. Sealed offers in original and _____ copies for furnishing the supplies or services in the Schedule will be received at the place specified in item 8, or if hand carried, in the depository located in _____ until _____ local time _____ (PM/AM) (Day/Mo)						
CAUTION - LATE Submissions, Modifications, and Withdrawals: See Section L, Provision Number 52.214-7 or 52.215-1. All offers are subject to all terms and conditions contained in this solicitation.						
10. FOR INFORMATION CALL:		A. NAME		B. TELEPHONE (NO COLLECT CALLS)		C. EMAIL ADDRESS
		AREA CODE NUMBER		EXTENSION		
11. TABLE OF CONTENTS						
(X)	SECTION	DESCRIPTION	PAGE(S)	(X)	SECTION	DESCRIPTION
PART I - THE SCHEDULE				PART II - CONTRACT CLAUSES		
	A	SOLICITATION/CONTRACT FORM			I	CONTRACT CLAUSES
	B	SUPPLIES OR SERVICES AND PRICES/COSTS		PART III - LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACHMENTS		
	C	DESCRIPTION/SPECIFICATIONS/WORK STATEMENT			J	LIST OF ATTACHMENTS
	D	PACKAGING AND MARKING		PART IV - REPRESENTATIONS AND INSTRUCTIONS		
	E	INSPECTION AND ACCEPTANCE			K	REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF OFFERORS
	F	DELIVERIES OR PERFORMANCE			L	INSTRUCTIONS, CONDITIONS, AND NOTICES TO OFFERORS
	G	CONTRACT ADMINISTRATION DATA			M	EVALUATION FACTORS FOR AWARD
	H	SPECIAL CONTRACT REQUIREMENTS				
OFFER (Must be fully completed by offeror)						
NOTE: Item 12 does not apply if the solicitation includes the provisions at 52.214-16, Minimum Bid Acceptance Period.						
12. In compliance with the above, the undersigned agrees, if this offer is accepted within _____ calendar days (60 calendar days unless a different period is inserted by the offeror) from the date for receipt of offers specified above, to furnish any or all items upon which prices are offered at the set opposite each item, delivered at the designated point(s), within the time specified in the schedule.						
13. DISCOUNT FOR PROMPT PAYMENT (See Section J, Clause Number 52.232-5)		10 CALENDAR DAYS (%)		20 CALENDAR DAYS (%)		30 CALENDAR DAYS (%) CALENDAR DAYS (%)
14. ACKNOWLEDGMENT OF AMENDMENTS (The offeror acknowledges receipt of amendments to the SOLICITATION for offers and related documents numbered and dated:)		AMENDMENT NUMBER		DATE		AMENDMENT NUMBER DATE
15A. NAME AND ADDRESS OF OFFEROR		CODE		FACILITY		15. NAME AND TITLE OF PERSON AUTHORIZED TO SIGN OFFER (Type or print)
15B. TELEPHONE NUMBER		15C. CHECK IF REMITTANCE ADDRESS IS DIFFERENT FROM ABOVE - ENTER SUCH ADDRESS IN SCHEDULE.		17. SIGNATURE		18. OFFER DATE
AREA CODE NUMBER EXTENSION						
AWARD (To be completed by Government)						
19. ACCEPTED AS TO ITEMS NUMBERED		20. AMOUNT		21. ACCOUNTING AND APPROPRIATION		
22. AUTHORITY FOR USING OTHER THAN FULL OPEN COMPETITION UNDER THE UNITED STATES CODE AT: <input type="checkbox"/> 10 U.S.C. 3204(b) <input type="checkbox"/> 41 U.S.C. 3304(b) ()		23. SUBMIT INVOICES TO ADDRESS SHOWN IN (4 copies unless otherwise specified)		ITEM		
24. ADMINISTERED BY (If other than item 7)		25. PAYMENT WILL BE MADE BY		CODE		
26. NAME OF CONTRACTING OFFICER (Type or print)		27. UNITED STATES OF AMERICA		28. AWARD DATE		
(Signature of Contracting Officer)						
IMPORTANT - Award will be made on this Form, or on Standard Form 28, or by other authorized official written notice.						
AUTHORIZED FOR LOCAL REPRODUCTION Previous edition is unusable						
STANDARD FORM 33 (REV. 12/2022) Prescribed by GSA - FAR (48 CFR) 53.214 (c)						

<https://www.gsa.gov/system/files/SF33-22.pdf>

Common Contract Proposal Format

Technical Volume

- Cover Page
- Abstract
- Narrative
- CV/Biosketches
- Current & Pending (Other) Support
- Letters of Collaboration/Support
- IP Management Plan
- Organizational Conflict of Interest
- Etc.

Business or Cost Volume

- Cover Page
- Detailed Budget
- Budget Justification
- Quotes and other supporting docs
- Payment Terms/Milestones
- Subrecipient Information
- Small Business Subcontracting Plan
- Representations & Certifications
- Etc.

Certified Cost or Pricing

FAR Part 15.4

- Contracting officers must confirm that proposed costs are fair and reasonable
 - **Certified Cost or Pricing** - Truthful Cost of Pricing Data Act (10 USC 271, 41 USC 35) requires offerors to certify that the cost or pricing is accurate, current and complete.
 - **Other Than Certified Cost or Pricing** – Permitted when an exception is contemplated in [FAR 15.403-4](#).
- See [FAR 52.215-20](#), Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data
- Certified Cost or Pricing data is required to be entered into FAR 15.408, Table 15-2

This is to certify that, to the best of my knowledge and belief, the cost or pricing data (as defined in section 2.101 of the Federal Acquisition Regulation (FAR) and required under FAR subsection 15.403-4) submitted, either actually or by specific identification in writing, to the Contracting Officer or to the Contracting Officer's representative in support of ___ are accurate, complete, and current as of DDMMYYYY. This certification includes the cost or pricing data supporting any advance agreements and forward pricing rate agreements between the offeror and the Government that are part of the proposal.



Negotiation at Proposal Stage

- Very common to have to accept terms and complete reps/certs at the time of proposal submission, *sometimes without any opportunity to negotiate is selected for funding*

Examples:

a. A representative of the firm authorized to commit the firm to contractual obligations must sign the offer's quote, including adding any Discount Terms, if applicable. In doing so, the contractor agrees to the contract terms and conditions as written in the Solicitation, with attachments.

(c) A written notice of award or acceptance of an offer, mailed or otherwise furnished to the successful offeror within the time for acceptance specified in the offer, shall result in a binding contract without further action by either party. Before the offer's

negotiations are successfully concluded. The draft Standard Research Subcontract, including the proposed Statement of Work, and applicable Terms and Conditions has been enclosed for your information. This should be reviewed prior to the submission of your proposal. Acceptance of the terms and conditions or deviations requested shall be provided with proposal submission. Exceptions submitted after award will not be entertained. The Standard Research Subcontract including the



Why is that
a concern?

FAR terms are time consuming!

- Terms are extensive and expansive
- Requires a high level of training and experience to navigate and understand
- Demands a large amount of time and concentration
- Commonly requires input from PI, unit, and offices



52.215-8 ORDER OF PRECEDENCE—UNIFORM CONTRACT FORMAT (OCT 1997)	1
52.215-12 SUBCONTRACTOR CERTIFIED COST OR PRICING DATA (OCT 2010)	1
52.215-13 SUBCONTRACTOR CERTIFIED COST OR PRICING DATA— MODIFICATIONS (OCT 2010)	2
52.215-17 WAIVER OF FACILITIES CAPITAL COST OF MONEY (OCT 1997)	2
52.215-21 REQUIREMENTS FOR CERTIFIED COST OR PRICING DATA AND DATA OTHER THAN CERTIFIED COST OR PRICING DATA—MODIFICATIONS (OCT 2010).....	2
52.215-23 LIMITATIONS ON PASS-THROUGH CHARGES (OCT 2009).....	2
52.216-7 ALLOWABLE COST AND PAYMENT (JUN 2013) ALTERNATE II (AUG 2012).....	2
52.216-11 COST CONTRACT-NO FEE (APR 1984) ALTERNATE I (APR 1984)	8
52.216-15 PREDETERMINED INDIRECT COST RATES (APR 1998).....	9
52.219-8 UTILIZATION OF SMALL BUSINESS CONCERNS (NOV 2016).....	9
52.219-9 SMALL BUSINESS SUBCONTRACTING PLAN (JAN 2017).....	9
52.219-28 POST-AWARD SMALL BUSINESS PROGRAM REREPRESENTATION (JUL 2013)	9
52.222-3 CONVICT LABOR (JUN 2003).....	10
52.222-21 PROHIBITION OF SEGREGATED FACILITIES (APR 2015).....	10
52.222-26 EQUAL OPPORTUNITY (SEP 2016)	10
52.222-37 EMPLOYMENT REPORTS ON VETERANS (FEB 2016)	10
52.222-40 NOTIFICATION OF EMPLOYEE RIGHTS UNDER THE NATIONAL LABOR RELATIONS ACT (DEC 2010).....	11
52.222-50 COMBATING TRAFFICKING IN PERSONS (MAR 2015).....	11
52.222-54 EMPLOYMENT ELIGIBILITY VERIFICATION (OCT 2015).....	11
52.223-6 DRUG-FREE WORKPLACE (MAY 2001).....	11
52.223-18 ENCOURAGING CONTRACTOR POLICIES TO BAN TEXT MESSAGING WHILE DRIVING (AUG 2011)	11
52.225-1 BUY AMERICAN—SUPPLIES (MAY 2014)	11
52.225-13 RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (JUN 2008)	11
52.227-16 ADDITIONAL DATA REQUIREMENTS (JUN 1987)	11
52.228-7 INSURANCE-LIABILITY TO THIRD PERSONS (MAR 1996).....	11
52.230-2 COST ACCOUNTING STANDARDS (OCT 2015).....	11
52.230-5 COST ACCOUNTING STANDARDS – EDUCATIONAL INSTITUTION (AUG 2016)	11
52.230-6 ADMINISTRATION OF COST ACCOUNTING STANDARDS (JUN 2010).....	11
52.232-22 LIMITATION OF FUNDS (APR 1984)	11
52.232-23 ASSIGNMENT OF CLAIMS (MAY 2014)	11

52.230-5 Cost Accounting Standards-Educational Institution.

As prescribed in 30.201-4(e)(1), insert the following clause:

Cost Accounting Standards-Educational Institution (Jun 2020)

(a) Unless the contract is exempt under 48 CFR 9903.201-1 and 9903.201-2, the provisions of 48 CFR 9903 are incorporated herein by reference and the Contractor, in connection with this contract, *shall*—

(1) *(CAS-covered Contracts Only)*. If a *business unit* of an educational institution (defined as an institution of higher education in the OMB Uniform Guidance at 2 CFR part 200, subpart A and 20 U.S.C. 1001) is required to submit a Disclosure Statement, disclose *in writing* the Contractor's cost accounting practices as required by 48 CFR 9903.202-1 through 9903.202-5, including methods of distinguishing *direct costs* from *indirect costs* and the basis used for accumulating and allocating *indirect costs*. The practices disclosed for this contract *shall* be the same as the practices currently disclosed and applied on all other contracts and subcontracts being performed by the Contractor and which contain a Cost Accounting Standards (CAS) clause. If the Contractor has notified the *Contracting Officer* that the Disclosure Statement contains trade secrets, and commercial or financial information which is privileged and confidential, the Disclosure Statement *shall* be protected and *shall* not be released outside of the Government.

(2) Follow consistently the Contractor's cost accounting practices in accumulating and reporting contract performance cost data concerning this contract. If any change in cost accounting practices is made for the purposes of any contract or subcontract subject to CAS requirements, the change *must* be applied prospectively to this contract and the Disclosure Statement, if required, *must* be amended accordingly. If an accounting principle change mandated under OMB Uniform Guidance at 2 CFR part 200, subpart E and appendix III, requires that a change in the Contractor's cost accounting practices be made after the date of this contract award, the change *must* be applied prospectively to this contract and the Disclosure Statement, if required, *must* be amended accordingly. If the contract price or cost allowance of this contract is affected by such changes, adjustment *shall* be made in accordance with paragraph (a)(4) or (a)(5) of this clause, as appropriate.

(3) Comply with all CAS, including any modifications and interpretations indicated thereto contained in 48 CFR 9905 in effect on the date of award of this contract or, if the Contractor has submitted *certified cost or pricing data*, on the date of final agreement on price as shown on the Contractor's signed certificate of current *cost or pricing data*. The Contractor *shall* also comply with any CAS (or modifications to CAS) which hereafter become applicable to a contract or subcontract of the Contractor. Such compliance *shall* be required prospectively from the date of applicability to such contract or subcontract.

(4)

(i) Agree to an equitable adjustment as provided in the Changes clause of this contract if the contract cost is affected by a change which, pursuant to paragraph (a)(3) of this clause, the Contractor is required to make to the Contractor's established cost accounting practices.

(ii) Negotiate with the *Contracting Officer* to determine the terms and conditions under which a change *may* be made to a cost accounting practice, other than a change made under other provisions of paragraph (a)(4) of this clause; provided that no agreement *may* be made under this provision that will increase costs paid by the *United States*.

(iii) When the parties agree to a change to a cost accounting practice, other than a change under subdivision (a)(4)(i) or (a)(4)(iv) of this clause, negotiate an equitable adjustment as provided in the Changes clause of

changes clause of this contract, if the contract cost is required under the OMB Uniform Guidance at 201.11(e)(1) to be effective after the date of contract award, established cost accounting practices.

in accordance with, as appropriate, if the Contractor or a subcontractor has complied with an applicable CAS clause, or to follow any cost accounting practices established by the *United States*. Such costs paid by the *United States*, together with interest in 6621(a)(2) of the Internal Revenue Code of 1954, shall be paid by the *United States* was made to the extent recover costs greater than the increased cost is subject to the price adjustment, unless the Contractor was aware or *should* have been aware at the time of the award of the contract.

Contractor has complied with an applicable CAS clause, or to follow any cost accounting practices established by the *United States*, chapter 71, Contract Disputes.

Contractor is required to make to the Contractor's established cost accounting practices.

Contractor enters into, the substance of the contract, or any tier, in effect on the subcontractor's award date or, if the Contractor is not aware of the change, on the date of final agreement on price as shown on the Contractor's signed certificate of current *cost or pricing data*, except that—

Contractor is required to make to the Contractor's established cost accounting practices.

Contractor is required to make to the Contractor's established cost accounting practices.

(2) The requirement in this paragraph (d) *shall* apply only to negotiated subcontracts in excess of the lower CAS threshold specified in Federal Acquisition Regulation (FAR) 30.201-4(b) on the date of subcontract award; and

(3) The requirement *shall* not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 48 CFR 9903.201-1.

(End of clause)

Why is that a concern?

FAR terms are time consuming!

- Terms are extensive and expansive
- Requires a high level of training and experience to navigate and understand
- Demands a large amount of time and concentration
- Commonly requires input from PI, unit, and offices

FAR terms are largely not written for research institutions, and there are many that are not actionable

- Intellectual Property
- Costing requirements
- Fundamental research (no citizenship or publication restrictions)
- Security requirements



(1) The Contractor shall not use any information provided or acquired under this contract for any purpose other than in the performance of this contract.

C.3. DISTRIBUTION STATEMENT

Distribution Statement determination for deliverable documents generated under this contract: DISTRIBUTION STATEMENT C: Distribution authorized to U.S. Government Agencies and their contractors due to the Proprietary Information and to prevent Premature Dissemination of Information, determined 19 MAY 2023. Other requests for this document shall be referred to the DARPA Public Release Center via email at prc@darpa.mil.

H.1. PUBLIC RELEASE OR DISSEMINATION OF INFORMATION

(a) There shall be no dissemination or publication, except within and between the Contractor and any subcontractors, of information developed under this contract or contained in the reports to be furnished pursuant to this contract without prior written approval of the Procuring Contracting Officer (PCO) and DARPA's Public Release Center (DARPA/PRC). All technical reports will be given proper review by appropriate authority to determine which Distribution Statement is to be applied prior to the initial distribution of these reports by the Contractor.

Classified Data: The work performed under this AGREEMENT may cover classified national security information and unclassified Military Critical Technology (MCT). All personnel, government and non-government, working with classified material must have an appropriate security clearance and need to know. Any exchange of classified data with industry shall comply with the National Industrial Security Program Operating Manual, DoD 5220.22-M (February 2006) and the DD-254, DoD Contract Security Classification Specification. If required, the COLLABORATOR(S) must also be certified by the Joint Certification Program (JCP) to receive MCT and technical data governed by DoD Directive 5230.25. This data must be controlled in accordance with ITAR.

Why is that a concern?

FAR terms are time consuming!

- Terms are extensive and expansive
- Requires a high level of training and experience to navigate and understand
- Demands a large amount of time and concentration
- Commonly requires input from PI, unit, and offices

FAR terms are largely not written for educational institutions, and there are many that are not actionable

- Intellectual Property
- Costing requirements
- Fundamental research (no citizenship or publication restrictions)
- Security requirements

OTA solicitations often have model agreements or terms that proposers must either accept or comment on within the proposal.



ARPA-H Sample OTA – September 2024

2024

This is a sample Other Transaction agreement with articles and language that are regularly used in ARPA-H OTs.

Any text highlighted in **blue** may be information the Government asks to be provided by Performers, and text highlighted in **yellow** is information usually provided by the Government, however, any final language will be determined by the cognizant ARPA-H Agreements Officer (AO) and agreed upon by both Performer and AO.

Fixed milestone/no resource share sample

OTHER TRANSACTION AGREEMENT

BETWEEN

INSERT PERFORMER AND ADDRESS, UEI

AND

THE ADVANCED RESEARCH PROJECTS AGENCY FOR HEALTH (ARPA-H)

CONCERNING

INSERT PROGRAM/PROJECT TITLE

Agreement No.: **IAYSAXXXXXXX**

Authority: 42 U.S. Code § 290c(g)(1)(D)

Total Amount of the Agreement: \$ **X,XXX,XXX** [Base + Exercised Phases/Options]

Segment 1 (Base): _____	\$ X,XXX,XXX
Segment 2 (Phase/Option, Exercised): _____	\$ X,XXX,XXX
Segment 3 (Phase/Option, Unexercised): _____	\$ X,XXX,XXX

Funding Obligated:

Date of the Agreement:

This Agreement is entered into between the United States of America, hereinafter called the Government, represented by The Advanced Research Projects Agency for Health (ARPA-H), and **INSERT PERFORMER NAME**, pursuant to and under United States Federal law.

FOR **INSERT PERFORMER NAME**

FOR THE GOVERNMENT
ADVANCED RESEARCH PROJECTS AGENCY FOR HEALTH

<div style="position: relative; width: 100%; height: 100%;"> X </div>	<div style="position: relative; width: 100%; height: 100%;"> X </div>
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 (Name, Title) _____

 (Name, Title) _____

Page 3 of 29

<https://arpa-h.gov/sites/default/files/2024-09/ARPA-H%20-%20OT%20Agreement%20Sample%20-%20Sep%202024.docx>

DARPA Sample OTA – June 2024

Agreement No. HR0011-XX-9-XXXX

**(SAMPLE - Fixed Support Approach with a Nontraditional Defense Performer -
- No resource contribution)**

Other Transaction for Prototypes

BETWEEN

(INSERT PERFORMER AND ADDRESS)

AND

THE DEFENSE ADVANCED RESEARCH PROJECTS AGENCY
675 NORTH RANDOLPH STREET
ARLINGTON, VA 22203-2114

CONCERNING

(INSERT RESEARCH AND DEVELOPMENT TITLE)

Agreement No.: HR0011-XX-9-XXXX
Purchase Requisition No.: XXXXXXXXXXXX
Total Amount of the Agreement: \$ XXXXXXXXXXXX
Funds Obligated: \$ XXXXXXXXXXXX
Authority: 10 U.S.C. § 4022
Effective Date: XXXXXXXXXX

Line of Appropriation:

AA \$

This Agreement is entered into between the United States of America, hereinafter called the Government, represented by The Defense Advanced Research Projects Agency (DARPA), and (INSERT COMPANY NAME) pursuant to and under United States Federal law.

FOR (INSERT COMPANY NAME) FOR THE GOVERNMENT
DEFENSE ADVANCED RESEARCH PROJECTS
AGENCY

(Signature)

(Signature)

(Name, Title) (Date)

(Name, Title) (Date)

Updated 6/20/2024 Page 1 of 6

[https://acquisitioninnovation.darpa.mil/docs/Samples/7%20-%20SAMPLE%20OT\(P\)%20-%20Fixed%20Support%20Nontraditional%20-%202024.06.20.docx](https://acquisitioninnovation.darpa.mil/docs/Samples/7%20-%20SAMPLE%20OT(P)%20-%20Fixed%20Support%20Nontraditional%20-%202024.06.20.docx)

Reps & Certs

Section K

- May repeat or go beyond what is routinely completed via SAM.gov registration
 - Certification of limited technical data and computer software rights
 - Background IP
 - Cost Accounting Standards
 - Byte-Dance Prohibition
 - Foreign Transparency
 - Government approved systems
 - Etc.

Organizational Conflict of Interest

FAR 9.5

- Goes beyond financial conflict of interest (COI) and conflict of commitment (COC)
- FAR 9.502(c) – *“An organizational conflict of interest may result when factors create an actual or potential conflict of interest on an instant contract, or when the nature of the work to be performed on the instant contract creates an actual or potential conflict of interest on a future acquisition. In the latter case, some restrictions on future activities of the contractor may be required.”*
- Examples include:
 - Systems engineering and technical direction to be used in support of the competitive acquisition
 - Preparing specifications or work statements to be used in the competitive acquisition
 - Situations where a contractor would be evaluating their own proposal submission
 - Access to proprietary information through another federal contract

NASA FAR R&D Contract

MSFC 52.209-94 RESOLUTION OF ORGANIZATIONAL CONFLICTS OF INTEREST (MAY 2017)

- (a) The Organizational Conflict of Interest (OCI) Plan and its obligations (which includes any appended resolution strategies related to identified OCIs), are hereby incorporated in the contract by reference.
- (b) Changes. (1) Either the Contractor or the Government may propose changes to the OCI Plan. Such changes are subject to the mutual agreement of the parties and will become effective only upon incorporating the change into the plan by contract amendment.

(2) In the event that the Government and the Contractor cannot agree upon a mutually acceptable change, the Government reserves the right to make a unilateral change to the OCI Plan as necessary, with the approval of the head of the contracting activity, subject to Contractor appeal as provided in the Disputes clause.
- (c) Violation. The Contractor shall report any violation of the OCI Plan, whether by its own personnel or those of the Government or other contractors, to the Contracting Officer. This report shall include a description of the violation and the actions the Contractor has taken or proposes to take to mitigate and avoid repetition of the violation. After conducting such further inquiries and discussions as may be necessary, the Contracting Officer and the Contractor shall agree on appropriate corrective action, if any, or the Contracting Officer shall direct corrective action.
- (d) Breach. Any breach of the above restrictions or any nondisclosure or misrepresentation of any relevant facts required regarding OCI to be disclosed may result in termination of this contract for default or other remedies as may be available under law or regulation.
- (e) Subcontracts. The Contractor shall include the substance of this clause, including this paragraph (e), in subcontracts where the work includes or may include tasks related to the OCI. The terms "Contractor" and "Contracting Officer" shall be appropriately modified to reflect the change in parties and to preserve the Government's rights.

(End of clause)

ARPA-H OTA

B. Organizational Conflicts of Interest

In accordance with FAR 9.5, proposers are required to identify and disclose all facts relevant to potential OCIs involving the proposer's organization and *any* proposed team member (proposed subcontractor, subawardee, consultant, etc.). Regardless of whether or not the proposer has identified potential OCIs, under this Section, the proposer is responsible for providing a disclosure with each proposal submitted to the solicitation. The disclosure must include the proposer's, and as applicable, proposed team member's OCI mitigation plan. The OCI mitigation plan must include a description of the actions the proposer has taken, or intends to take, to prevent the existence of conflicting roles that might bias the proposer's judgment and to prevent the proposer from having unfair competitive advantage. The OCI mitigation plan will specifically discuss the disclosed OCI in the context of each of the OCI limitations outlined in FAR 9.505-1 through FAR 9.505-4. Furthermore, although the FAR does not apply to OTs, OCIs must be addressed in the same manner prescribed in FAR subpart 9.5. The disclosure and mitigation plan to not count toward the page limit.

Small Business Subcontracting Plan

FAR 19.7

- FAR 19.702:

Any contractor receiving a contract with a value greater than the simplified acquisition threshold must agree in the contract that small business, veteran-owned small business (VOSB), service-disabled veteran-owned small business (SDVOSB), HUBZone small business, small disadvantaged business (SDB), and women-owned small business (WOSB) concerns will have the maximum practicable opportunity to participate in contract performance consistent with its efficient performance.

- FAR 19.704 – SBSPs are required to include the following:
 - Percentage goals for using small business and total dollars to be subcontracted
 - Methods used to develop goals and to identify potential sources
 - Efforts by the offeror to ensure equitable opportunity to compete for subcontracts
 - Assurances

<https://researchservices.cornell.edu/resources/diverse-suppliers-requirements>

Best Practices for Federal Contract& OTA Proposals



Assemble your proposal preparation team

- Include the technical team, pre-award proposal preparation staff, the authorized official, and the post-award finance team
- Start early!
- Meet regularly
- Create a collaborative tracking document with clear roles and internal deadlines in a shared workspace

Confirm what
type of
agreement is
anticipated

Search for keywords (CTRL + F)

- Contract, OTA, Award Type, Bid, Quote, Commercial Services, Pricing, etc.
- FAR, DFAR, DEAR, etc.
- 52.XXX, 1852.XXX, etc.
- Technical Volume, Cost Volume, etc.

Review the solicitation in detail

- What is the submission method and deadline?
- Are there award terms that need to be reviewed/negotiated now?
- Does submission of the proposal constitute acceptance of terms?
- Is a small business plan required?
- Are there extensive reps and certs?
- What is the deadline for questions?

Create a detailed summary of proposal elements

- Summarize proposal requirements; required sections, page limits, formatting requirements, etc.
- Assign responsible individuals for each requirement
- Establish internal deadlines
- Develop questions to submit to the federal sponsor

ARPA-H Program XX -- Summary of Required Elements (SRE)

Guidelines	link
FAQ's	updated at SAM.gov opportunities page (link above)
Lead PI	
Start Date	9/1/2024
Period of Performance	24 months
Budget Cap, Gig Module	\$4,999,999
Formatting	1 inch margins. 12 pt. font. Text for figures, tables and charts can be 8 and 10 pt. font

ARPA-H Submission Deadlines	Volume 1: Monday 6/3/2024, 12pm EST Volume 2: TBD
Internal Cornell Deadlines	OSP Full Review: Friday 5/24 before noon

VOLUME 1

ARPA-H Required Documents	Page	Page limit	formatting requirements	Notes	Lead	Internal Deadline	Other
Cover Sheet		1	Use of the template is encouraged		Pre-Award Specialist	5/31	Not included in page limit
Table of Contents		no limit	Use of the template is encouraged		Pre-Award Specialist	5/31	Not included in page limit
Technical & Management							
1. Proposal Summary		40	See Proposal Template Volume 1 : Technical and Management	Section A (Discussion) & Section B (Innovative Claims Table) required	PI	5/20 Draft 5/31 Final	
2. Goals and Impact				The task structure much be consistent with that in the			
3. Technical Plan							
4. Capabilities/Management Plan							
5. Bibliography - Optional			Individual 2 page cv/resumes for key persons with links to relevant work are allowed. See notes in Other	Use this part to point to teams key references	PI	5/20 Draft 5/31 Final	Guidance state no limit on this optional section. Monitoring FAQ's and asked PM for clarification.
Basis of Estimate (BoE)		no limit	Use of the template is encouraged		Pre-Award Specialist (with PI/GCO input)	5/20 Draft	
Administrative & National Policy Requirements		no limit	Must use the template provided Includes Current and Pending Support		Pre-Award Specialist (with PI/GCO input)	5/20 Draft	
Task Description Document (TDD)		no limit	Use of the template is encouraged		PI	5/31 Final	

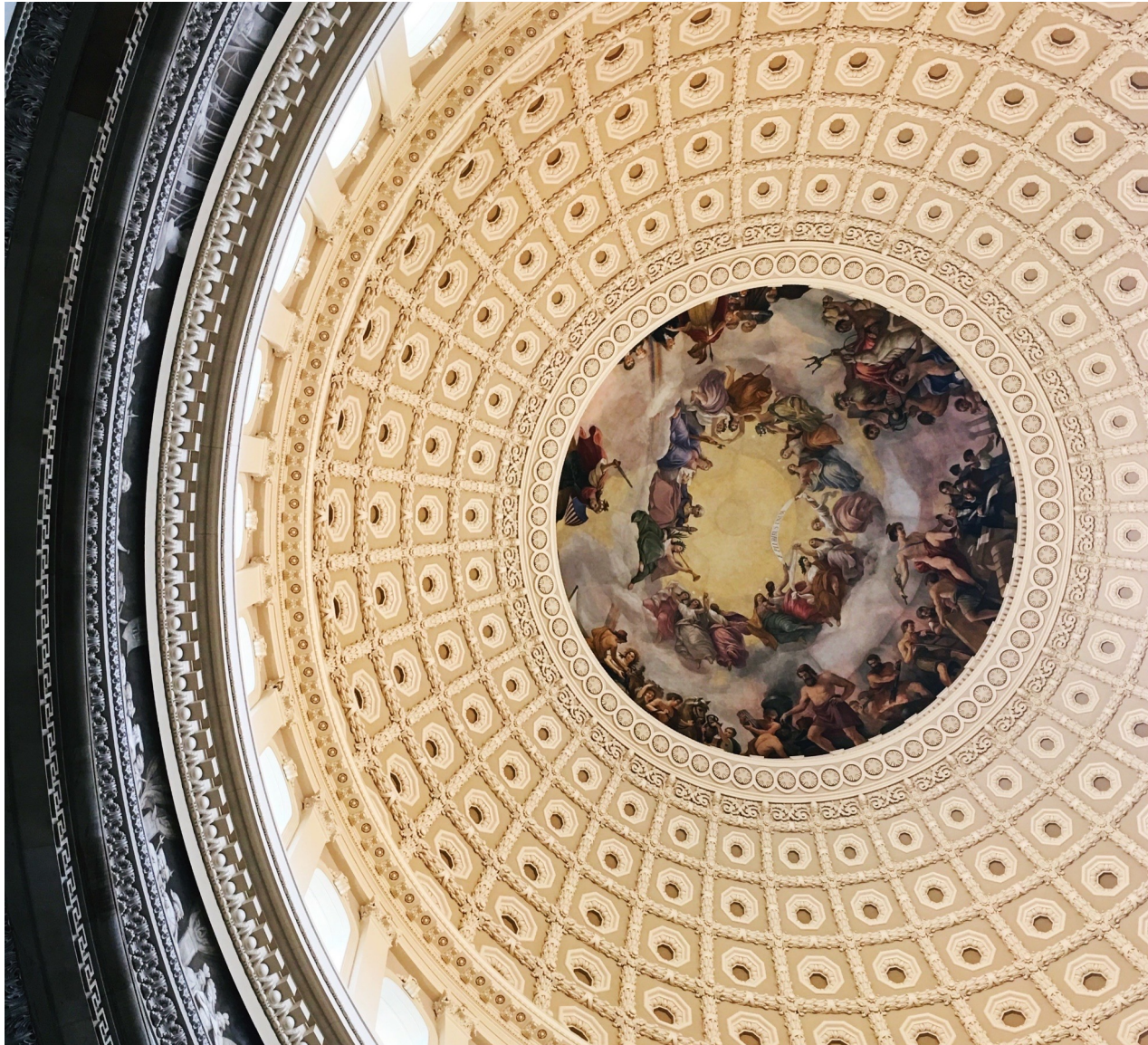
Cornell Signature Authority

Per OVPRI transaction authority letters, pre-award Grant & Contract Officers in CALS and VET are prohibited from submitted the following proposals:

- SBIR/STTR proposals
- **Proposals for federal contracts**
- **Proposals in response to competitive bids**
- **Proposals for fixed price contracts**
- **Proposals where the solicitation binds Cornell to agreement terms**
- Proposals to industry sponsors where the industry sponsor is a pass-through entity of the federal government

Note: Only Sr. GCOs in OSP have authority to submit federal contract proposals





Questions?

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