Part 5116 - Types of Contracts

The official AFARS regulation resides on the Army's Knowledge Management Portal PAM. If you do not have CAC access to PAM, please visit the Army Contracting Enterprise's public facing website "Army Connect" at https://www.army.mil/armycontracting#org-afars. The AFARS will return to Acquisition.gov upon completion of the RFO.

(Revised 01 October 2024)

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Subpart 5116.1 - Selecting Contract Types

5116.102-90 Policies.

Contracting officers must document the rationale for selection of the contract type, to include consideration of the associated risks, in the contract file. The supporting documentation may be located in the contract type justification, a separate determination and findings, memorandum for record, or other appropriate document.

Follow the procedures at AFARS PGI 5116.102-90-1 for selecting contract type.

See AFARS PGI 5116.102-90-2 for guidance on using the Pricing website.

5116.103 Negotiating contract type.

(c) Contracting officers should actively communicate and coordinate with their requiring activities to identify opportunities to transition away from cost-reimbursement contracts, when possible and in the best interest of the Government.

(d)(1) In addition to the items at FAR 16.103(d)(1), discuss how the profit arrangement motivates the contractor to control costs and meet performance requirements.

Subpart 5116.2 - Fixed-Price Contracts

5116.203 Fixed-price contracts with economic price adjustment.

5116.203-4 Contract clauses.

(d)(2) See AFARS 5101.304-90 and Appendix FF for clause approval procedures.

Subpart 5116.3 - Cost-Reimbursement Contracts

5116.301 General.

5116.301-3 Limitations.

The HCA shall approve actions as described in DFARS 216.301-3. See Appendix GG for further delegation.

5116.306 Cost-plus-fixed-fee contracts.

(c)(ii) Contracting officers requesting approval to award a contract for non-construction, environmental work (see DFARS 236.271) must submit their requests to the address at AFARS 5101.290(b)(2)(i).

Subpart 5116.4 - Incentive Contracts

5116.401 General.

(d)(i) The HCA or designee shall sign the determination and finding. See Appendix GG for further delegation.

(e)(3)(i) The head of the contracting activity shall approve actions as described in FAR 16.401(e)(3)(i). See Appendix GG for further delegation.

(g) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) shall provide mechanisms for sharing proven incentive strategies as described in FAR 16.401(g). See DPCAP Guidance on Using Incentive and Other Contract Types and AFARS PGI 5116.102-90-1

5116.405 Cost-reimbursement incentive contracts.

5116.405-1 Cost-plus-incentive-fee contracts.

(b)(3) For cost-plus-incentive-fee type contracts, Contracting officers shall consider use of a 70/30 share line and a zero minimum fee as the point of departure for establishing the incentive arrangement during negotiations.

5116.405-2 Cost-plus-award-fee contracts.

(2)(A) In accordance with DFARS PGI 216.405-2, a contractor begins each evaluation period with zero percent of the available award fee due and works to earn the evaluated fee for each evaluation period. Contractors do not begin with 100% of the available award-fee and have deductions withdrawn to arrive at the evaluated fee for each evaluation period. In addition, contractors should not receive award fee above the base fee for simply meeting contract requirements. Earning an award fee is in accordance with the award fee plan, and should be directly commensurate with the level of performance under the contract. A contractor should not receive the maximum amount of award fee under a contract without a demonstrated superior level of performance, as provided for in the award-fee plan. Maximum contract fee is the sum of all fees (i.e., not just the award fee) and incentives payable under the contract, including performance and subcontracting incentives.

(B) When an Award-Fee Evaluation Board (AFEB) is used, the SCO or authorized Contracting officer will appoint an Award-Fee Determining Official (AFDO) in writing, unless the SCO is the AFDO. The AFDO will then appoint the AFEB and its chairperson in writing. Such appointment letters will clearly outline the responsibilities and limitations of the AFEB and its chairperson. AFEB

membership should consist of those contracting and acquisition management personnel, including contract administration personnel, most knowledgeable of the requirements and contractor performance in the areas evaluated. For contracts in support of major systems, the AFDO will coordinate the selection of technical AFEB members with the program executive officer or other management official responsible for technical requirements prior to their appointment. The AFEB chairperson is responsible for ensuring sufficient training of all AFEB evaluators. AFDOs and AFEBs will document in the contract file the rationale for their decision(s) in sufficient detail to demonstrate the integrity of the award-fee determination process in the contract file. The AFDO may alter the AFEB's recommended award fee.

Subpart 5116.5 - Indefinite-Delivery Contracts

5116.504 - Indefinite Quantity Contracts.

(a)(1) The Contracting officer shall ensure an order that fulfills the minimum quantity of supplies or services is issued at the time of contract award.

(c)(1)(ii)(D)(*1*) The senior procurement executive shall approve actions as stated in DFARS 216.504(c)(1)(ii)(D)(*1*). See Appendix GG for further delegation.

5116.505 Ordering.

(b)(2)(ii)(C)(3) The HCA shall approve actions as stated in FAR 16.505(b)(2)(ii)(C)(3). See Appendix GG for further delegation.

(b)(8) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) shall designate a task and delivery order ombudsman for the contracting activity. The ombudsman shall be a senior official, who is independent of the Contracting officer and may be the command advocate for competition. The ombudsman shall be responsible for reviewing complaints from the contractors under multiple award task or delivery order contracts and ensuring they receive a fair opportunity for consideration, consistent with the procedures in the contract. See Appendix GG for further delegation.

5116.505-91 Multiple award task order contracts.

Contracting officers will document in the contract file all critical task order decisions, such as exceptions to the fair opportunity process described at FAR 16.505(b)(2) or the selection of a higher priced proposal because of its greater technical merit, in sufficient detail to justify the decision.

Subpart 5116.6 - Time-and-Materials, Labor-Hour, and Letter Contracts

5116.603 Letter contracts.

5116.603-2 Application.

(c)(3) The HCA shall perform the duties as described in FAR 16.603-2(c)(3). See Appendix GG for further delegation.

5116.603-3 Limitations.

The HCA shall make the determination stated in FAR 16.603-3. See Appendix GG for further delegation.