PART 3416—TYPES OF CONTRACTS

Authority: 5 U.S.C. 301 and 20 U.S.C. 1018a.

Source: 88 FR 60542, Sept. 1, 2023, unless otherwise noted.

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Parent topic: SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

Subpart 3416.3—Cost-Reimbursement Contracts

3416.303 Cost-sharing contracts.

(b) *Application.* Costs that are not reimbursed under a cost-sharing contract may not be charged to the Federal Government under any other grant, contract, cooperative agreement, or other arrangement.

3416.307 Contract clauses.

(a) If the clause at FAR 52.216–7 (Allowable Cost and Payment) is used in a contract with a hospital, the contracting officer must modify the clause by deleting the words “Federal Acquisition Regulation (FAR) subpart 31.2” from paragraph (a)

(1) and substituting “45 CFR part 75, appendix IX.”

(b) The contracting officer must insert the clause at 3452.216–70 (Additional cost principles) in all

solicitations of and resultant cost-reimbursement contracts with nonprofit organizations other than educational institutions, hospitals, or organizations listed in 2 CFR part 200, subpart E.

Subpart 3416.4—Incentive Contracts

3416.402 Application of predetermined, formula-type incentives.

3416.402-2 Performance incentives.

(b) Award-term contracting may be used for performance-based contracts or task orders. See 3416.470 for the definition of *award-term contracting* and implementation guidelines.

3416.470 Award-term contracting.

(a) *Definition.* Award-term contracting is a method, based upon a pre-determined plan in the contract, to extend the contract term for superior performance and to reduce the contract term for substandard or poor performance.

(b) *Applicability.* A Contracting Officer may authorize use of an award-term incentive contract for acquisitions where the quality of contractor performance is of a critical or highly important nature. The basic contract term may be extended on the basis of the Federal Government's determination of the excellence of the contractor's performance. Additional periods of performance, which are referred to in this section as “award terms,” are available for possible award to the contractor. As award term(s) are awarded, each additional period of performance will immediately follow the period of performance for which the award term was granted. The contract may end at the base period of performance if the Federal Government determines that the contractor's performance does not reflect a level of performance as described in the award-term plan. Award-term periods may only be earned based on the evaluated quality of the performance of the contractor. Meeting the terms of the contract is not justification to award an award-term period. The use of an award-term plan does not exempt the contract from the requirements of FAR 17.207, with respect to performing due diligence prior to extending a contract term.

(c) *Approvals.* The Contracting Officer must justify the use of an award-term incentive contract in writing. The award-term plan approving official will be appointed by the HCA.

(d) *Disputes.* The Federal Government unilaterally makes all decisions regarding award-term evaluations, points, methodology used to calculate points, and the degree of the contractor's success.

(e) *Award-term limitations.*

(1) Award periods may be earned during the base period of performance and each option period, except the last option period. Award-term periods may not be earned during the final option year of any contract.

(2) Award-term periods may not exceed twelve months.

(3) The potential award-term periods will be priced, evaluated, and considered in the initial contract

selection process.

(f) *Implementation of extensions or reduced contract terms.*

(1) An award term is contingent upon a continuing need for the supplies or services and the availability of funds. Award terms may be cancelled prior to the start of the period of performance at no cost to the Federal Government if there is not a continued need or available funding.

(2) The extension or reduction of the contract term is affected by a bilateral contract modification.

(3) Award-term periods occur after the period for which the award term was granted. Award-term periods effectively move option periods to later contract performance periods.

(4) Contractors have the right to decline the award of an award-term period. A contractor loses its ability to earn additional award terms if an earned Award-Term Period is declined.

(5) Changes to the contract award-term plan must be mutually agreed upon.

(g) *Clause.* Insert a clause substantially the same as the clause at 3452.216–71 (Award-term) in all solicitations and resulting contracts where an award-term incentive contract is anticipated.

Subpart 3416.5—Indefinite-Delivery Contracts

3416.505 Ordering.

(b)(8) *Task order and delivery-order ombudsman.* The competition advocate at each contracting activity shall act as the task order and delivery-order contract ombudsman for purposes of FAR 16.505(b)(8).

Subpart 3416.6—Time-and-Materials, Labor-Hour, and Letter Contracts

3416.603 Letter contracts.

3416.603-3 Limitations.

If the HCA is to sign a letter contract as the contracting officer, the SPE signs the written determination under FAR 16.603–3.