P2P & OT

Presented by: ASD(A)/DPC/CP
• PALT (Procurement Administrative Lead Time) Tracking

• Protests at both GAO and COFC
  • Government Accountability Office (GAO)
  • U.S. Court of Federal Claims (COFC)
Why is This Being Discussed/Implemented?

- SECDEF Priorities – Lethality; Strengthening Ties to our Allies; **Business Reforms**
  - From OUSD (A&S) Priorities - Simplify, speed up and reduce costs of product and service procurement across DoD

- Congressional (FY17-19 National Defense Authorization Act)
  - Sec 818, Enhanced Post-Award Debriefing Rights
  - Sec 822, Contracting Dispute Matters
  - Sec 827, Pilot Program on Payment of Costs for Denied GAO Protests
  - Sec 885, Report on Bid Protests
  - Sec 886, Development of PALT
    - GAO Audit
  - Sec 887, Notional Milestones and Standard Timelines for Contracts for Foreign Military Sales
Defense Pricing and Contracting Acting Director issued memorandum directing its use on 6 Feb19

Prior to RFP release milestones
- AS/AP approved
- J&A approved
- Funded PR (including any iterative dates)
- Procurement ready requirements package (including iterative dates)

RFP to contract Award milestones
- **RFP release date**
- Proposal receipt (including iterative dates)
- Tech evaluation completed (including iterative dates)
- Audit completed (including iterative dates)
- Contract clearance completed
- Business clearance approved
- **Contract award**

Implementation via the Procurement Integrated Enterprise Environment (PIEE)
Accessing PALT

Based on user profile data, some users had the PALT role automatically added to their existing PIEE account. PALT Contracting Official allows users to add/edit procurement actions in the PALT Tool for their given contracting office. Users may access the website here: https://wawf.eb.mil/
After selecting the PALT icon in PIEE, you will be brought to the home page. Users can view all programs with active PALT timelines registered in the system. The site will list the PALT status, program description, service or agency of the program, the specific office that will be issuing the contract, the next milestone of the PALT, the dates of the PALT, and the status of activity.
Registering for PALT – Option 1

- Existing users who do not have PALT automatically added to their account may login to PIEE and add the appropriate PALT role.
- The user will first login to PIEE and select the “My Account” button.
- The user will then select “Add Additional Roles”.
- After updating or confirming your user profile data, the user will select “PALT” from the “Application” list and the “PALT Contracting Official” role from the “Role” list.
- Once you complete the remaining screens and submit your role request, your supervisor will need to approve the role. The Government Account Management will also need to activate the role before the user gains access to PALT.
• Alternatively, one may seek to create an account on the PIEE platform by selecting “Register” on the homepage. Then the user will follow the screen prompts to create an account.

• The user should select the appropriate PALT role from Application selection screen

• Once the role is active through one of the three identified paths, a user will see the PALT icon after login to PIEE. By clicking this icon, a new browser window will open and the user will be active in PALT Tracker
How Many are We Talking?

- For fiscal year 2018 there was about 1000 competitive (882) and noncompetitive (111) awards

<table>
<thead>
<tr>
<th>Contracting Agency</th>
<th>Competitive # of Awards</th>
<th>Noncompetitive # of Awards</th>
</tr>
</thead>
<tbody>
<tr>
<td>Air Force</td>
<td>85</td>
<td>35</td>
</tr>
<tr>
<td>Army</td>
<td>431</td>
<td>34</td>
</tr>
<tr>
<td>Navy</td>
<td>176</td>
<td>19</td>
</tr>
<tr>
<td>DLA</td>
<td>70</td>
<td>12</td>
</tr>
</tbody>
</table>
Take Away

• Get and install the API (i.e., contact David Zakar, david.m.zakar.ctr@mail.mil, 301-537-9537)

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Purpose of the Protest Tracker

• Track the number of protests filed with Government Accountability Office and United States Court of Federal Claims (COFC)

• Used to study the frequency and effects of bid protests by the Department and Congress
Accessing the Protest Tracker

• Based on user profile data, some users will have the Protest Tracker role automatically added to their existing PIEE account. Protest Tracker Contracting Official allows users to add/edit procurement actions in the Protest Tracker for their given contracting office. Users may access the website here: https://wawf.eb.mil/
Registering for the Protest Tracker – Option 1

• Existing users who do not have the Protest Tracker automatically added to their account may login to PIEE and add the appropriate Protest Tracker role

• The user will first login to PIEE and select the “My Account” button

• The user will then select “Add Additional Roles”

• After updating or confirming your user profile data, the user will select “Protest Tracker” from the “Application” list and the “Protest Tracker Contracting Official” role from the “Role” list

• Once you complete the remaining screens and submit your role request, your supervisor will need to approve the role. The Government Account Management will also need to activate the role before the user gains access to the Protest Tracker
• Alternatively, one may seek to create an account on the PIEE platform by selecting “Register” on the homepage. Then the user will follow the screen prompts to create an account.

• The user should select the appropriate Protest Tracker role from Application selection screen.

• Once the role is active through one of the three identified paths, a user will see the Protest Tracker icon after login to PIEE. By clicking this icon, a new browser window will open and the user will be active in Protest Tracker.
To access the Protest Tracker tool, the user will select the Protest box on the right side of the page.

After selecting the “Protest” icon, the user can view all of the active Protest Tracker timelines registered in the system.
Protest Tracker Tracker: Identifications

Users may look up a protest by its respective DoDAAC. The Contract Office DoDAAC provides the six alphanumeric characters assigned to each contracting office, known as the DoD Activity Access Code (DoDAAC).

The Solicitation Number lists the 13 alphanumeric characters assigned to each contracting office.

The Protestor Name is the name of the contracting or consulting firm that is protesting the contract.

The Contract Number is the number assigned to the contract being protested.

The Action column displays the status of protest.

<table>
<thead>
<tr>
<th>Agency Name</th>
<th>Contract Office DoDAAC</th>
<th>Solicitation #</th>
<th>Contract #</th>
<th>Protestor Name</th>
<th>Actions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Defence Contract Management Agency</td>
<td>50512A</td>
<td>S1234519R0001</td>
<td></td>
<td>COMPUSEARCH SOFTWARE SYSTEMS, INC.</td>
<td></td>
</tr>
</tbody>
</table>
## How Many are We Talking?

- For Fiscal Years 2016 - 2018 there were 179 DoD protests at COFC and 3066 DoD protests at the GAO

<table>
<thead>
<tr>
<th>Contracting Agency</th>
<th>Total FY 16-18 (COFC/GAO)</th>
<th>Average per year (COFC/GAO)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Air Force</td>
<td>32/554</td>
<td>11/185</td>
</tr>
<tr>
<td>Army</td>
<td>72/1175</td>
<td>24/392</td>
</tr>
<tr>
<td>Navy</td>
<td>22/479</td>
<td>7/160</td>
</tr>
<tr>
<td>DLA</td>
<td>8/476</td>
<td>3/159</td>
</tr>
</tbody>
</table>

- Data shows between 50% and 90% COFC cases having GAO history
Take Away

• Wait until COFC protest, if there was a GAO protest, then enter data in Protest Tracking Tool
  –Protests are a high interest item by OUSD(A&S) and Congress
  –COFC and GAO track protest data but not by a common identifier
Keep Calm
the presentation is over
Any Questions?
Other Transactions Update

Presented by: Larry McLaury

OASD(A)/DPC
Recent Developments

• DoD issued a new OT Guide in December 2018

• DoD issued new OT Policy guidance in November 2018

• FY19 NDAA includes new sections on references, clarifications and OT Reporting requirements

• GAO Engagement – DoD’s Use of OTs for Prototyping and follow-on Production
## Tool Box of Authorities

<table>
<thead>
<tr>
<th>Pathway</th>
<th>Acquisition</th>
<th>Financial Assistance</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Instrument</td>
<td>Financial Assistance</td>
</tr>
<tr>
<td>Authority</td>
<td>10 U.S.C. 2358</td>
<td>10 U.S.C. 2358</td>
</tr>
<tr>
<td></td>
<td>10 U.S.C. 2371b</td>
<td>10 U.S.C. 2358</td>
</tr>
<tr>
<td>Fiscal Year</td>
<td>98%</td>
<td>&lt; 1%</td>
</tr>
<tr>
<td>Obligations</td>
<td>&lt; 1%</td>
<td>&lt; 1%</td>
</tr>
<tr>
<td>Purpose</td>
<td>To acquire</td>
<td>To support / stimulate with substantial Gov’t involvement expected</td>
</tr>
<tr>
<td>Outcome</td>
<td>Direct Gov’t benefit or use</td>
<td>Carries out a public purpose authorized by U.S. law</td>
</tr>
</tbody>
</table>
Other Transactions Authorities

• DoD has statutory authority to award Other Transactions (OT)

  – OTs for Research, including Technology Investment Agreements (TIAs) – 10 U.S.C. 2371
    • The Secretary of Defense and the Secretary of each military department may enter into transactions (other than contracts, cooperative agreements, and grants) in carrying out basic, applied and advanced research projects
  – OTs for Prototypes – 10 U.S.C. 2371b
    • DoD may use the authority of 10 U.S.C. 2371 to carry out prototype projects that are directly relevant to enhancing the mission effectiveness of military personnel and the supporting platforms, systems, components, or materials proposed to be acquired or developed by the DoD, or improvements of platforms, systems, components, or materials in use by the armed forces.
  – OTs for Production – 10 U.S.C. 2371b(f)
    • A transaction entered into under this section for a prototype project may provide for the award of a follow-on production contract or transaction to the participants in the transaction.
New OT Guide

The Guide released in December 2018 rescinds the January 2017 version


- The philosophical approach and substantive guidance regarding OTs has largely remained the same

- The goal was to make the Guide more informative and user-friendly
  - New, easier to read format and layout
  - Inclusion of case study examples
  - Inclusion and explanation of OT myths
  - Updated and expanded attachments
New OT Policies

• Two policy documents were issued in November 2018 and included in the OT Guide as Appendix E

• The first policy addressed:
  – Delegations of OT Authority within DoD
  – Specific approval threshold designations, and
  – Data collection and reporting requirements
Award Authority Delegations

• The statutory authority is given to the Secretary of Defense, the Secretaries of the Military Departments, MDA and DARPA

• OSD policy has delegated the authority further
  – Directors of the Defense Agencies
  – Commanding Officer of Combatant Commands (CCMDs) with contracting authority
  – Directors of Field Activities (FAs) with contracting authority
  – Director of the Defense Innovation Unit (DIU)
**Approval Levels**

<table>
<thead>
<tr>
<th>Organization</th>
<th>Up to $100M</th>
<th>$100M to $500M</th>
<th>Over $500M</th>
</tr>
</thead>
<tbody>
<tr>
<td>CCMDs with contracting authority</td>
<td>Commanding Officer</td>
<td>USD(R&amp;E) or USD(A&amp;S)*</td>
<td>USD(R&amp;E) or USD(A&amp;S)*</td>
</tr>
<tr>
<td>DAs/FAs with contracting authority/DIU</td>
<td>Director</td>
<td>USD(R&amp;E) or USD(A&amp;S)*</td>
<td>USD(R&amp;E) or USD(A&amp;S)*</td>
</tr>
<tr>
<td>Military Departments</td>
<td>Senior Procurement Executive</td>
<td>Senior Procurement Executive*</td>
<td>USD(R&amp;E) or USD(A&amp;S)*</td>
</tr>
<tr>
<td>DARPA MDA</td>
<td>Director</td>
<td>Director*</td>
<td>USD(R&amp;E) or USD(A&amp;S)*</td>
</tr>
</tbody>
</table>

* The determinations at these levels are nondelegable. Additionally, OTs over $500M must give 30 days advance notice to the congressional defense committees before award.
Approval Levels

• Approval levels will be determined on the value of each OT transaction, including:
  – All options with established prices and
  – Any cost-shared amount required to be provided by the performing team

• Approval levels will not be based on the total value of all OTs that might be executed for a specific prototype project or program or for follow-on production

• Regardless of value, a separate approval is required for each phase – prototype or production
The second OT policy document provides definitions and requirements in the use of OTs for Prototypes:

- Defines the term “prototype project” in the context of OTs.
- Defines the term “successful completion” before a follow-on production effort can begin.
- Requires advance consideration be made and notification given of the potential for a follow-on OT.

  - Notification to the offerors must be given in the solicitation for the prototype effort.
  - Language discussing the potential for a follow-on effort must also be included in any resultant OT award.
What’s a Prototype

• There is no established definition in the statute
• The recent DoD Guide includes the following:
  – Proof of concept
  – Model or pilot
  – Reverse engineering to address obsolescence
  – Novel application of commercial technologies for defense purposes
  – Agile development activity
  – Creation, design, development, and/or demonstration of technical or operational utility
  – Combinations of the above
Successful Completion

• Determining “successful completion” of the OT for Prototype phase
  – The appropriate approving official determines in writing that the Prototype OT
    • Met the technical goals,
    • Satisfied established Agreement success metrics, or
    • Accomplished a particularly favorable or unexpected result that justifies transition
  – Completion of a particular aspect of the project can occur prior to conclusion of the entire project to allow the Government to transition that aspect before completion of the prototype phase
  – Each OT for Prototype award will have a provision describing conditions of successful completion
Follow-on Activities

- The recent guide states that advance consideration and notice should be given to industry on the potential for a noncompetitive follow-on production effort
  - This is required regardless of the award vehicle chosen for the follow-on effort
  - This notice must be included in the solicitation documentation for the OT for Prototype award
  - The language about the potential or planned follow-on effort must also be included in any subsequent OT agreement
FY19 NDAA

• Section 211
  – Updated references and language within the statute
  – Clarified that prototype awards made through consortia business models can proceed into follow-on efforts prior to the completion of the consortia OT itself

• Section 873
  – Requires collection of data on all OTs awarded by DoD
  – Each year on December 31 from 2018 through 2021, the Secretary is to submit a report on the use of OTs in the preceding year
FY19 NDAA

- **Section 885**
  - Requires the Secretary to develop process and procedures for limiting foreign access to technology
  - This section applies to all award vehicles, including OTs
  - Many OT agreement models used by DoD organizations already include a clause addressing foreign access but it is not necessarily universally included in all OTs
  - The Secretary will report to Congress by September 1, 2019
    - An assessment of DoD’s ability through existing authorities to limit foreign access
    - An assessment of DoD’s need to implement a process to limit access
    - Recommendations for penalties for violations of access, including intellectual property forfeiture
Data Collection and Reporting

• DPC is leading the ongoing data collection and reporting activities within DoD


  – Report to Congress on the use of OTs
  – Standard reporting format using FPDS-NG OT module expanded to include additional requirements in Excel file format

  – Components input will be collected and consolidated
• The OT report will contain the following:
  – By Service or agency, major command, contracting activity
  – Purpose, description, and status of projects
  – Vendor
  – Award value
  – Appropriation used
  – Budget line item
  – Obligations to date
  – Product service code
  – Quantities
  – Period of performance
  – Highlights of OT successes and challenges, including case examples
• Does DoD’s use of OTs for Prototypes conform with applicable statutory and Departmental guidelines?

• Does any DoD use of OTs conflict with 31 U.S.C. 1301 (Appropriations)?

• What is the extent of DoD’s use of OTs for Prototypes since FY16?
  – Quantify agreements, including options for follow-on production:
    • By Service or Agency
    • Appropriation
    • Other characteristics as appropriate