

TRADEWINDS SOLUTIONS MARKETPLACE

ACQUISITION GUIDE

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Kessel Run Contracting Division (HBBK)



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Welcome to the TSM Hands-On Guide

Welcome to the Hands-On Guide for awarding contracts from the Tradewinds Solutions Marketplace (TSM). This serves as your comprehensive guide to navigating the future of public sector procurement. TSM stands as a pivotal resource, having meticulously assessed solutions to align with the Federal Acquisition Regulation (FAR), the Defense Federal Acquisition Regulation Supplement (DFARS), and various DoD statutes and policies. This marketplace is more than just a procurement tool; it's an innovation hub where government agencies can swiftly discover and implement high-tech solutions. Our marketplace showcases a diverse array of vendors through efficient, 5-minute videos, allowing you to quickly evaluate their offerings and see how they can address your specific challenges. In this Hands-On Guide, we will delve into how TSM streamlines your procurement process and significantly accelerates contracting, ensuring you stay at the forefront of technology while meeting your operational needs efficiently and effectively.

This hands-on guide is designed to be complementary to the TSM Customer Handbook. The Handbook provides a high-level overview of how the TSM operates and outlines the legal authorities that enable you to award contracts to your selected vendors on a post-competition basis.

This Guide is not intended to take precedence over local policy, procedures, or guidance, nor is it official DoD regulation, policy, or guidance. While some agency-specific policies, procedures, and guidance are covered in this Guide, due to the varying nature of local guidelines, local-specific direction is not included. Contracting professionals should seek legal counsel before award if and where required.

Getting Started

Have you browsed the TSM website,¹ watched some TSM guidance videos,² read the TSM Customer Handbook,³ and you're still unsure of your next steps to get your selected vendor on contract? That's where this Hands-On Guide comes in. We'll explore your authorities to award various contract vehicles (either FAR-based or OTs), and the major steps from here to award. This guide is designed to clarify the path forward, breaking down the process into manageable steps. From selecting your acquisition authority to navigating the specifics of the contract award, the Acquisition Guide provides detailed insights and practical advice to help you confidently progress from vendor selection to successful contract execution.

Contracting Authorities

As covered in the Handbook, the TSM has effectively met the stringent requirements mandated by key federal acquisition authorities. This compliance ensures that the technology solutions within TSM adhere to the competitive standards as stipulated in 10 USC 4021, 10 USC 4022, 10 USC 3458, FAR/DFARS Part 35, and DFARS Subpart 212.70.

Alignment with these authorities means that solutions awardable in TSM have successfully satisfied Federal competitive procedures, enabling you to confidently engage in contracts (FAR-based or Other Transaction (OT) Agreements) with vendors in the marketplace. This compliance with competition requirements not only signifies TSM's adherence to federal acquisition norms but also streamlines the

¹ [TSM Website](#)

² [TSM Guidance Videos](#)

³ [TSM Customer Handbook](#)

contracting process for you, ensuring efficient and legally sound procurement of technology solutions. (For simplicity, moving forward, we will use “contract” to describe both FAR-based contracts or OT Agreements; we will specify when the discussion is about one and not both.)



The solutions on the TSM are post-competition; you can award FAR-based contracts or OTs for these solutions without additional competition, and without use of a Justification & Approval (J&A) or other Sole-Source Justification (SSJ). The competition requirements have been met.

Because the TSM solicitation was written to meet the competition requirements for multiple acquisition authorities, the type of contract you use is dictated by your local policies and what will best suit your needs. This can (and likely should) also be influenced by the business arrangement that is agreeable to both you and your selected vendor. Below are a few items that may help determine which acquisition authority is best suited to acquire your technology solution. (We will move on to contract vehicles in the next section.)

Broad Agency Announcement (BAA)

- Authority: FAR 6.102 and 35.016
- Appropriate for basic and applied research, to advance or evaluate cutting-edge technologies, and for advanced component development and prototype projects
- IAW DFARS 235.016, must be funded with RDT&E dollars
- Cost realism and reasonableness need to be considered to the extent appropriate
- Price needs to be determined as Fair and Reasonable
- This authority can be used to award a *purchase order, contract, or Other Transaction* (see below for further discussion on options)

Commercial Solutions Opening (CSO)

- Authority: 10 U.S.C. §3458, DFARS 212.206 and 212.70
- For the acquisition of commercial items
- Best suited for: commercial products and services, R&D for commercial technology, and commercial technology maturation projects
- Price must be considered to the extent appropriate, and must be determined as Fair and Reasonable
- Resultant awards must be fixed-price (including fixed-price incentive contracts)
- Before award, awards over \$100M must have a Determination and Findings approved by OUSD(A&S) or cognizant Service Acquisition Executive (SAE), and post-award, must provide congressional notification
- This authority can be used to award a *purchase order, contract, or Other Transaction* (see below for further discussion on options)

Other Transaction Agreements

- Authority: 10 U.S.C. § 4021 and 10 U.S.C. § 4022
- Ideal for developing, testing, and prototyping
- Typically offers more flexibility than FAR-based strategies with fewer compliance-based items for vendors; but not always quicker than a FAR-based contract
- Enables partnerships with non-traditional defense contractors and commercial entities
- Encourages the use of commercial best practices, which your vendors may be more familiar with,

which can create a business arrangement that is more straightforward for your non-traditional or commercial vendor

- Requires your organization to have a warranted Agreements Officer
- Requires determination of a fair and reasonable price, typically includes consideration of price reasonableness
- Approval based on total dollar value, under \$100M requires approval by the Senior Procurement Executive (*delegable, see agency and local guidance*)
- Must specify either Research or Prototype (*see below*)

Other Award Options

Blanket Purchase Agreements (BPAs) and Basic Ordering Agreements (BOAs) may be issued without competition and are not legally binding contracts (they are agreements). The legally binding contract happens when orders are placed against the BPA or BOA. A BPA or BOA may be awarded to a contractor on the TSM, similarly to how it can be awarded to any contractor. The contractors' status as *post-competition* TSM vendors *does* enable you to award orders to them off an established BPA or BOA on a *post-competition* basis. This guide will provide information for the issuance of a BPAs and BOAs; resultant orders will be awarded in accordance with the terms and conditions of your BPA/BOA award and therefore are not included in this guide.

Blanket Purchase Agreement

- BPAs are provided for in FAR Part 13
- An arrangement between an agency and a supplier to fulfill recurring needs for supplies or services over a period of time
- Enables streamlined procurement by allowing the agency to issue “calls” or place orders against a pre-established agreement without negotiating terms for each pricing
- Facilitates quicker and more efficient purchasing processes, reducing the administrative effort needed for repetitive acquisitions within set limits on quantity and price

Basic Ordering Agreement

- BOAs are available under the authority of FAR Part 16
- Essentially a pre-arranged understanding (not a contract) between a Government agency and a supplier
- Used when the Government knows it will need a lot of a certain type of supply or service but doesn't know the exact details like how many or at what cost
- The BOA sets up the terms, conditions, and framework so when the specifics are known, you can quickly order what you need without having to renegotiate everything from scratch each time
- Facilitates quicker and more efficient purchasing processes when there is a continuous need for items but the exact quantities, timing, and future prices are uncertain
- DFARS⁴ restricts the ordering period of BOAs to a maximum of five years

⁴ [DFARS 216.07 - Agreements](#)

Contract Vehicles

Since the TSM solicitation meets the competition requirements for multiple contracting authorities, you have options in what kind of contract vehicle you select. This flexibility allows you to tailor your approach to each unique procurement scenario, ensuring that your contract type aligns effectively with your project's objectives, risk profile, specific requirements, and local policies.

Each contract vehicle has distinct characteristics and suitability for different kinds of projects. We will provide a high-level overview of the most commonly used vehicles to equip you with the knowledge to make an informed decision, balancing regulatory guidance with strategic choice to optimize the outcomes of your project.

Purchase Orders

- Purchase orders are typically awarded following Simplified Acquisition Procedures (SAP) of FAR Part 13
- Most commonly used for research and development projects or for the acquisition of commercial products or services
- Best for purchases that don't exceed the thresholds to utilize SAP (see FAR Parts 2, 13, and DOD/Agency supplements for various thresholds)
- Ideal for quick acquisitions with minimal administrative burden, typically allows for streamlined acquisition planning documents
- SAP permits all contract types, but given the commercial nature of *most* purchase orders, Firm Fixed Price (FFP) is most commonly used
- Requires vendors to comply with the FAR, DFARS, and Agency-specific supplemental regulations

Procurement Contracts

- The most "traditional" contract vehicle option without the efficiencies offered by Purchase Orders or OT Agreements
- May take more time to award compared to other options discussed in this Guide
- Only recommended for purchases above the threshold for SAP for which an OT is not permissible
- Requires vendors to comply with the FAR, DFARS, and Agency-specific supplemental regulations

Single-Award Indefinite Delivery Indefinite Quantity (IDIQ)

- Appropriate for regular and recurring supplies or services from the same vendor over a set period, based on negotiated pricing at the IDIQ level
- Can support centralized (your organization only) or decentralized ordering, your choice
- After issuance of the Single-Award IDIQ vehicle, you may place a Task Order (predominately services) or Delivery Order (predominately supplies) to provide funding, period of performance, and scope for the specific order at hand
- Must fulfill a minimum order guarantee (dollar value defined in the IDIQ contract)
- This guide will provide information for the issuance of a Single-Award IDIQ; resultant orders will be awarded in accordance with the terms and conditions of your IDIQ award and therefore are not included in this guide

Blanket Purchase Agreement (BPA)

- BPAs are simplified acquisition methods that contain terms and conditions, and often also include price lists
- There is no guaranteed delivery for the services/supplies listed in a BPA; after award of the BPA, the Government seeks orders against the price list/in accordance with the pricing methodology in the BPA
- Orders are issued in accordance with individual purchase limitations, as defined in the BPA
- The Government must issue an order, and the contractor must accept that order, to form a binding contract
- This guide will provide information for the issuance of a BPA; resultant orders will be awarded in accordance with the terms and conditions of your BPA award and therefore are not included in this guide

Basic Ordering Agreement (BOA)

- BOAs are designed for the expedited issuance of future orders where the price cannot be determined ahead of time
- Contains terms, conditions, a description of the supplies or services that may be purchased, pricing and ordering procedures for an unknown schedule and quantity (does not contain a price list)
- The Government must issue a request for pricing before placing an order, contractors are under no obligation to provide the supplies or services until pricing is established
- This guide will provide information for the issuance of a BOA; resultant orders will be awarded in accordance with the terms and conditions of your BOA award and therefore are not included in this guide

OT Agreement for Prototype

- Authority: 10 U.S.C. § 4022
- Most appropriate when the project is for a prototype effort, directly related to enhancing the mission effectiveness of a DoD program, or improving platforms, systems, components, or materials, and when there is a need to develop and deploy prototypes
- Ideal for projects that are collaborations between the Government and non-traditional defense contractors, including many small businesses and academic institutions

OT Agreement for Research

- Authority: 10 U.S.C. § 4021
- An ideal vehicle for projects where the primary goal is to conduct basic, applied, or advanced research to advance scientific and technical knowledge, and does not duplicate research under an existing program
- Government-provided funds do not exceed the total amount provided by other parties to the agreement

Fundamental Steps for Contract Award

Before we get into the steps for contract award, it's important to note that nothing in this Guide is intended to take precedence over local policy, procedures, or guidance, nor is it official DoD regulation or policy. While some agency-specific policy, procedures, and guidance are covered in this Guide, due to the varying nature of local guidelines, local-specific direction is not included. Contracting professionals should seek legal counsel before award.

While the TSM Customer Handbook covers steps for contract file documentation, this Guide is intended to be more specific and outline *all the* steps and activities the acquisition team is responsible for (including steps under the responsibility of the Contracting Officer (PCO/KO/AO)). Below is a list of required steps to achieve a contract award. Please note, these steps do not necessarily need to be completed in this order, and the order you complete them may be determined by local policies.

Gain access to TSM and Review Awardable Companies



You are welcome (and encouraged!) to contact awardable companies early in the process to discuss how their technology solution can meet your requirements.

Follow the procedures on Tradewindai.com to set up a Government account. Once a Government account is established, you may view video solutions rated as awardable and selected. At this stage, you are also welcome to request additional information (including activities such as demonstrations) from solution providers. This research should be part of your project's market research. Your selected contracting path will ultimately dictate *how* your market research is documented, but it should be conducted for all efforts (and FAR 7.102 requires it is). If your requirements necessitate an Authority to Operate (ATO), it is recommended that you contact awardable companies early in the process to inquire about their ATO status.

1. Select a Technology Solution

When you select your technology solution and vendor, note the date of submission, month of assessment, and the date the submission was added to the marketplace. You will likely want to include this information in your acquisition's supporting documents. You will also use this information to request the support package (containing the contractor's proposal materials and evaluation documents related to your selected solution) from the TSM team.

2. Request the Assessment documentation

Request the official TSM assessment from the TSM team by emailing success@tradewindAI.com with the name of the video solution, and the subject: "Assessment Materials for Award."

3. Document Your Selection

Your contract file should be documented with your selected technology solution and vendor, and include the items listed in the above step. While not explicitly required when using the TSM to make a contract award, it is good practice to have this level of information explained in your contract file. Depending on local procedures for acquisition strategy documentation, you may have this included in your file elsewhere.

4. Determine Your Project's Technical Scope

Before engaging with your selected vendor further, if not already completed, the Government team should be aligned on your requirements and required deliverables.

5. Engage With Your Selected Vendor



While not mandatory, if you did not previously engage with your selected vendor, it is recommended to engage with them no later than at this point in the process.

Have a conversation with the vendor about the more detailed aspects of their technology solution and how it can be used to meet your requirements, including your deliverables and their pricing.

6. Finalize the Scope of Your Contract

After discussing with your chosen vendor, you will move forward with finalizing the Government documentation to define the scope of your contract. This includes preparing and finalizing documents such as a Statement of Objectives/Work (SOO/SOW) or Performance Work Statement (PWS), alongside any other technical requirements documents. At this stage, you should also finalize the types and quantities of deliverables, as well as determine the approach to pricing these deliverables.



The TSM contains post-competition awardable solutions that were evaluated on the merits of their technology. You need to communicate with and engage your selected vendor to agree on a specific scope of work and final pricing (or pricing methodology for BPA/BOA awards).

The contract type will also be finalized at this point. The choice between a FAR-Based or OT Agreement and the commercial nature of your solution can influence the available contract types. Furthermore, since you are *post-competition*, you have the flexibility to engage in discussions with your selected vendor throughout this process.

7. Complete the Acquisition Strategy or Plan Documents

If not already completed, finish the required Acquisition Strategy or Plan documents. This documentation will vary greatly depending on the nature of your contract authority and contract vehicle, so see those sections, below, for more information about your selected path.

8. Obtain Required Approvals

As with Acquisition Strategy/Plan documents, the required approvals will be dependent on the selected contract authority, and contract vehicle. Examples of approvals that may be required are: approval to pursue an OT award, a D&F for a cost-reimbursable or time and materials contract type, or Acquisition Plan approval.

9. Request (& Receive) Contractor Pricing

As part of your ongoing engagement with your selected vendor, discuss and request final pricing for your agreed-upon scope of work. Before awarding a contract, it's important to ensure that the pricing for TSM's technology solutions, tailored to your particular requirements, is determined fair and reasonable.

10. Complete Negotiations

If and when necessary, negotiate the final details of the contract. In addition to the requirements set in the FAR,⁵ DFARS, and service-specific supplements, follow local policies for award-file documentation.

11. Award Contract

Congratulations! You are ready to award your contract.

12. Report Marketplace Activities



As a condition of use, you agree to follow the procedures outlined in the Customer Handbook to report awards to the Marketplace manager.

Detailed Guidance for Contract Vehicles

Before we dig into different contract vehicles, the following table is a summary of thresholds to keep in mind as they may impact the options that are available for your project, and/or your timeline to award. Due to the varying nature of local guidelines, local directions and guidance are not included. The highlighted thresholds are representative of the most commonly used contract vehicles from TSM: purchase orders following Simplified Acquisition Procedures (SAP), and OTs for Prototypes.

Summary of Thresholds for Common Contract Vehicles Used for TSM Awards		
Regulation	Contract Vehicle	
	Purchase Order (via SAP)	OT for Prototypes
Federal-level (FAR or U.S.C.)	Maximum \$250k, ⁶ except for: - Contingency Ops \$800k/\$1.5M (inside/outside US) - \$500k humanitarian mission Maximum \$7.5M for commercial products and services ⁷ Maximum \$15M for contingency or certain other activities ⁸ Awards issued under CSO authority and >\$100M, require approval from USD(A&S) or Military SAE ⁹	Awards <\$100M not addressed in U.S.C. Awards >\$100M and ≤\$500M require approval by the Senior Procurement Executive (SPE) ¹⁰ (not delegable) Awards >\$500M require approval from USD(R&E) or USD(A&S) ¹¹ (not delegable)

⁵ [FAR 4.8](#) - Government Contract Files

⁶ [FAR 2.101](#)- Definitions

⁷ [FAR Part 13](#)- Simplified Acquisition Procedures

⁸ [FAR 13.500\(c\)](#)- Simplified Procedures for Certain Commercial Products and Commercial Services

⁹ [10 USC §3458](#) - Authority to acquire innovative commercial products and commercial services using general solicitation competitive procedures

¹⁰ [10 U.S.C. §4022](#) - Authority of the Department of Defense to carry out certain prototype projects

¹¹ [10 U.S.C. § 4022](#) - Ibid

DOD	<i>No supplemental regulations regarding thresholds</i>	Awards <\$100M, for Military Departments ¹² , require approval from the SPE ¹³ (<i>delegable, see agency-specific guidance, below</i>) Awards >\$100M not delegable, see above
Air Force and Space Force	<i>No supplemental regulations regarding thresholds</i>	Awards <\$100M require approval from the SCO (delegable no lower than COCO, <i>consult local policy</i>) ¹⁴ Awards >\$100M not delegable, see above
Army	<i>No supplemental regulations regarding thresholds</i>	Awards <\$50M, HCA, delegable to the Senior Contracting Official, <i>without authority to further delegate</i> ¹⁵ Awards >\$50M, ≤\$100M, Head of the Contracting Authority (HCA) with written concurrence from the DASA(P), <i>non-delegable</i> Awards >\$100M, not delegable, see above
Navy and Marines	<i>No supplemental regulations regarding thresholds</i>	Awards <\$100M, Heads of Contracting Activities, with further delegation allowable ¹⁶ Awards >\$100M, not delegable, see above

The table above outlines key threshold levels that could influence your choice of contract vehicle and the timeline for your project. In the following sections, we'll provide guidance on awarding various contract types. This guidance will enable you to identify the best vehicle for your procurement.

¹² For other-than Military Departments, please consult the referenced DOD Memorandum for more information

¹³ Memo from OUSD dated 05 Aug 2020, titled "Authority for Use of Other Transactions for Prototype Projects under 10, United States Code, Section 2371b,"

¹⁴ Memo from SAF/AQC, dated 05 Aug 2020, titled, "Leveraging Other Transactions Pursuant to 10 U.S.C. 2371b for "Fly, Fight, Win""

¹⁵ Memo from ASA(ALT), dated 21 May 2019, titled: "Policy on the Use of Other Transaction Authority to Carry Out Certain prototype Projects Under Title 10, United States Code, Section 2371b"

¹⁶ Memo from (DASN(A&P)), dated 18 May 2018, titled: "Other Transactions (OT) Authority for Prototype Projects"

Market Research and Acquisition Plans

Generally, you are required to have a written acquisition plan and documentation of market research for all activities. Specifically, the DFARS requires a written acquisition plan for all *development* activities when the total cost of all contracts is \geq \$10M, and for *production* activities or services when the total cost of all contracts for the program is \geq \$50M (or \geq \$25M in any fiscal year).¹⁷

However, written acquisition plans are not required for a “one-time buy” such as a single contract. Acquisitions that fall outside the thresholds above can have acquisition plans written on either a program or individual contract basis.

Air Force/Space Force-Specific Guidance

Per the Department of the Air Force FAR Supplement (DAFFARS) acquisitions that do not fall within one of the categories discussed above, a written acquisition plan is still recommended.¹⁸ This documentation of Market Research activities may include: Market Research Acquisition Approach document (MRAA), briefing charts, Memorandums for Record (MFRs), or use of the Streamlined Acquisition Strategy Summary (SASS).¹⁹ If your acquisition does not fall within the categories discussed above, your team should consider the depth, complexity, and requirements needed of your program to determine the appropriate documentation method.

Army-Specific Guidance

Per the Army FAR Supplement (AFARS) acquisition plans that do not fall within one of the categories discussed above, from the DFARS, or for situations where the acquisition plan approval authority has waived the requirements of formality and detail, you can use an alternate format for documenting your acquisition plan such as a memorandum for record, price negotiation memorandum, simplified acquisition management plan, and acquisition strategies (for services) or record your acquisition pre-award decision and risk assessment information. For acquisition plans for procurements below the thresholds identified at DFARS 207.103(d)(i) are in accordance with local contracting activity procedures.²⁰

Market Research and Acquisition Strategy Plan templates are available via the AFARS PGI.

Navy/Marines-Specific Guidance

In Navy and Marine Corps acquisition, streamlined acquisition plans are referred to as STRAPs. Below the thresholds provided in the DFARS, the Navy Marine Corps Acquisition Regulation Supplement (NMCARS) provides for several thresholds dependent on the type of requirement (such as production, development, or services) that are too plentiful to summarize here. Review the thresholds in NMCARS 5207.1²¹ to determine the required documentation and approval for your requirement based on estimated dollar value and type of requirement.

¹⁷ [DFARS 207.103 - Agency-head responsibilities](#)

¹⁸ [DAFFARS 5307.105](#)

¹⁹ [Air Force SASS Template](#)

²⁰ [AFARS 5107.1 - Acquisition Plans](#)

²¹ [NMCARS 5207.1 Acquisition Plans](#)

Documenting Scope & Price

The acquisition guidance provided in this document does not mandate any particular method of documentation for your scope of work and price. You have flexibility to select a SOO, SOW, or PWS to incorporate into your resultant contract, as well as any other required technical documents (such as Contract Data Requirements List (CDRLs), technical specifications or drawings, etc.). For awards that include pricing, your contract file needs to document the determination of a fair and reasonable price in a document such as a Contracting Officer's Memorandum for Record.

Since the awardable vendors in TSM are post-competition, you are encouraged to engage your selected vendor and communicate about your requirements and pricing methodology. Since this is a post-competition engagement, your contract file documents will likely look different from if this was a traditional acquisition. You are encouraged to document your contract file, including confirmation from the vendor that they can perform the requirements of your effort, and their pricing for the effort (reflecting your selected contract type). While the vendor is post-competition, Contracting Officers have a responsibility to determine the price for their effort is fair and reasonable. The format of such a determination is not prescribed by the DFARS (see Service-Specific Guidance, below, for service-level requirements, if applicable).

Many contracting officers have accomplished the determination of scope and pricing by exchanging emails with their selected vendor. See Exhibit I for examples of language used in such emails. Once in agreement, documents such as a Pricing Memorandum for Record and a Contracting Officer's Memorandum for Record are completed to document the contract file.

Awarding Purchase Orders

You can award a Purchase Order under the authority of a BAA or CSO. Regardless of your selection, your contract file will need to include market research and acquisition strategy documents. SAP provides for a streamlined, and therefore, accelerated timeline to contract award.^{22 23}

Thresholds for purchase orders under Simplified Acquisition Procedures are as follows:

- Maximum \$250k, except for:²⁴
 - Maximum \$800k for actions supporting contingency operations to be performed inside the United States, or /\$1.5M for actions to be performed outside the United States
 - \$500k humanitarian mission
- Maximum \$7.5M for commercial products and services²⁵
- Maximum \$15M for contingency or certain other activities²⁶
- Awards issued under CSO authority and >\$100M, require approval from USD(A&S) or Military SAE²⁷

Since competition requirements have been met, you have complete flexibility to move forward with a Purchase Order within the thresholds identified above.

Funding

If awarding under the authority of the BAA, in accordance with the DFARS, the action must be funded by RDT&E dollars.²⁸

Contract Type

Purchase orders in and of themselves do not have restrictions on the type of contract. In accordance with the FAR, the contracting officer can use any type of contract that is appropriate for the procurement, but there is a preference for fixed price contracts for commercial item acquisitions. This includes both FFP and fixed price with economic price adjustments, and the FAR also allows for the use of time and materials (T&M) and labor hour (LH) contracts under certain conditions where no other contract type is suitable.²⁹

Contract Award

DoD Standard Forms (SF) for purchase orders are SF 18 and SF 1449.

²² [FAR Part 13 - Simplified Acquisition Procedures](#)

²³ [DFARS Part 213 - Simplified Acquisition Procedures](#)

²⁴ [FAR 2.101](#)

²⁵ [FAR 13.000](#)

²⁶ [FAR 13.500\(c\)](#)

²⁷ [10 USC §3458\(c\)](#)

²⁸ [DFARS 235.016](#)

²⁹ [FAR Part 12 - Acquisition of Commercial Products and Commercial Services](#)

Checklists for Awarding a Purchase Order

	Document	AF/SF	Army	Navy/Marines
<input type="checkbox"/>	Market Research		Required	
<input type="checkbox"/>	Acquisition Strategy/Plan		Required	
<input type="checkbox"/>	Streamlined Acquisition Strategy Summary (SASS) or other streamlined market research/acquisition plan documentation		Recommended if applicable	
<input type="checkbox"/>	Copy of solicitation		Required	
<input type="checkbox"/>	Copy of contractor's proposal materials (provided upon request from the TSM team)		Required	
<input type="checkbox"/>	Copy of evaluation materials		Required	
<input type="checkbox"/>	Documentation re: agreement on scope & price with contractor		Required	
<input type="checkbox"/>	PWS or SOW		Required	
<input type="checkbox"/>	Funding		Required	
<input type="checkbox"/>	Memorandum for Record (MFR) regarding severability	N/A	Required	N/A
<input type="checkbox"/>	CAS Coverage MFR	N/A	Required	N/A
<input type="checkbox"/>	Contract Type D&F		Required if applicable	
<input type="checkbox"/>	Documentation of Fair and Reasonable Price (such as Pricing Memorandum for Record)		Required	
<input type="checkbox"/>	Contracting Officer's MFR		Recommended	
<input type="checkbox"/>	Peer Review Abstract	N/A	Required if >\$5M	N/A
<input type="checkbox"/>	Policy Review	Required if applicable per local policy/thresholds		
<input type="checkbox"/>	Legal Review	Required if applicable per local policy/thresholds		
<input type="checkbox"/>	Verification of SAM Registration		Required	
<input type="checkbox"/>	Contract Award-SF 18 or 1449, including Contract Action Report		Required	

Awarding Single-Award IDIQs

The DFARS provides specific regulation about utilizing single-award IDIQs vs. multiple-award IDIQs. Specifically, the DFARS requires a Determination and Findings (D&F) to justify a single-award IDIQ.³⁰ This D&F must explain why the use of a single-award approach is more advantageous than a multiple-award IDIQ. If the value of the single-award IDIQ exceeds \$112M, the D&F must be approved by the SPE, unless a higher approval level is designated in accordance with agency procedures.

Contract Award

IDIQ awards are made on an SF 26 (resultant task or delivery orders are made on a DD Form 1155).

Service-Specific Guidance

For service-specific D&F thresholds and additional required information, review section 16.504(c) of the DAFFARS, AFARS, and NMCARS. For example, the Army requires the minimum order guarantee is issued at the time of IDIQ contract award. There are many local-level policies regarding filling the minimum order guarantee.

Checklist for Awarding a Single-Award IDIQ

	Document	AF/SF	Army	Navy/Marines
<input type="checkbox"/>	Market Research		Required	
<input type="checkbox"/>	Acquisition Strategy/Plan		Required	
<input type="checkbox"/>	Copy of solicitation		Required	
<input type="checkbox"/>	Copy of contractor's proposal materials (provided upon request from the TSM team)		Required	
<input type="checkbox"/>	Copy of evaluation materials		Required	
<input type="checkbox"/>	Documentation of agreement on scope & price with contractor		Required	
<input type="checkbox"/>	PWS or SOW		Required	
<input type="checkbox"/>	Funding		Required	
<input type="checkbox"/>	D&F for Single-Award IDIQ		Required	
<input type="checkbox"/>	Memorandum for Record (MFR) regarding severability	N/A	Required	N/A
<input type="checkbox"/>	CAS Coverage MFR	N/A	Required	N/A
<input type="checkbox"/>	Documentation of Fair and Reasonable Price (such as Pricing Memorandum for Record, if prices included in the IDIQ)		Required, if applicable	
<input type="checkbox"/>	Contracting Officer's MFR		Recommended	
<input type="checkbox"/>	Policy Review		Required if applicable per local policy/thresholds	

³⁰[DFARS 216.504\(c\)](#)- Indefinite-Quantity Contracts

<input type="checkbox"/>	Legal Review	Required if applicable per local policy/thresholds
<input type="checkbox"/>	Verification of SAM Registration	Required
<input type="checkbox"/>	Contract Award - SF 26, including Contract Action Report	Required
<input type="checkbox"/>	DD Form 1155	N/A - use for Orders

Awarding BPAs

BPAs, the award of which can be streamlined under FAR Part 13, simplify the process of repetitive buying. To award a BPA, you must establish terms, conditions, and a list of prices for services or supplies. After a BPA is awarded, you can place orders against the pre-agreed price list with the pre-established terms and conditions, when necessary. Each individual order must be accepted by the contractor to create a legally binding contract. Since awardable TSM contractors are *post-competition*, you can non-competitively place orders for their services or supplies from a BPA. Keep in mind the following thresholds for purchases under BPAs:

FAR 13.303-5 restricts purchases to the SAT; however, agencies can establish higher thresholds consistent with the limitations for individual purchases, as described in the FAR citation.

Contract Award

Awards are made on an SF 1449.

Service-Specific Guidance

Army

AFARS requires a business case analysis in situations where the scope of the BPA significantly overlaps to existing contracts or agreements under the Federal Strategic Sourcing Initiative, GSA's SmartBuy or an existing GWAC.

Checklist for Awarding a BPA

	Document	AF/SF	Army	Navy/Marines
<input type="checkbox"/>	Market Research		Required	
<input type="checkbox"/>	Acquisition Strategy/Plan		Required	
<input type="checkbox"/>	Streamlined Acquisition Strategy Summary (SASS) or other streamlined market research/acquisition plan documentation		Recommended if applicable	
<input type="checkbox"/>	Copy of solicitation		Required	
<input type="checkbox"/>	Copy of contractor's proposal materials (provided upon request from the TSM team)		Required	
<input type="checkbox"/>	Copy of evaluation materials		Recommended	
<input type="checkbox"/>	Documentation re: agreement on scope & price with contractor		Required	
<input type="checkbox"/>	PWS or SOW		Required	
<input type="checkbox"/>	Funding		Required	
<input type="checkbox"/>	Memorandum for Record (MFR) regarding severability	N/A	Required	N/A
<input type="checkbox"/>	CAS Coverage MFR	N/A	Required	N/A

<input type="checkbox"/>	Documentation re: Fair and Reasonable Price (such as Pricing Memorandum for Record)	Required		
<input type="checkbox"/>	Contracting Officer's MFR	Recommended		
<input type="checkbox"/>	Business Case Analysis	N/A	Required, if applicable	N/A
<input type="checkbox"/>	Peer Review Abstract	N/A	Required if >\$5M	N/A
<input type="checkbox"/>	Policy Review	Required if applicable per local policy/thresholds		
<input type="checkbox"/>	Legal Review	Required if applicable per local policy/thresholds		
<input type="checkbox"/>	Verification of SAM Registration	Required		
<input type="checkbox"/>	Contract Award - SF 1449, includes: <ul style="list-style-type: none"> - Ts & Cs - Scope - Price list - Ordering methodology - Contract Action Report 	Required	Required	Required

Awarding BOAs

Unlike Blanket Purchase Agreements, BOAs do not include a price list but instead outline terms, conditions, a description of potential supplies or services, and procedures for pricing and ordering, accommodating unpredictable schedules and quantities. The contract file will be very similar to that of a BPA award, but it will not have pricing considerations. This guide focuses on establishing a BOA; it does not cover the specific terms and conditions of orders resulting from the agreement, as these are dictated by the initial terms of the BOA and should be negotiated per individual order.

Contract Award

In accordance with the DFARS, the BOA award is on an SF26; subsequent orders are issued on a DD Form 1155. The BOA award must contain the terms, conditions, technical scope, and ordering methodology for future orders against the BOA. The TSM vendors are *post-competition*; future BOA orders are issued on a *post-competition* basis.

Checklist for Awarding a BOA

	Document	AF/SF	Army	Navy/Marines
<input type="checkbox"/>	Market Research		Required	
<input type="checkbox"/>	Acquisition Strategy/Plan		Required	
<input type="checkbox"/>	Streamlined Acquisition Strategy Summary (SASS) or other streamlined market research/acquisition plan documentation		Recommended if applicable	
<input type="checkbox"/>	Copy of solicitation		Required	
<input type="checkbox"/>	Copy of contractor's proposal materials (provided upon request from the TSM team)		Required	
<input type="checkbox"/>	Copy of evaluation materials		Recommended	
<input type="checkbox"/>	PWS or SOW		Required	
<input type="checkbox"/>	Funding	N/A	N/A	N/A
<input type="checkbox"/>	Memorandum for Record (MFR) regarding severability	N/A	Required	N/A
<input type="checkbox"/>	CAS Coverage MFR	N/A	Required	N/A
<input type="checkbox"/>	Contracting Officer's Memorandum for Record		Recommended	
<input type="checkbox"/>	Peer Review Abstract (> \$5M)	N/A	Required	N/A
<input type="checkbox"/>	Policy Review		Required if applicable per local policy/thresholds	
<input type="checkbox"/>	Legal Review		Required if applicable per local policy/thresholds	
<input type="checkbox"/>	Verification of SAM Registration		Required	

<input type="checkbox"/>	Contract Award - SF 26, includes: <ul style="list-style-type: none"> - Ts & Cs - Scope - Ordering methodology - Contract Action Report 	Required		
<input type="checkbox"/>	DD Form 1155	N/A - use for Orders	N/A - use for Orders	N/A - use for Orders

Awarding OT Agreements

While OT Awards can be for either research or production, there are several topic areas that are applicable to both; we will discuss those areas first.

Contract Type

Program payment structures are negotiable and should be tailored to fit the specific conditions of the project, clearly defining the basis and procedures for payment. The initial focus is on whether payments will be made on a fixed support basis or based on expenditures incurred by the contractor, with possibilities for hybrid options combining both methods.

Fixed Support Payment Method: This approach involves a fixed sum paid to the contractor for executing the agreed-upon work, suitable for projects with lower financial values or shorter durations. Payments are made for completing specified tasks, not based on the success of the technology.

Expenditure-Based Payment Method: Payments are made based on actual expenses incurred, chosen when cost estimation is difficult due to project uncertainties. This method requires more oversight from the Government team to ensure budget compliance. Contractors can use their existing financial systems as long as they adhere to Generally Accepted Accounting Principles (GAAP) and effectively manage all program funds.

Clauses

Government teams possess considerable leeway in crafting a suitable award process for their projects, given that regulations like the FAR, DFARS, and the Competition in Contracting Act (CICA) are not applicable. This flexibility allows teams to effectively streamline the award process.

Negotiation processes will vary depending on the maturity of technical work. The clarity and enforceability of cost, schedule, and performance requirements can range from “best effort” approximations to well-defined and binding fixed requirements. It is the responsibility of the Government team to negotiate terms and conditions that are suitable for the specific project and accommodate potential future needs of the program. As a project advances through various stages of technological maturity, these terms and conditions may be adjusted through modifications. During negotiations, the Government team should consider various considerations to align with the project's evolving stages.

For guidance on negotiating intellectual property clauses or terms, please refer to the DoD Intellectual Property Cadre policy and guidance.

The following is a list of frequent topics included in OTs as clauses. This guide is not meant to direct which clauses the Agreement Officer includes in their OT, but rather provide options to ensure the best agreement is negotiated and awarded.

- Procedures for modifications (bilateral vs. unilateral)
- Disputes
- Payment instructions
- Security requirements (such as methods for obtaining CACs)
- Physical property
- Termination
- Follow-on production award
- Recovery of Funds
- Limitation of obligation or liability
- Comptroller general access
- Flow-down requirements
- Accounting systems
- Entity registration

Agreement Award

The award process for Research and Prototype OTs are the same. In the OT framework, the government team must assess the reasonableness of total pricing without requiring performers to have government-approved accounting systems or to alter their existing practices. Instead, the team should utilize additional data sources such as commercial pricing, market data, and parametric estimates to determine price reasonableness, prioritizing these methods over directly requesting cost information from proposers. Key focus areas in price assessments typically include direct labor, associated indirect costs, and equipment costs. The government team can use price and value analysis techniques. Additionally, depending on your contract writing software, keep in mind you may need to manually upload your OT award to EDA; refer to local policy for direction.

Awarding OT Agreements for Prototypes

In addition to local policy, Agreements Officers should be mindful of the guidance provided in the following memorandums from the Office of the Under Secretary of Defense for Acquisition and Sustainment (OUSD(A&S)):

- OUSD(A&S) Memo, “Authority for Use of Other Transactions for Prototype Projects Under 10, United States Code, Section 2371b,” dated 20 Nov 2018
- OUSD(A&S)/(R&E) Memo, “Definitions and Requirements for Other Transactions Under Title 10, United States Code, Section 2371b,” dated 20 Nov 2018

Important Note: Since the issuance of the referenced Memorandums, there has been a change in the numbering of the U.S. Code. What was formerly known as 10 U.S.C. § 2371b has been renumbered to § 4022. Please ensure that any references to § 2371b in older documents are understood as references to § 4022.

In addition to the attached policy memorandums, the DoD has a robust guide to awarding Prototype OTs. The document is too lengthy to attach here, but it is readily available via several websites, including

OSD's acquisition policy website.³¹ This Guide will highlight the most common questions for the TSM team regarding awarding an OT for Prototype supporting an awardable vendor on the TSM. While the DOD OT Guide is just that, a Guide, this document (the TSM Acquisition Guide) is not intended to supersede or alter any guidance provided in the DOD OT Guide.

Funding

Other Transaction agreements (OTs) for prototype projects can utilize various types of funding depending on the specifics of the project and its development phase. The selection of funding type, which could range from Research, Development, Test, and Evaluation (RDT&E) to procurement, operations and maintenance (O&M) funds, or even military construction appropriations, should align with the prototype's current stage and overall requirements. To ensure appropriate funding decisions, it's crucial for the government team involved to evaluate the development stage and scope of the project thoroughly and seek guidance from fiscal managers, agency legal counsel, and comptrollers. Engage with your financial manager early in the procurement process to verify your use of funds.

Production OT Agreement Award

A follow-on Production OT award is possible when the Prototype award was made on a competitive basis (awardable companies on TSM are *post-competition*). Therefore, it is a best practice to include notice in the OT agreement of the possibility of a follow-on production award, as well as qualifications to deem the prototype a success before transitioning to production.

DARPA's Acquisition Innovation website sample and resources page has a magnitude of useful resources, including several sample OT documents.³² For example, you can review a sample agreement for a Prototype OT with a fixed base for a nontraditional contractor,³³ or a same agreement for a Prototype OT with an expenditure base for a nontraditional contractor,³⁴ among many more.

Checklist OT for Prototype Awards

	Document	AF/SF	Army	Navy/Marines
<input type="checkbox"/>	Market Research		Required	
<input type="checkbox"/>	Acquisition Strategy/Plan		Required	
<input type="checkbox"/>	Copy of solicitation		Required	
<input type="checkbox"/>	Copy of contractor's proposal materials (provided upon request from the TSM team)		Required	
<input type="checkbox"/>	Copy of evaluation materials		Required	
<input type="checkbox"/>	Determination and Approval for OT Award		Required	
<input type="checkbox"/>	Funding		Required	

³¹ [Other Transactions Guide, Office of the Under Secretary of Defense for Acquisition and Sustainment](#)

³² [DARPA's Acquisition Innovation, samples and resources](#)

³³ [DARPA's Acquisition Innovation website, sample OT award with fixed base](#)

³⁴ [DARPA's Acquisition Innovation website, sample OT award with expenditure-base](#)

<input type="checkbox"/>	Memorandum for Record (MFR) regarding severability	N/A	Required	N/A
<input type="checkbox"/>	Documentation of Fair and Reasonable Price (such as Pricing Memorandum for Record)	Required		
<input type="checkbox"/>	Contracting Officer's Memorandum for Record	Recommended		
<input type="checkbox"/>	Peer Review Abstract	N/A	Required if >\$5M	N/A
<input type="checkbox"/>	Policy Review	Required if applicable per local policy/thresholds		
<input type="checkbox"/>	Legal Review	Required if applicable per local policy/thresholds		
<input type="checkbox"/>	Verification of SAM Registration	Required		
<input type="checkbox"/>	Agreement Award, including: <ul style="list-style-type: none"> - Ts & Cs (see list, above) - Funding - Line items & pricing methodology - Scope of Work and due dates/deliveries - Contract Action Report 	Required		

Awarding OT Agreements for Research

OTs for Research projects are used for basic, applied, and advanced research projects that are more focused on validating research results and advancements than delivering or acquiring the resultant technologies. Within the DoD, the “Guide to Research Other Transactions Under 10 U.S.C. 4021, revised 13 Sep 2024” is the prevailing guidance document.

The business and contracting flexibilities of this authority allow the DoD to reduce bureaucratic barriers that may make working with the DoD difficult for vendors with little or no experience working with the Federal Government. This is further amplified by Research OTs not having statutory approval thresholds or requirements.

Generally speaking, OTs for Research are not used as frequently as OTs for Prototype efforts, and thus, there is less prescriptive policy or guidance across the agencies. This Guide summarizes the policy or guidance items that may be relevant for you when awarding an OT for Research for a solution from TSM.

Funding

Given the focus of a Research OT effort is research, engage with your financial manager early and often if you have other-than-RDT&E funds for your effort to explore if other funding sources are available and allowable.

Research OT Awards

DARPA’s Acquisition Innovation website³⁵ sample and resources page has a magnitude of useful resources, including several sample OT documents.

Checklist Research OT Awards

	Document	AF/SF	Army	Navy/Marines
<input type="checkbox"/>	Market Research		Required	
<input type="checkbox"/>	Acquisition Strategy/Plan		Required	
<input type="checkbox"/>	Copy of solicitation		Required	
<input type="checkbox"/>	Copy of contractor’s proposal materials (provided upon request from the TSM team)		Required	
<input type="checkbox"/>	Copy of evaluation materials		Required	
<input type="checkbox"/>	Determination and Approval for OT Award		Required	
<input type="checkbox"/>	Funding		Required	
<input type="checkbox"/>	Memorandum for Record (MFR) regarding severability	N/A	Required	N/A
<input type="checkbox"/>	Documentation of Fair and Reasonable Price (such as Pricing Memorandum for Record)		Required	

³⁵ [DARPA’s Acquisition Innovation, samples and resources](#)

<input type="checkbox"/>	Contracting Officer's Memorandum for Record	Recommended		
<input type="checkbox"/>	Peer Review Abstract	N/A	Required if >\$5M	N/A
<input type="checkbox"/>	Policy Review	Required if applicable per local policy/thresholds		
<input type="checkbox"/>	Legal Review	Required if applicable per local policy/thresholds		
<input type="checkbox"/>	Verification of SAM Registration	Required		
<input type="checkbox"/>	Agreement Award, including: <ul style="list-style-type: none"> - Ts & Cs (see list, above) - Funding - Line items & pricing methodology - Scope of Work and due dates/deliveries - Contract Action Report 	Required		

Exhibits

1. Determining Scope & Price with your Contractor

Many contracting officers have determined the scope and pricing by exchanging with their selected vendor. See below for examples of language used in such emails.

Date: 10 January 20XX
From: Government Program Manager (Gov't PM)
To: Contractor (Ctr) Director of Government
CC: Gov't Contracting Officer (PCO/KO), Gov't Lead Engineer, Ctr Contracts Manager

Dear [Ctr Director of Government]

We viewed your awardable video on the Tradewinds Solutions Marketplace (TSM) and are interested in learning how we can work together to meet our technical requirements on the [program name]. Do you have availability to connect early next week?

V/r,
[Government PM]

Date: 11 January 20XX
From: Gov't PM
To: Ctr Director of Government
CC: Gov't PCO/KO, Gov't Lead Engineer, Ctr Contracts Manager

Dear [Gov't PM]

That's great to hear! We would appreciate the opportunity to learn more about your requirements and discuss if our technology solutions are a good fit. I've attached some additional information about the technical specifications of our [product name].

[Provided meeting availability.] Looking forward to connecting,

Best,
[Ctr Director of Business]

<<Coordinated a meeting time and held several in-depth discussions to discuss the contractor's solution, and the scope of work required to meet the Government's requirement>>

Date: 17 January 20XX
From: Gov't PCO/KO
To: Ctr Director of Government and Ctr Contracts Manager
CC: Gov't PM, Gov't Lead Engineer

Dear [Ctr Director of Government] and [Ctr Contracts Manager],

Thank you for having your team spend time with us to discuss and iterate how we can best work together. Based on our discussions, I am sharing a draft Statement of Work. Additionally, we would like to confirm

your pricing methodology and price for the work we discussed, as reflected in the draft SOW. [Discusses specifics concerning price to confirm data communicated during live meetings.]

Please confirm your company's ability to meet these delivery dates, scope of work, and pricing.

V/r,
[Gov't PCO/KO]

Date: 18 January 20XX
From: Ctr Contracts Manager
To: Gov't PCO/KO
CC: Ctr Director of Government, Gov't PM, Gov't Lead Engineer

Dear [Gov't PCO/KO]

[Contractor] confirms the details as discussed in our previous meetings. We can fulfill the requirements of the draft SOW and meet the required delivery parameters, for the pricing as discussed.

Please let us know if you have any additional questions. [Contractor] is excited to review the draft contract!

Best,
[Ctr Contracts Manager]

2. Market Research MFR

MEMORANDUM FOR RECORD

SUBJECT: Market Research for [Contractor] [product/service name]

The subject acquisition fills a capability gap for the [Government program name]. The contractor, [Contractor], provides [description of the contractor's solution] using the Tradewinds Solution Marketplace (TSM). This [product name] is required to provide [requirements] for the [service /program name] mission.

Market research conducted consisted of a search of the TSM for [types of technology]. That is where the contractor was found. The decision to procure from [contractor] was made after reviewing their video in the marketplace. It was determined to meet the requirements for the end user. The TSM is a competed environment, consisting of awardable videos. The software is not listed in any of the required sources. No further market research was necessary.

The Commercial Solutions Opening was not restricted to small business, but [contractor] is a small business under the applicable NAICS Code [xxxxxx][NAICS name].

The [contractor] [technology product] is listed on TSM at [insert web link for video on TSM]. ((name of video)).

[Contracting officer]
Contracting Officer
[Organization]

[Date]

3. Acquisition Narrative MFR (often referred to as Contracting Officer's MFR)

For procurements below the threshold for a formal Acquisition Strategy or Plan, the following is an example of how you could document your acquisition activities for the contract file, including the contracting officer's determination of a Fair and Reasonable Price.

MEMORANDUM FOR RECORD

SUBJECT: [Company Name] Acquisition Narrative and Fair and Reasonable Determination

This acquisition is the result of a request for contract award supporting [Organization Name] for the [Program Name], a commercially proven and dual-use capability, effectively mitigates [organization's] stated capability gaps and strategic initiatives by providing critical decision-support and continuous operational optimization to enable [technology]. The offeror was identified through the Tradewinds Solutions Marketplace. This acquisition will result in a FAR Part 12 Firm Fixed Price Commercial Purchase Order for licensing and support over a period of 12 months.

Marketplace Background: Army Contracting Command – Rock Island (ACC-RI) issued the Tradewinds Solutions Marketplace (TSM) long-term, open call on 31 October 2022 for new and novel technology solutions to support the DoD in advancing research, development, prototyping, and adoption of AI/ML, digital and data analytics capabilities. This initiative is governed by the Chief Digital and Artificial Intelligence Office (CDAO).

The TSM solicits, collects, assesses, and curates AI/ML, digital and data analytics solutions, and makes those solutions available through rapid acquisition methods DoD-wide. The TSM serves Government laboratories, industry and academic organizations, and individual developers by providing a forum to showcase their relevant research, products, and services to prospective Government customers, and serves DoD by providing a forum to access AI/ML, digital and data analytics solutions and rapidly ingest game-changing technology solutions.

Marketplace Competition: The TSM is a digital environment of competed video pitches. The video solutions housed within the marketplace have been assessed and vetted through competitive procedures which conform to the competition requirements of 10 USC 3026, 3458, 4021 and 4022, FAR/DFARS Part 35, and Class Deviation 2022-O0007, implementing Section 803 of the FY2022 National Defense Authorization Act (NDAA), and thus are readily available to be viewed, selected, and awarded by DoD activities.

10 USC 3026 does not require solicitations to evaluate price if it intends to award to all qualifying offerors. The TSM does select for their marketplace all qualifying video submissions that meet the non-price related factors outlined in the CSO.

10 USC 3458 is relevant to CSOs, which directs solicitation requirements back to 10 USC 3026.

10 USC 4022 and 4023 only require competition be used to the greatest extent possible but is silent on what that competition must consist of, and the Competition in Contracting Act under 10 USC 3026 does not apply.

Selected Video Submission/Offeror: The [contractor's name] capability was selected from the TSM. The [company's product/services descriptor] being leveraged in this project are covered in the video solutions

available on the Marketplace. The Government reviewed and selected the following “awardable” video solution for the resulting project is located at: [insert hyperlink to contractor’s video in TSM].

Pricing: [Program office] reached out to the offeror, [contractor], for pricing of their commercially available [contractor’s product/service], suitable for [technology requirements]. [Contractor] responded with their 12-month commercial license pricing and 12 months of customer support. Based on commercial catalog pricing offered and IAW FAR 15.403-1(b)(3) the pricing is determined as fair and reasonable.

[Contracting officer name]
Contracting Officer
[Organization]
[Date]

4. Tailorable MFR for Competition Procedures within TSM

The below MFR, provided by an Army contracting organization, may be useful to help document the contract file with how adequate competition was met. Inclusion is not required, it is provided as guidance.

MEMORANDUM FOR RECORD

**SUBJECT: TRADEWIND SOLUTIONS MARKETPLACE COMPETITIVE PROCEDURES
DESCRIPTION WITH ASSOCIATED AUTHORITIES**

What is the definition of “Competitive Procedures” within the Tradewind Solutions Marketplace Announcement?

The video solutions housed within the marketplace have been assessed through competitive procedures which conform to the competition requirements of 10 USC 4021 and 4022, FAR/DFARS Part 35, and Class Deviation 2022-O0007, implementing Section 803 of the FY2022 National Defense Authorization Act (NDAA), and thus are readily available to be viewed, selected, negotiated, and awarded by DoD activities. The specific competitive standards, marketplace procedures, and Awarding activity responsibilities which satisfy these authorities are described below.

I. Competition Standards

10 U.S.C. §4021 - Research Projects: Transactions Other Than Contracts and Grants

10 U.S.C. §4021 provides other transaction authority for basic, applied, and advanced research projects provided the project does not duplicate research under an existing program. 10 U.S.C. §4021 itself does not contain any required competition standard or procedures, however, the OUSD(A&S) OT Guide implies otherwise. Specifically, the OUSD(A&S) OT Guide provides, “Both OT statutory authorities [Research and Prototype] require the use of competitive practices to the maximum extent practicable.”¹ This language is consistent with the government’s policy concerning competition generally. The OUSD(A&S) OT guide allows a requiring activity to determine what the competition will look like and how it will be structured. “The OT statutes do not prescribe a method of evaluation or restrict the Government team from employing any particular type of evaluation. As a general matter, the Government’s evaluation process should enable the Government team to review submissions effectively and efficiently.”² Although CICA

¹ See Office of the Under Secretary of Defense for Acquisition and Sustainment (OUSD(A&S)), *Other Transactions Guide*, Version 2.0, Appendix D, Page 44 (July 2023), stating, “Both OT statutory authorities require the use of competitive practices to the maximum extent practicable. Agencies are not required to complete the formal competition structure laid out in CICA (*i.e.*, three tiers of competition: full and open, limited, and sole source with justification and approval), nor follow the competition rules in the FAR. The OT statutes and guidance allow the agency to determine what the competition will look like and how it will be structured.”

² *Id.* at Section II.E.2, pg. 18. See also, Under Secretary of Defense for Research and Engineering (OUSD(R&E)), *Guide To Research Other Transactions Under 10 U.S.C. 4021*, Section 2.E.2, Page 18 (2023), “Government teams are free to create their own evaluation processes and should not feel compelled to incorporate any traditional government evaluation methods unless it makes sense for the particular situation. Generally, the goal with OT solicitations is to be as efficient as possible and make the selection determination quickly so as not to delay award.” See also, Under Secretary of Defense for Research and Engineering (OUSD(R&E)), *Guide To Research Other Transactions Under 10 U.S.C. 4021*, Section 2.E.3.a, Page 18 (2023), stating, “In OT competitive procedures, offerors with solutions that are most advantageous to the Government are typically selected for negotiation. Unlike traditional

and FAR Part 6 do not apply, Research OT agreements should be awarded fairly and transparently³.

10 U.S.C. §4022 – Authority of the Department of Defense to Carry Out Certain Prototype Projects

10 U.S.C. §4022 provides authority for the DoD to enter into other transaction agreements for 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 to improvement of platforms, systems, components, or materials in use by the armed forces.”⁴ 10 U.S.C. §4022(b)(2) requires that competitive procedures be used to the maximum extent practicable when carrying out prototype projects. The DoD is not required to follow the formal competition structure laid out in CICA, nor the competition rules contained in FAR Part 6. 10 U.S.C. §4022 and the OUSD(A&S) Other Transactions Guide, dated July 2023, allow the requiring activity to determine what the competition will look like and how it will be structured.⁵ “The OT statutes do not prescribe a method of evaluation or restrict the Government team from employing any particular type of evaluation. As a general matter, the Government’s evaluation process should enable the Government team to review submissions effectively and efficiently.”⁶ Although CICA and FAR Part 6 do not apply, Prototype OT agreements should be awarded fairly and transparently.

FAR 6.102 and 35.016 – Broad Agency Announcement

FAR 35.016 provides authority for the DoD to issue Broad Agency Announcements (BAA). A BAA is a solicitation method by which the DoD can acquire basic and applied research. BAAs can be used to fulfill requirements for scientific study and experimentation directed toward advancing the state of the art or increasing knowledge or understanding rather than focusing on a specific system or hardware solution. Under FAR 6.102(d)(2), a BAA is considered a competitive procedure and meets the requirements for full and open competition if it: (1) is general in nature, identifying areas of research interest including criteria for selecting proposals; (2) solicits the participation of offerors capable of satisfying the government’s needs; and (3) provides for peer or scientific review. There are two types

Government awards, the terms and conditions for the award of an OT may take considerable time to draft and negotiate as the proposed solutions, schedules, terms and conditions, and price are likely to vary significantly among competitors and there are no standard terms and conditions.”

³ See Office of the Under Secretary of Defense for Research and Engineering (OUSD(R&E)), *Guide To Research Other Transactions Under 10 U.S.C. 4021*, Section 2.E.1, Page 16 (2023), stating, “[w]ith OTs, the Government team is free to create a competitive process that is efficient and can be targeted to the audience it is trying to attract. There are no standard procedures, time limitations or procedural requirements, but Research OT competitions are generally well-suited for merit-based competitive procedures. What is key to maintain in every OT competitive procedure is fairness and transparency.”

⁴ 10 U.S.C. §4022(a).

⁵ Office of the Under Secretary of Defense for Acquisition and Sustainment (OUSD(A&S)), *Other Transactions Guide*, Version 2.0, Section II.E.2, Page 17 (July 2023), “Agencies that intend to award only OTs from a solicitation are free to create their own process to solicit and assess potential solutions.”

⁶ *Id.* at Section II.E.2, pg. 18.

of BAAs: (1) a program-specific BAA, which describes an agency's research interest for an individual program requirement; and (2) an office-wide BAA, which broadly defines areas of interest covering the range of an agency's requirements. Unlike sealed bidding and other negotiated procurement methods, a BAA does not contain a specific statement of work and no formal solicitation is issued. In addition, the contracting officer is under no obligation to award any contracts and there is no common due date for proposals. Instead, the DoD identifies a broad area of interest within which research may benefit the government and publishes its desire to contract for such research. Private organizations are then invited to submit their ideas within a certain period of time. The offerors who submit proposals are not competing against each other but rather are attempting to demonstrate that their proposed research meets the DoD's requirements. The DoD may decide to fund those efforts and award procurement contracts, grants, cooperative agreements, or OTs as a result of proposals submitted in response to a BAA. The primary basis for selecting proposals for award are technical, importance to a DoD program, and funds availability. Cost realism and reasonableness are required to be considered to the extent appropriate.

Class Deviation 2022-O0007, implementing Section 803 of the FY2022 National Defense Authorization Act (NDAA).

Section 803 of the FY 2022 NDAA repealed Section 879 of the 2017 NDAA, permanently authorizing the DoD to acquire innovative commercial products, technologies, or services through the use of a Commercial Solutions Opening (CSO). Because implementing statutory changes to the competition requirements can be time-consuming, the Office of the Under Secretary for Defense Acquisition and Sustainment issued Class Deviation 2022-O0007 on February 4, 2022. Class Deviation 2022-O0007 provides authority for the DoD to competitively select proposals received in response to a general solicitation, similar to a BAA, based on the review of proposals by scientific, technological, or other subject-matter expert peers. Use of a CSO in accordance with Class Deviation 2022-O0007 is considered to be a competitive procedure under FAR 6.102(d)(2). When using a CSO in acquisitions for research and development, contracting officers are required to use the procedures set forth in Class Deviation 2022-O0007 in conjunction with the FAR Part 35. The procedures set forth in Class Deviation 2022-O0007 are generally the same as those used for BAAs with one notable distinction. When using a CSO under Class Deviation 2022-O0007, contracting officers are required to consider price, to the extent appropriate, but at a minimum, to determine that the price is fair and reasonable.

II. The Marketplace Procedures⁷

The Marketplace was designed to support the solicitation and selection of solutions against broadly defined areas of interest (strategic focus areas⁸) to accelerate the procurement and adoption of artificial intelligence and machine learning, digital, and data analytics solutions across the DoD.

⁷ See Open Call - Tradewind Marketplace Announcement (Revision 4), W519TC-23-S-CTSM (July 2023), available at <https://sam.gov/opp/80ed1dcab9304fc0bb5095531cc3fd9/view>

⁸ Id. at pgs. 3-4, identifying the applicable strategic focus areas for the Open Call.

The Marketplace utilizes a long-term, open call that is publicized on the Governmentwide point of entry (“GPE”) to invite partners in industry and academia to upload solution videos to pitch their technology and service solutions to DoD.⁹ Submissions to the Marketplace are assessed against established evaluation criteria which are defined and described, along with their weighting (relative importance) and the method of assessment, and published through the Governmentwide point of entry.¹⁰ Assessments are conducted on a monthly basis during the period in which the Open Call is active by a peer panel of subject matter experts comprised of experts from industry, academia, government, and non-profit research institutions with programs related to data, analytics, digital and artificial intelligence/machine learning. Peer Panel assessment rating recommendations are submitted for final approval to the marketplace Government Assessment Authority. Assessments include written evaluation reports, and disappointed offerors are provided feedback from the peer panel to incorporate into any resubmission. Submissions that are rated “awardable” are placed in the Marketplace and made available to requiring activities who are ultimately responsible for determining the award vehicle and negotiating the terms and conditions of award based on their needs. While the Marketplace competitive assessment procedures were developed to satisfy the competition standards of 10 USC 4021 and 4022, FAR/DFARS Part 35, and Class Deviation 2022-O0007, implementing Section 803 of the FY2022 National Defense Authorization Act (NDAA), the award of marketplace solutions may be subject to further statutory and regulatory requirements and may require the offeror and Government customer to collaboratively develop and negotiate a scope of effort, pricing, project milestones and deliverables, period of performance, relevant terms and conditions and a definition of successful completion for the effort.¹¹

III. Awarding Activity Responsibilities

10 U.S.C. §4021 - Research Projects: Transactions Other Than Contracts and Grants

For awards of Marketplace solutions through Research Other Transaction Agreements, the Marketplace competitive procedures provide for fair and transparent competitive procedures to the maximum extent practicable. The awarding activity must assure, however, that the following award requirements are met:

- A. The award is for basic, applied, or advanced research¹²

⁹ Id. at pgs. 5-7, identifying instructions for preparation and submission of solutions (the technical and content requirements for submissions against the Open Call).

¹⁰ Id. at Appendix B, Tradewind Solutions Marketplace V1-4 Evaluation Criteria Defined, pgs 15-16.

¹¹ Id. at page 10.

¹² 10 USC §4021(a), “The Secretary of Defense and the Secretary of each military department may enter into transactions (other than contracts, cooperative agreements, and grants) under the authority of this subsection in carrying out basic, applied, and advanced research projects. The authority under this subsection is in addition to the authority provided in section 4001 of this title to use contracts, cooperative agreements, and grants in carrying out such projects.”

- B. To the maximum extent practicable, the project does not duplicate research under an existing program¹³
- C. To the extent practicable the funds provided by the Government do not exceed the total amount provided by other parties to the agreement¹⁴
- D. Price Reasonableness¹⁵
- E. Awarding Activity-Specific Requirements (where applicable)
- F. Project-Specific Requirements (where applicable)

10 U.S.C. §4022 – Authority of the Department of Defense to Carry Out Certain Prototype Projects

For awards of Marketplace solutions through Prototype Other Transaction Agreements, the Marketplace competitive procedures provide for fair and transparent competitive procedures to the maximum extent practicable. The awarding activity must assure, however, that the following award requirements are met:

- A. The award is for a prototype project¹⁶
- B. The awarded effort is directly relevant to enhancing the mission effectiveness of personnel of the Department of Defense or improving platforms, systems, components, or materials proposed to be acquired or developed by the Department of Defense, or to improvement of platforms, systems, components, or materials in use by the armed forces.¹⁷
- C. The award is approved at the appropriate level as identified by Statute and in Awarding Activity Policy¹⁸
- D. Statutory access and participation requirements are met and documented.¹⁹
- E. Price Reasonableness²⁰
- F. Awarding Activity-Specific Requirements (where applicable)
- G. Project-Specific Requirements (where applicable)

¹³ 10 USC §4021(e)(1), “to the maximum extent practicable, no cooperative agreement containing a clause under subsection (d) and no transaction entered into under subsection (a) provides for research that duplicates research being conducted under existing programs carried out by the Department of Defense.”

¹⁴ 10 USC §4021(e)(2), “to the extent that the Secretary determines practicable, the funds provided by the Government under a cooperative agreement containing a clause under subsection (d) or a transaction authorized by subsection (a) do not exceed the total amount provided by other parties to the cooperative agreement or other transaction.”

¹⁵ OUSD(R&E), Guide to Research Other Transactions, Section 2.E.3.b.i, pg. 18, “Price reasonableness. The Government team will likely be required to determine reasonableness of the total price to perform the research as supported by the award.”

¹⁶ 10 USC §4022(e)(5)(A)-(F).

¹⁷ 10 USC §4022(a)(1).

¹⁸ 10 USC §4022(a)(2)(A-C).

¹⁹ 10 USC §4022(c) & (d).

²⁰ OUSD(A&S), *Other Transactions Guide*, Section II.E.3.b.i (July 2023), “Price Reasonableness – Price reasonableness is a key consideration prior to award. The Government team may obtain and consider, among other data, commercial pricing data, market data, parametric data, or cost information. However, given that NDCs generally do not capture cost data and that providing cost data to the Government is frequently cited as a deterrent to contracting with the Government, the AO should exhaust other means to establish price reasonableness before resorting to requesting cost information from any performer.”

FAR 6.102 and 35.016 – Broad Agency Announcement

For award of basic and applied research efforts of Marketplace solutions through contract or purchase order, the Marketplace competitive procedures satisfy FAR Part 35.016 by providing competitive procedures, which (1) describe broadly defined areas of interest covering the full range of the DoD's requirements²¹; (2) describe the criteria for selecting the proposals, their relative importance, and the method of evaluation²²; (3) specify the period of time during which proposals submitted in response to the Open Call will be accepted²³; (4) provide instructions for the preparation and submission of proposals²⁴; (5) publicize the Open Call through the Governmentwide point of entry (GPE)²⁵; (6) Assess solutions through a peer review panel of subject matter experts²⁶; (7) produce written evaluation reports of individual solution assessments²⁷; and (8) select solutions for placement into the Marketplace based upon an assessment of their technical viability and merit and potential for operational impact to the Department of Defense²⁸. To satisfy the full requirements of the Broad Agency Announcement requirements, the awarding activity, additionally, must assure that the following award requirements are met:

- A. Funds are available to support award of the effort.²⁹
- B. Cost realism and reasonableness are considered to the extent appropriate.³⁰
- C. Fair and Reasonable Price Determination.³¹
- D. Regulatory Requirements for Contract or Purchase Order are Satisfied.
- E. Awarding Activity-Specific Requirements (where applicable).
- F. Project-Specific Requirements (where applicable).

Class Deviation 2022-O0007, implementing Section 803 of the FY2022 National Defense Authorization Act (NDAA).

For award of Marketplace solutions through contract or purchase order, to procure innovative commercial products, technologies, or services (including efforts for advanced component development through operational systems development), the Marketplace competitive procedures satisfy Class Deviation 2022-O0007, implementing Section 803 of the FY2022 National Defense Authorization Act (NDAA) by providing competitive procedures, which (1) describe broadly

²¹ FAR 35.016(b)(1).

²² FAR 35.016(b)(2).

²³ FAR 35.016(b)(3).

²⁴ FAR 35.016(b)(4).

²⁵ FAR 35.016(c).

²⁶ FAR 35.016(d).

²⁷ Id.

²⁸ FAR 35.016(e).

²⁹ Id.

³⁰ Id.

³¹ FAR 15.402(a)

defined areas of interest covering the full range of the DoD's requirements³²; (2) describe the criteria for selecting the proposals, their relative importance, and the method of evaluation³³; (3) specify the period of time during which proposals submitted in response to the Open Call will be accepted³⁴; (4) provide instructions for the preparation and submission of proposals³⁵; (5) publicize the Open Call through the Governmentwide point of entry (GPE) at least annually³⁶; (6) Assess solutions through a peer review panel of subject matter experts³⁷; (7) produce written evaluation reports of individual solution assessments³⁸; (8) select solutions for placement into the Marketplace based upon an assessment of their technical viability and merit and potential for operational impact to the Department of Defense³⁹; and (9) use the prescribed procurement instrument identifier (PIID) to identify the solicitation is a CSO. To satisfy the full requirements of the CSO Deviation requirements, the awarding activity, additionally, must assure that the following award requirements are met:

- A. Funds are available to support award of the effort.⁴⁰
- B. Price is considered to the extent appropriate.⁴¹
- C. Fair and Reasonable Price Determination.⁴²
- D. Awards resulting from the CSO Deviation are fixed-price including fixed-price incentive contracts.⁴³
- E. Proposed Awards in excess of \$100 million are supported by OUSD(A&S) or cognizant service acquisition executive approval in a written determination prior to award.⁴⁴
- F. Awards in excess of \$100 Million require notification to the congressional defense committees subsequent to award.⁴⁵
- G. Documentation of Market Research conducted and rationale supporting the conclusion that the requirements of the class deviation have been satisfied.⁴⁶
- H. Regulatory Requirements for Contract or Purchase Order are Satisfied.
- I. Awarding Activity-Specific Requirements (where applicable).
- J. Project-Specific Requirements (where applicable).

³² OUSD DPC Class Deviation 2022-00007, pg. 2.

³³ Id.

³⁴ Id.

³⁵ Id.

³⁶ Id.

³⁷ Id. at pgs. 2-3.

³⁸ Id. at pg. 3.

³⁹ FAR 35.016(e).

⁴⁰ Id. at pg. 2.

⁴¹ Id.

⁴² FAR 15.402(a). But see FAR 15.403-1(b)(3), "Exceptions to certified cost or pricing data requirements. The contracting officer shall not require certified cost or pricing data to support any action (contracts, subcontracts, or modifications) (but may require data other than certified cost or pricing data as defined in FAR 2.101 to support a determination of a fair and reasonable price or cost realism)—(3) When a commercial product or commercial service is being acquired (see standards in paragraph (c)(3) of this subsection); See OSD DPC CSO Deviation 2022-00007 pg. 2, stating, "Contracting officers shall treat items, technologies, and services acquired using a CSO as commercial products or commercial services."

⁴³ OSD DPC CSO Deviation 2022-00007, pg. 2.

⁴⁴ Id. at pg. 3.

⁴⁵ Id.

⁴⁶ Id.

THANK YOU

FOR MORE INFORMATION, CONTACT:
SUCCESS@TRADEWINDAI.COM

