



FEDERAL DEMONSTRATION PARTNERSHIP

Redefining the Government & University Research Partnership

FDP Data Stewardship and Contracts September 2018 Meeting

Presenters:

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Session Agenda

- EU General Data Protection Regulations (GDPR) compliance
- Other Transaction Authority agreements (OTAs)
- Contract clauses related to information/data security
- FAR implementation of the increased micro and simplified acquisition thresholds and other notable pending FAR cases
- Other projects/demonstrations?



EU GDPR Compliance

- GDPR effective May 25, 2018
- Informal lunch at May meeting
 - Institutions still developing internal guidance on how to handle
 - Open questions on how this might impact proposals, subawards, DTUAs, etc.
- Information sharing on approach/guidance
- Planning for plenary in January 2019 or May 2019?



Other Transaction Authority (OTA) Agreements

- Recent increases in volume of OTAs being issued to member institutions.
- NIH: Section 213 of the 2014 Consolidated Appropriations Act

SEC. 213. (a) AUTHORITY.—Notwithstanding any other provision of law, the Director of NIH (“Director”) may use funds available under section 402(b)(7) or 402(b)(12) of the PHS Act to enter into transactions (other than contracts, cooperative agreements, or grants) to carry out research identified pursuant to such section 402(b)(7) (pertaining to the Common Fund) or research and activities described in such section 402(b)(12).



OTAs - DoD

- 2018 NDAA

SEC. 867. PREFERENCE FOR USE OF OTHER TRANSACTIONS AND EXPERIMENTAL AUTHORITY.

In the execution of science and technology and prototyping programs, the Secretary of Defense shall establish a preference, to be applied in circumstances determined appropriate by the Secretary, for using transactions other than contracts, cooperative agreements, and grants entered into pursuant to sections 2371 and 2371b of title 10, United States Code, and authority for procurement for experimental purposes pursuant to section 2373 of title 10, United States Code.



Although, in the FY19 NDAA...

SEC. 873. DATA, POLICY, AND REPORTING ON THE USE OF OTHER TRANSACTIONS.

(a) **COLLECTION AND STORAGE.**—The Service Acquisition Executives of the military departments shall collect data on the use of other transactions by their respective departments, and the Under Secretary of Defense for Research and Engineering and the Under Secretary of Defense for Acquisition and Sustainment shall collect data on all other use by the Department of Defense of other transactions, including use by the Defense Agencies. The data shall be stored in a manner that allows the Assistant Secretary of Defense for Acquisition and other appropriate officials access at any time.

(b) **USE OF DATA.**—The Assistant Secretary of Defense for Acquisition shall analyze and leverage the data collected under subsection (a) to update policy and guidance related to the use of other transactions.

(c) **REPORT REQUIRED.**—Not later than December 31, 2018, and each December 31 thereafter through December 31, 2021, the Secretary of Defense shall submit to the congressional defense committees a report covering the preceding fiscal year on the Department's use of other transaction authority. Each report shall summarize and display the data collected under subsection (a) on the nature and extent of the use of the authority, including a summary and detail showing—

- (1) organizations involved, quantities, amounts of payments, and purpose, description, and status of projects; and
- (2) highlights of successes and challenges using the authority, including case examples.



Outcomes of increase in OTAs

- Increased Administrative Burden
 - More documentation to review rather than being able to rely on well-established assistance agreement policy or the FAR
 - Awards that might have otherwise been issued as grants or cooperative agreements now require negotiation
 - If subawards are involved, cannot rely on established templates and drafting customized agreements encourages the inclusion of other problematic terms
 - Other burdens?
- Benefits? To Member Institutions? To the Federal Agencies?



OTAs – potential next steps?

- Which funding agencies are institutions receiving OTAs from most often?
- Brainstorming on how FDP might be able to help alleviate some of the burdens



Information/Data Security Contract Clauses

- CUI FAR case due date extended (again) to September 12, 2018
- Existing information/data security clauses often included in inappropriate circumstances or without sufficient information being provided to the Contractor on the information being received or accessed.



Proposed project

- Create a resource that helps member institutions navigate which clauses are appropriate in which cases and what information from the Federal agency should accompany each clause
- Create a repository similar to the Troublesome Clauses database to track which clauses are being applied inappropriately and when.
- Any volunteers?



Increased micro and simplified acquisition thresholds

- FAR implementation is FAR case 2018-004
- Current status: 08/28/2018 Draft proposed FAR rule from FAR analyst to OFPP. OFPP reviewing.
- No clear indication on when the legal review is anticipated to be completed and/or the clause will be posted/finalized.



Mexico City FAR clause also pending

- FAR case: 2018-002
- Title: Protecting Life in Global Health Assistance
- Synopsis: Implements Presidential memorandum of January 13, 2017, "The Mexico City Policy," in accordance with the interagency implementation plan, "Protecting Life in Global Health Assistance," prepared by the Secretary of State on May 9, 2017.
- Status: 11/13/2017 FAR principals opened case (Acquisition Strategy Team), proposed FAR rule. FAR and DAR staff processing.



Other topics?

- Other issues to be discussed?
- Potential projects for Data Stewardship and/or Contracts?



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