



**AISS  
HR001119S0044**

**Proposers Day**

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# Proposers Day Disclaimer

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- **Plenty of good information is made available to potential proposers to help clarify program goals/objectives and proposal preparation instructions - those things that are stipulated in the BAA**

## **However:**

- Only the information/instructions in the BAA counts
  - Proposals will only be evaluated in accordance with the instructions provided in the BAA
  - Any response provided by the Government in the FAQ that's different than what is provided in the BAA will be made formal by an amendment to the BAA
    - Such responses will make note of an impending BAA amendment
- **Only a duly authorized Contracting Officer may obligate the Government**



# BAA Overview

- **BAA allows for a variety of technical solutions and award instrument types**

- The BAA defines the problem set, the proposer defines the solution (and SOW)
- Allows for multiple award instrument types:
  - Procurement Contract or Other Transaction (no assistance instruments)
  - Anticipated Funding Type: 6.2
    - Fundamental research for Universities (prime or subcontractor)
    - Restricted research for for-profits (prime or subcontractor)

- **DARPA Scientific Review Process**

- Proposals are evaluated on individual merit and relevance as it relates to the stated research goals/objectives rather than against one another
- Selections will be made to proposers whose proposals are determined to be most advantageous to the Government, all factors considered, including potential contributions to research program and availability of funding
- **Government may select for negotiation all, some, or none of the proposals received**
- **Government may accept proposals in their entirety or select only portions thereof**
- **Government may elect to establish portions of proposal as options**



# BAA Process/Timeline

1. **Proposers Day is conducted (10 April 2019)**
  2. **BAA is released (3 April 2019)**
    - No abstracts
    - Full proposals only
    - Multiple TAs/Multiple Tracks
  3. **Proposals are due (20 May 2019)**
  4. **Proposals are reviewed for BAA compliance**

Noncompliant proposals are not reviewed (and cannot be selected)
  5. **Government conducts Scientific Review Process**

Clarification requests may be sent to various proposers
  6. **Government sends out notification letters (10 July 2019)**
  7. **Contracts negotiated & awarded (~19 October 2019)**
- 47 days
- ~51 days
- ~101 days



# Eligibility Issues

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- All interested/qualified sources may respond subject to the parameters outlined in BAA
- Foreign participants/resources may participate to the extent allowed by applicable Security Regulations, Export Control Laws, Non-Disclosure Agreements, etc. **(Unclassified proposals are anticipated)**
- FFRDCs and Government entities:
  - Are not prohibited by the BAA from proposing
  - Are, however, subject to applicable direct competition limitations
  - Are, however, required to demonstrate eligibility (sponsor letter)
  - **The burden to prove eligibility for all such team members rests with the proposer**
  - **All elements of a proposal (tech and cost, prime and subs – even FFRDC team members) must be included in the prime's submission**
- Real and/or Perceived Conflicts of Interest:
  - Identify any conflict/s
  - If any are identified, a mitigation plan must be included



# Full Proposal Ground Rules

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- A proposal can address TA1 only, TA2 only, or both TA1 and TA2
- A proposer can submit multiple proposals
- Submit **ONLY** to <https://baa.darpa.mil>, and request **ONLY** a contract or OT

**TIP: Propose to the program (goals, objectives, schedule, deliverables, etc.) the BAA has defined, not to the program you desire**

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- ✓ **Multiple awards are anticipated. Total funding for **all** selected proposals is \$75M**
  - ✓ **TA1/TA2 Performer Collaboration: All TA1 and TA2 performers must execute Associate Contractor Agreements (ACAs) prior to contract award – the technical approach must acknowledge this requirement:**
    - **“All TA1 developed technologies, tools, IP, and methods shall be made available under ACAs to all members of TA2 teams.”**



# Full Proposal Preparation

## ● Volume 1: Technical/Management Proposal

- Be mindful of the page limitations: **30 pages** for single TA proposal, **60 pages** for multiple TA proposal (Section II of Volume 1)
- Be sure to respond to **all** of the required “Detailed Proposal Information” items (10)
  - Technical Approach – is the centerpiece of the technical proposal
    - **Keep an eye out for proposal preparation guidance in the “Funding Opportunity Description” as well**
  - Statement of Work – Organize by TA and Phase. Define all tasks (what you are doing, not how you are doing it)
  - National Security Impact Statement – Around 2 pages is typically adequate

## ● Volume 2: Cost Proposal

- No page limitations
- Fully detailed cost build-ups/estimates (Prime **and** Subcontractors)
  - Summary Cost Breakdown – by TA, phase and performer fiscal year
  - Detailed Cost Breakdown – by TA, phase, task and month
- All necessary supporting information (BoE, BoM, vendor quotes, rate agreements, etc.)
  - **Reminder: Government Cloud Computing Infrastructure will be provided as GFP**
- **No Rough Order of Magnitudes (ROMs)**



# Data Rights

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- **Government desires as few restrictions as possible - however....**
- **If asserting less than Unlimited Rights (e.g., Restrictions):**
  - Provide and justify basis of assertions using the prescribed format
  - Explain how each item will be used to support the proposed research project
  - Explain how the Government will be able to reach its program goals (including technology transition)
- ✓ The above Data Rights Cert includes **prime and sub info**, as applicable
- ✓ Provide even if you are proposing other than a contract (see OT backup slides)
- **This information is assessed during evaluations (barriers to transition)**





# Pitfalls That Delay (or prevent) Proposal Review

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- **Failure to submit proposal on time (could be noncompliant!)**
  - Proposals that miss first due date can be submitted through 17 June 2019 but it's very possible that no program funding will be available after initial round selections
- **Failure to submit using the correct mechanism (noncompliant!)**
  - DARPA BAA site **only** (Procurement Contracts & OTs)
    - Click “Finalize Full Proposal” button or it does not get submitted
  - No assistance proposals so **no** Grants.gov
  - **Pls must keep an eye on the above if somebody else in your organization is submitting**
- **Failure to submit both proposal volumes (noncompliant!)**
  - Volume 1, Technical/Management
  - Volume 2, Cost
- **Pages beyond the page limitation (tech prop) – pages will not be reviewed**
- **ROM/s instead of full subcontract cost proposal/s (noncompliant!)**
  - “I didn't have time to get the subcontract proposal/s” will not change the outcome
  - “My subcontractor/s would not give me a proposal” will not change the outcome



# Communications

- **Prior to Receipt of Proposals (Solicitation Phase):** No restrictions, however Gov't (PM/PCO) shall not dictate solutions or transfer technology
  - Typically handled through the FAQ
- **After Receipt of Proposals/Prior to Selections (Scientific Review Phase):** Limited to Contracting Officer or BAA Coordinator (with approval) to address clarifications requested by the review team
  - Proposal cannot be changed in response to clarification requests
- **After Selection/Prior to Award (Negotiation Phase):** Negotiations are conducted by the Contracting Officer
  - PM and/or COR typically tasked with finalizing the SOW (with PI)
  - PM and/or COR typically involved in any technical discussions (i.e., partial selection discussions)
  - Pre-award costs will not be reimbursed unless a pre-award cost agreement is negotiated prior to award
- **Informal Feedback Sessions (Post Selection):** May be requested/provided once the selection(s) are made
  - If made on a timely basis (~2 wks after letter), all requests will be accepted



# Backup Material

## Further Info Regarding OTs

- **The following slides are provided for new Non-Traditional DoD performers**
  - They will not be presented during this Proposers Day event
- **Additional information is also available on the ERI Webpage (DARPA Website - “Work With Us” / “Electronics Resurgence Initiative”)**
  - Agreement Template (“ERI TIA Model”)
  - Companion Guide
  - Maybe an excerpt of the Page 3/Franc Proposers Day video where I present the following OT slides
- **Additional information is also available on the Contract Management Webpage (DARPA Website - “Work With Us” / “Contract Management”)**
- **See the “Other Transaction (OT) Guide” issued in December 2018 (DAU)**
- **I am available to discuss (this topic only - I will not discuss the BAA)**



# Other Transactions

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## ● Technology Investment Agreements (always dual-use)

- DoD-created term that encompasses OTs for Research under 10 U.S.C. 2371 and flexible cooperative agreements under 10 U.S.C. 2358
- To engage nonfederal entities in working collaboratively with the Government on basic, applied, or advanced research projects
- These instruments are premised on the resulting technology being dual-use
- Considered an assistance arrangement
- Presently covered in Part 37 of the DoDGARs (Department of Defense Grant and Agreement Regulations)

## ● OTs for Prototypes (focused on military needs)(sometimes dual-use)

- Allows DoD to enter into OT agreements 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 Department of Defense, or to improvement of platforms, systems, components, or materials in use by the armed forces.”
- 10 U.S.C. 2371b
- Considered an acquisition arrangement (supplies or services for the direct benefit or use of the Federal Government)
- DoD has issued an OT for Prototype Guide (Jan 2017) – available on the web.



# Other Transactions

- **No matter the type of OT – most of the acquisition statutes don't apply, and none of the acquisition regulations apply:**
  - Competition in Contracting Act (CICA)
  - Truth in Negotiations Act (Truthful Cost and Pricing)
  - Cost Accounting Standards
  - Contract Disputes Act
  - Procurement Protest Process
  - P.L. 85-804 and indemnification
  - Cost plus a percentage of cost prohibition
  - Buy American Act (in part)
  - Bayh-Dole Act (patents)
  - FAR/DFARS/Agency specific acquisition regulations
    - Termination for Convenience or Default
    - Changes Clause
    - Mandatory flowdowns to subcontractors
  
- **But! Some laws (not considered acquisition regs) still do apply:**
  - Criminal Laws (false claims/statements)
  - Laws of general applicability (Civil Rights Act)
  - Laws that would apply to anyone doing business in the U.S. (e.g. environmental laws, import/export control)



# Other Transactions

## ● Why use an OT?

- Attractive to contractors looking for elasticity in their agreements
  - Attracts companies that would normally avoid DoD business
  - Any apparent risk allows parties to change the terms to be more suitable to the party absorbing most of the risk
  - Invokes commercial practices, such as negotiating terms and conditions
  - Removes rigidity of traditional Government procurement
  - Promotes trust and a spirit of cooperation with industry
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- OTs involving non-federal (performer) cost share form a partnership between the Government and the Performer (not just the usual Customer-Performer relationship)
  - The usual Government procurement safeguards are removed, and risks to the Government increased, which is why the associated statutes involve cost share in most cases.
    - TIAs = 50/50 share to the maximum extent practicable. Sets the expectation (dual-use), but not a firm requirement – it's negotiable.
    - OT for Prototypes:
      - 1/3 Performer cost share required (except for small business and non-trationals)
  - The inclusion of cost share does influence the terms and conditions negotiation.



# Other Transactions (TIAs)

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## ● Factors to consider (TIAs)

### – The Nature of the Project

- Does it involve the support or stimulation of research?
- Is it relevant to integrating the technology into the commercial industrial base?

### – The Type of Recipient

- Is a for-profit performer involved in the research?
- Will the program be more successful with a team approach or a single performer?
  - These efforts often work well with consortia or teams to facilitate collaboration
  - Single firms are permissible, especially when there will be collaboration between their government and commercial divisions

### – The Recipient's Commitment

- Is there evidence of commitment to incorporate the technology into future products?
- Are they prepared to cost-share and is the cost-share high quality?

### – The Degree of Government Involvement

- Is the expectation that the Government will be part of the team with insight into progress?
- Is the recipient or team prepared to self-police and take a leadership role in managing the program?

- **But keep in mind – OTs can take longer to negotiate than a standard procurement (FAR/DFARS) contract.**



# Other Transactions (TIAs)

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- **There is a ERI “Model” TIA available on the ERI webpage.**
  - This “Model” is unique even to DARPA (i.e., IP terms and conditions).
  - See also the companion document – it helps you get into the Contracting Officer’s head.
  
- **If you have little to no experience contracting with the federal government, but really want to be an ERI performer, don’t let the unknown (or misinformation) prevent you from submitting a proposal!**
  - The Government is not out to steal a performers IP.
    - ✓ The Performer owns the IP that is created (all award instruments).
    - ✓ The Government seeks only a license to use the IP that is created (Patent and Data Rights).
    - ✓ The extent of the Government use rights (data) is negotiable and depends on such factors as program goals and objectives, non-federal (performer) cost share, the nature of each specific data/software deliverable, etc.
    - ✓ Yes – the Government typically seeks/prefers Unlimited Rights (no use restrictions at all – but,, as noted, it negotiable).
  
  - ✓ The Performer owns all pre-existing IP.
  - ✓ Any rights the Government has to use pre-existing IP (typically data/software) is negotiable.





# Other Transactions (TIAs)

## ● How do we negotiate OTs?

1. It starts with the Statement of Work (referred to as a Task Description Document/TDD for OTs).
    - Well defined tasks that map to the a well defined program plan/schedule (prime and subs)
  2. It also starts with clearly defined deliverables (data, software, material items).
    - What are they?
    - What is the Government going to do with them once delivered (think program goals and objectives) and how does this relate to data rights for each deliverable?
  3. Taking the time immediately after selection to ensure each party fully understands the technical goals and objectives, and expectations specific to the proposed/selected project.
    - Work to quickly resolve any misunderstandings and fine-tune the TDD (deliverables).
  4. Then – when the above has been accomplished, we work to fine-tune the agreement terms and conditions to ensure it fits the above.
  5. Cost is negotiated along the way – the extent is at least somewhat related to the amount of non-federal (Performer) cost share involved.
- **Negotiation can take as little as 90 days or as long as 180+ days (each OT is unique)**