

Other Transaction Authority (OTA) Overview

What is Other Transaction Authority (OTA)?

Other Transactions (OTs) are legally binding instruments that may be used to engage industry and academia for a broad range of research and prototyping activities. OTs are typically defined by what they are not: they are not standard procurement contracts, grants, or cooperative agreements. As such, they are generally not subject to the federal laws and regulations that apply to government procurement contracts (e.g., FAR/DFARS).

An “other transaction” agreement comes in a variety of forms and is typically distinguished according to whether its purpose is for research or a prototype. This document focuses primarily on OTs for Prototypes, which was originally authorized by the Section 845 of the FY1994 National Defense Authorization Act (NDAA) and has been amended and extended since. While the principal purpose of OTA is for RDT&E activities, Congress has provided the authority to link a FAR-based procurement contract to an OT for Prototypes when the OT is competitively awarded.

When may OTs for Prototypes be used?

Congress most recently amended the Section 845 authority in the Section 812 of the FY2015 NDAA. Whereas the original authority was limited to apply to “weapons or weapon systems proposed to be acquired or developed by the Department of Defense,” Congress expanded the authority to include any prototype project “directly related 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.” By definition, prototypes developed through OTA may include physical or virtual models used to evaluate the technical or manufacturing feasibility or military utility of a particular technology or process, concept, end item, or system. Hence, a very wide range of activities can be pursued under an OT for Prototypes.

Though OTs for Prototypes should be awarded pursuant to competition, no specific competitive procedures are prescribed by law and sole source OTs may be permitted. The Competition in Contracting Act does not apply to OTs for Prototypes, and as such, protests are not usually a factor. As noted above, there is an opportunity to link a FAR-based production contract to an OT when the OT is competitively awarded.

Each military service has authority to execute OTs up to \$100M, and there are no limits on how many OTs may be executed by the services or the cumulative value of such awards. Beyond the \$100M threshold for individual OTs, USD(AT&L) must provide authorization to proceed. There is no limit to the number or dollar value of OTs that the Defense Department may execute in aggregate, but DPAP has counseled for caution when using OTs for Prototypes given the unstructured environment in which they are awarded and administered.

Congressional reporting is required for each use of OTA, and this reporting must indicate the rationale for use of an OTA. Typically, the rationale for using OTA is either a desire to promote engagement of non-traditional contractors or the desire to implement business arrangements/structures that would not be feasible or practical under FAR-based contracts. This can include instances where specific clauses within the FAR would create unnecessary burden on the government or contractor.

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What is the benefit of using OTA?

An OT can allow for much greater speed, flexibility, and accessibility in performing research and prototyping activities. It can also be used to design and implement innovative business models within the government that would otherwise not be feasible.

Who is eligible to receive an OT award?

Any commercial or academic institution is eligible to receive an OT award. However, OTs may only be executed in the following circumstances:

- The awardee is a non-traditional defense contractor.
 - Non-traditional contractors are defined by statute as those entities that are not currently performing and has not performed for at least one-year prior to an OT solicitation: 1) any contract or subcontract subject to full coverage under the Cost Accounting Standards (CAS); or 2) any other contract in excess of \$700,000 under which the contractor is required to submit certified cost or pricing data.
- The awardee is a traditional defense contractor, but at least one of the following apply:
 - A non-traditional contractor is participating to a “significant” extent.
 - “Significant” participation can refer to any of the following:
 - Supplying a new key technology or product;
 - Accomplishing a significant amount of the effort;
 - Causing a material reduction in cost or schedule; and/or
 - Causing an increase in performance.
 - The awardee provides a financial or in-kind cost share – typically, a 1/3 cost share is required.
 - The Service Acquisition Executive makes a written determination that exceptional circumstances justify use of OTA for the purpose of executing innovative business models or structures that would not be feasible or appropriate with a FAR-based contract.

What is an OT Consortium?

OT business structures are highly variable. In fact, OSD guidance states that contracting officers should not use specific templates for designing such structures. The intent, rather, is for the government to structure business arrangements that are most appropriate for each specific scenario. However, there are OT structures that have been effectively demonstrated and can be replicated. One such structure was developed by Army Contracting Command (ACC) and involves the establishment of consortia of companies interested in working with the Army within a given subject area. These so-called “OT Consortia” have existed for more than a decade and have cumulatively resulted in the award of over \$1B for prototype development.

While there are several variants between OT Consortia, the general premise is that ACC executes an OT not with a single entity but an organized group of entities that agree to participate under a common rule set. The consortia typically employ a management organization to address administrative needs and manage the flow of information from the Army to the consortia. Typically, these consortia are designed

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to minimize barriers for new companies to participate. In several cases, the application to become a consortium member is a one-page form that can be completed online and a \$500 annual fee. Prospective members must agree to the terms of the consortium, but these terms are much more flexible than standard FAR-based contracts (e.g., intellectual property issues may be negotiated on a case-by-case basis).

Once the consortium is established, government customers may issue calls for whitepapers to the consortium. The government may then select a small number of companies to submit a more formal proposal. Ultimately, the government selects one or more awardees and delivers funding to the selected consortium member(s) – typically through the consortium management organization. The government may also propose new relationships between consortium members without re-soliciting white papers or proposals from the entire consortium.

The OT Consortium model provides tremendous flexibility, speed, and access to the broadest possible pool of prospective vendors. On average, the duration from the time of releasing a white paper to issuing an award can be less than two months. The model has been so successful that OSD has commissioned ACC to develop five new consortia on its behalf, and WHS is working to develop capability within its contracting personnel to execute its own OT Consortia. AFRL is also developing an OT Consortium to manage current and future PlugFest Plus (PFP) projects.