

# Other Transaction Authority (OTA)

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# Background

**“Inarguably, . . . the current pace at which we develop advanced capability is being eclipsed by those nations that pose the greatest threat to our security, seriously eroding our measure of overmatch.”**

The Honorable Ellen Lord, Under Secretary of Defense (Acquisition and Sustainment) in 2017

**“Our current bureaucratic processes are insufficiently responsive to the department's needs for new equipment. We will prioritize speed of delivery, continuous adaptation and frequent modular upgrades. We must shed outdated management and acquisition practices, while adopting American industry's best practices. Our management structure and process are not engraved in stone. They are a means to an end, empowering our warfighters with the knowledge, equipment and support needed to fight and win.”**

James Mattis, when Secretary of Defense in 2018

# » What is an OTA?

- › OTAs largely are defined by what they are not
  - » They're not standard procurement contracts
  - » They're not grants
  - » They're not cooperative agreements
- › Distinguished by purpose and intent: Two statutory authorities. One is for Research projects. The other is for Prototypes and follow-on Production. The Prototype OTA is our focus.
- › OTAs are contracts
- › DoD believes OTAs will open doors to non traditional contractors reluctant to participate in FAR based procurement. Attempt to attract new vendors who have promising technological capabilities. Cut through bureaucratic red tape associated with the traditional procurement process.
- › Army is the leading DoD service in terms of using OTAs. \$7B expected in total DoD contract obligations in 2019.

# Prototype OTA – Must Meet One of Four Conditions

- All significant participants other than the Government are small businesses or non traditional contractors or
- There is at least one nontraditional defense contractor participating to a significant extent in the prototype project or
- At least one third of the total cost of the prototype project is to be paid out of funds provided by sources other than the federal government or
- Senior procurement executive for the agency determines in writing that an exceptional circumstance exists for using OTA rather than a standard procurement

The reward for participating in a prototype OTA:

A noncompetitive follow on production agreement if the initial OTA was awarded on a competitive basis.

# » What is a Non-Traditional Defense Contractor (NTDC)?

- › A company that is not currently performing and has not performed, for at **least the period of one year preceding the issuance of a Request for White Papers (RWP)** by the DoD, any contract or subcontract that is subject to full coverage under Cost Accounting Standards (CAS)
- › Full CAS coverage is required for contracts greater than \$50M



# Significant Participation

- › Determined on a project basis and based on the importance of the NTDC contribution to the overall execution or outcome of the proposed project
- › Section 815 neither defines “significant” nor prescribes a monetary threshold or value to justify “significant”
- › Examples of Significant Participation:
  - ✓ Supplying a key technology, facility or unique capability
  - ✓ Causing a material and quantifiable reduction in the project cost or schedule
  - ✓ Causing a measurable increase in the performance of the prototype
  - ✓ Value-added analysis not based on percentage of project work or value



# » Use of Consortia

- › Majority of OTA funding has been awarded through consortia
- › Bloomberg Government tracks 26 different active consortia. GDMS is a member of 20 plus consortia (typical exclusions are consortia medical, forging, metal casting). Some consortia have as many as 1000+ members.
- › For DoD work run through a consortium, you can't bid on work and you can't submit proposals unless you are a member of that consortium. Membership dues are generally in the \$500 - \$2500 range per consortium
- › Example of membership, from the C5 Consortium:
  - » Membership is open to all qualified companies, nonprofits and academic institutions conducting research and development in the C4ISR and cyber technology sectors. The requirements for membership are: must operate and have the ability to provide solutions within C5's technology domains, agree to the terms of the Consortium Membership Agreement, and pay annual dues of \$500. This fee is waived for academic institutions. Upon enrollment, CMG will provide new members an overview of administrative procedures and provide all open opportunities at time of enrollment. New members are eligible immediately to respond to any open opportunity.

# OTA (NON – FAR) vs Traditional FAR Contract

	OTA	Traditional Contract
Program Type	<b>Prototype/Research &amp; Development</b> <ul style="list-style-type: none"> <li>Intended for prototype programs directly relevant for <b>enhancing the mission</b> of military personnel</li> </ul>	<b>Services or Equipment</b> <ul style="list-style-type: none"> <li>Required when the principal purpose of the agreement is to acquire property or services for <b>direct benefit or use by the US Government</b></li> </ul>
Regulations	<b>Not Covered by FAR Regulations</b> <ul style="list-style-type: none"> <li><b>Encourages non-traditional</b> contractors to bid</li> <li>Reduces processes that must be followed</li> <li>Does not require certified cost/price data</li> </ul>	<b>Required to Follow FAR</b> <ul style="list-style-type: none"> <li>Requires companies to follow specific acquisition regulations</li> <li>Can cost companies millions of dollars to implement a <b>CAS qualified financial system</b> to be compliant with FAR</li> </ul>
Protests	<b>Generally Not Protestable with GAO</b> <ul style="list-style-type: none"> <li>Results in quicker acquisitions with fewer complications</li> </ul>	<b>Allowable for Parties to Protest During Solicitation Period and After Award</b> <ul style="list-style-type: none"> <li>Can significantly delay acquisitions and getting technology to warfighters</li> </ul>
Participation	<b>Requires Non-Traditional Defense Contractor Participation for “Significant” Portion</b> <ul style="list-style-type: none"> <li>“Significant” not defined in a quantitative way</li> <li>If NTDC is not included, contractor must contribute a one-third cost-share from non-Federal sources</li> </ul>	<b>Full &amp; Open Competition Unless Defined as Small Business Set-Aside</b> <ul style="list-style-type: none"> <li>Generally includes <b>Small Business Goals</b> (if not Set-Aside) of up to 35% participation by SB</li> </ul>
Proposals	<b>In Most Cases, Requires Submission of White Paper/ROM followed by a Proposal</b> <ul style="list-style-type: none"> <li>White papers follow a much less formal process than an RFP</li> <li><b>Generally due within 2 weeks of request</b></li> <li>Typical white paper is limited to 10-20 pages in length.</li> <li>Government will request a proposal if White Paper is desirable.</li> </ul>	<b>Requires Full Proposal Submission and Detailed Cost/Price Data</b> <ul style="list-style-type: none"> <li>Generally due within <b>30-90 days</b> of request</li> <li>Proposals can be up to hundreds of pages</li> </ul>

# Typical OTA Process - Requests for White Papers (RWP)

- › Government identifies a need within the scope stated in a consortium agreement
- › Government and/or consortium issues a RWP to be submitted in a specified format and on a due date
- › Typical WP will require the submission of a ROM
- › Typical WP is a few pages long, submitted by consortium member briefly describing a technology solution or concept in the requested area
- › Typical WP must identify cost sharing or use of non traditional
- › Typical WP must identify anything proprietary
- › Government and/or consortium evaluate WP for completeness, format and technical merits to determine whether submission of a full proposal is warranted

# » Next Step – Request for Project Proposals (RPP)

- › Successful white papers are down-selected for next step
  - » If not selected, the white paper may be placed in a “basket” for future consideration
  - » Typically, the contractor will be notified that it has been selected to submit a proposal, at which point, there may be a SOW negotiation
- › Government/Consortium issues a request for proposal that specifies
  - » Format and due date
  - » Technical request
  - » Price or cost information/backup
  - » Details about how the proposal will be reviewed and selected
- › Government/Consortium reviews proposal, and either
  - » 1) rejects it
  - » 2) selects it for funding
- › If selected for funding, then Government/consortium negotiates project agreement with contractor

# OTA Myth

## *Since an OT is termed an “agreement,” it is not a contract*

### FALSE

- › When most people in the Government hear the word “contract,” they automatically think “Federal Acquisition Regulation (FAR)-based procurement contract” awarded under the traditional acquisition process and subject to all of the federal acquisition statutes and regulations. OT agreements are not procurement contracts, but they are legally valid contracts. They will be signed by someone who has the authority to bind the federal government (i.e., Agreements Officer (AO)). The terms and conditions can be enforced by and against either party. The organizations within DoD routinely using OTs have called them agreements to ensure that there would be no confusion between these arrangements and FAR based procurement contracts.

# » Why does the Government like OTAs?

- ✓ Access to Non-Traditional Defense Contractors
- ✓ Access to commercial technology that the government desires
- ✓ Allow faster prototyping activities that transition to production
- ✓ Limited paperwork
- ✓ Ability to work with industry to see if technology can fill the gap vs. writing requirements and not having available technology to fill gap

# » Summary and Call to Action

- » OTA Pros: Institutionalizes “**rapid acquisition**” processes, cuts cycle times, allows failure before buying an entire program
- » OTA Cons: Risk of playing favorites; no metrics exist for financial performance of OTAs vs. traditional FAR acquisitions; no line-item reporting; diminished oversight; exemption from regulations designed to protect USG and taxpayers. Where is the money going? Risk of abuse.
- » CALL TO ACTION:
  - » Consider joining a consortia of relevance to your business.
  - » Join the GDMS Innovation Network - no cost