

## Other Transactions (OT) Definitions

- 1) Agreement. The mutually agreed terms and conditions of the parties to an OT. Absent exceptional circumstances, it will take the form of a legally binding written instrument.
- 2) Agency. Agency means any of the military departments or defense agencies with authority to award OTs for prototype projects.
- 3) Agency level Head of the Contracting Activity. The Agency level Head of the Contracting Activity is the Head of the Contracting Activity within the Agency that has been delegated overall responsibility for the contracting function within the Agency. For the military departments this includes ASA(ALT)/SAAL-ZP, ASN(RDA)ABM and SAF/AQC.
- 4) Agreements Officer. An individual with authority to enter into, administer, or terminate OTs for prototype projects and make related determinations and findings.
- 5) Awardee. Any business unit that is the direct recipient of an OT prototype agreement.
- 6) Broad Agency Announcement (BAA). A BAA is a general solicitation as defined at 10 U.S.C. 2303. BAAs should only be used to solicit for research and development when the Government reserves the right to award a contract or another type of agreement, such as a grant, cooperative agreement, or other transaction. This must be clearly articulated in the solicitation.
- 7) Computer software. Computer programs, source code, source code listings, object code listings, design details, algorithms, processes, flow charts, formulae and related material that would enable the software to be reproduced, recreated, or recompiled. Computer software does not include computer data bases or computer software documentation.
- 8) Computer software documentation. Owner's manuals, user's manuals, installation instructions, operating instructions, and other similar items, regardless of storage medium, that explain the capabilities of the computer software or provide instructions for using the software.
- 9) Contracting activity. Contracting activity means an element of an agency designated by the agency head and delegated broad authority regarding acquisition functions. It also means elements designated by the director of a defense agency which has been delegated contracting authority through its agency charter.
- 10) Cost/Expenditure-type OT. Cost/Expenditure-type OTs include agreements where payments are based on amounts generated from the awardee's financial or cost records or that require at least one third of the total costs to be provided by non-federal parties pursuant to statute. This includes interim and final milestone payments that may be adjusted for actual costs incurred.
- 11) Directly Relevant. Under the authority of 10 U.S.C. §2371b, prototype projects must be 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. In this context, the phrase “directly relevant” focuses on the agency determination of the direct relationship of the prototype project (as opposed to a tangential association) with the DoD mission.

- 12) Fixed-price type OT. Fixed-price type OTs include agreements where payments are not based on amounts generated from the awardee's financial or cost records.
- 13) Head of the contracting activity (HCA). The HCA includes the official who has overall responsibility for managing the contracting activity.
- 14) Key Participant. A key participant is a business unit that makes a significant contribution to the prototype project. Examples of what might be considered a significant contribution include supplying new key technology or products, accomplishing a significant amount of the effort, or in some other way causing a material reduction in the cost or schedule or increase in performance.
- 15) Non-Traditional Defense contractor (NTDC). A business unit that has not, for a period of at least one year prior to the date of the OT agreement, entered into or performed on (1) any contract that is subject to full coverage under the cost accounting standards prescribed pursuant to section 26 of the Office of Federal Procurement Policy Act (41 U.S.C. 422) and the regulations implementing such section; or (2) any other contract in excess of \$500,000 to carry out prototype projects or to perform basic, applied, or advanced research projects for a Federal agency that is subject to the Federal Acquisition Regulation.
- 16) “Other transactions” is the term commonly used to refer to the 10 U.S.C. 2371 authority to enter into transactions other than contracts, grants or cooperative agreements. The Department currently has temporary authority to award “other transactions” (OTs) in certain circumstances for prototype projects that are directly relevant to weapons or weapon systems proposed to be acquired or developed by the Department.
- 17) “Other Transactions” for prototype projects are acquisition instruments that generally are not subject to the federal laws and regulations governing procurement contracts. As such, they are not required to comply with the Federal Acquisition Regulation (FAR), its supplements, or laws that are limited in applicability to procurement contracts.

This acquisition authority, when used selectively, is a vital tool that will help the Department achieve the civil and military integration that is critical to reducing the cost of defense weapon systems. This authority provides the Department an important tool that should be used wisely.

In accordance with statute, this authority may be used only when:

- (A) there is at least one nontraditional defense contractor participating to a significant extent in the prototype project; or
- (B) no nontraditional defense contractor is participating to a significant extent in the prototype project, but at least one of the following circumstances exists:

- a. (i) at least one third of the total cost of the prototype project is to be paid out of funds provided by the parties to the transaction other than the federal government.
- b. (ii) the senior procurement executive for the agency determines in writing that exceptional circumstances justify the use of a transaction that provides for innovative business arrangements or structures that would not be feasible or appropriate under a procurement contract.

18) Procurement contract. A procurement contract is a contract awarded pursuant to the Federal Acquisition Regulation.

19) Project Manager. Project Manager is the government manager for the prototype project.

20) Prototype project. The definition of a "prototype project" in the context of an OT is as follows: a prototype project addresses a proof of concept, model, reverse engineering to address obsolescence, pilot, novel application of commercial technologies for defense purposes, agile development activity, creation, design, development, demonstration of technical or operational utility, or combinations of the foregoing. A process, including a business process, may be the subject of a prototype project.

Although assistance terms are generally not appropriate in OT agreements, ancillary work efforts that are necessary for completion of the prototype project, such as test site training or limited logistics support, may be included in prototype projects. A prototype may be physical, virtual, or conceptual in nature. A prototype project may be fully funded by DoD, jointly funded by multiple federal agencies, cost-shared, funded in whole or part by third parties, or involve a mutual commitment of resources other than an exchange of funds.

21) Senior Procurement Executive (SPE) for the agency. The Under Secretary for Defense for Acquisition and Sustainment (USD(A&S)) has designated the Directors of the Defense Agencies, the Directors of Field Activities with contracting authority, the Commanding Officers of Combatant Commands (CCMDs) with contracting authority and the Director of the Defense Innovation Unit as having the authority to carry out Prototype OTs and follow-on Production OTs as permitted by section 2371 b. This designation does not apply to the military departments, the Defense Advanced Research Projects Agency (DARPA), and the Missile Defense Agency (MDA), which have their own authorities prescribed in statute.

22) Significant Extent. In evaluating the significance of expected NDC/nonprofit research institution participation, pursuant to 10 U.S.C. §2371b(d)(1)(A), the Agreements Officer (AO) is expected to consider input from relevant technical advisors (Legal, Engineering, Program Management, Pricing, Logistics, etc.) in assessing the totality of the circumstances for each proposed prototype project before making an independent judgment as to the significance of expected NDC or nonprofit research institution participation.

The AO should consider, by way of illustration and not limitation, whether the NTDC/nonprofit research institution will supply a new key technology, product or process; supply a novel application or approach to an existing technology, product or process;

provide a material increase in the performance, efficiency, quality or versatility of a key technology, product or process; accomplish a significant amount of the prototype project; cause a material reduction in the cost or schedule of the prototype project; or, provide for a material increase in performance of the prototype project.

AOs should not establish blanket rules or thresholds for determination of significance, and agencies must not establish local policies which infringe on the AO's judgment in making such determinations. Blanket policies which provide that expected NDC/nonprofit research institution participation must represent a predetermined percentage of total project value, or total labor dollars, etc., to be considered "significant," are arbitrary and infringe upon the Agreement Officers responsibility to make a reasoned, prudent and independent determination for each individual prototype project.

- 23) Successfully completed. A transaction for a prototype project is complete upon the written determination of the appropriate approving official for the matter in question that efforts conducted under a Prototype OT: (1) met the key technical goals of a project; (2) satisfied success metrics incorporated into the Prototype OT; or (3) accomplished a particularly favorable or unexpected result that justifies the transition to production. Furthermore, successful completion can occur prior to the conclusion of a prototype project to allow the Government to transition any aspect of the prototype project determined to provide utility into production while other aspects of the prototype project have yet to be completed. Any Prototype OT shall contain a provision that sets forth the conditions under which that prototype agreement must be successfully completed.