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## Army Contracting Command New Jersey



# Other Transaction Overview

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## ***Other Transaction Overview***

- Topics:
  - Definition of OTA
  - Authority
  - Benefits
  - Consortium Approach
  - Lessons Learned
  - OTA Notional Operating Procedures
  - Current OTAs



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## Other Transactions – Prototype Projects

- Authority: Section 845 of National Defense Authorization Act of 1994(PL 103-160), as amended by Section 804 of 1997 National Defense Authorization Act (PL104-201)
  - Used for prototype projects directly relevant to systems or requirements proposed to be developed or acquired by the DoD
- Must be significant nontraditional defense contractor participation **OR**
- Mandatory One Third Cost Sharing for Traditional Defense Contractor
  - may be waived by senior procurement executive for the agency if 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.
- Section 845 Other Transaction Guide for Prototype Projects
  - Under Secretary of Defense for Acquisition, Logistics & Technology, 21 December 2000





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## WHAT IS AN OTHER TRANSACTION (OT)?

- A legally binding instrument
- Defined by what it is NOT:
  - Not **procurement** contract/grant/cooperative agreement
  - For prototype projects that are directly relevant to weapons or weapon systems proposed to be acquired or developed by the DoD (**Prototype OT/Section 845 OT**)



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## What is a Prototype Project?

- No statutory definition BUT current DoD OTA guide says:
  - With regard to section 845 authority, a prototype can generally be described as a physical or virtual model used to evaluate the technical or manufacturing feasibility or military utility of a particular technology or process, concept, end item, or system. The quantity developed should be limited to that needed to prove technical or manufacturing feasibility or evaluate military utility.
- In general, Research, Development, Test & Evaluation (RDT&E) appropriations will be appropriate for OT prototype projects.
- Low Rate Initial Production quantities are **not** authorized to be acquired under prototype authority.



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## Prototype OT Authority

- Authority to enter into an OT for Prototype projects originates under Section 845 of Public Law 102-160
  - Access R&D efforts being accomplished by nontraditional defense contractors
  - Pursue commercial solutions to defense requirements
- Approval authority for these instruments delegated to different levels dependent upon dollar value
  - Up to \$ 20 Million
    - PARC
  - Over \$20 Million up to \$100 Million
    - Senior Procurement Executive (ASAALT)
  - Over \$100 Million
    - Under Secretary of Defense (ALT)



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## ***Non-Traditional Defense Contractor***

- Defined: Is 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 procurement contract that is subject to full coverage under the accounting standards prescribed pursuant to the Federal Procurement Policy Act; or
  - (2) any other procurement contract in excess of \$500,000 to carry out prototype projects or to perform basic, applied, or advanced research projects for a federal agency



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## ***Significant Participation of a Non-Traditional***

- Supplying new key technology or products
- Accomplishing a significant amount of the effort
- Causing a material reduction in the cost or schedule or increase in performance.



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## ***COST SHARING DEFINED***

- Resources expended by the award recipients on the proposed project SOW and subject to the direction of the project management Costs a reasonable person would incur (necessary to) carrying out project SOW.
- Cost Sharing does NOT involve Funds Directly to USG
- Two Types of Cost Sharing
  - **Cash:** Outlays of funds to perform the OT project
    - Includes labor, materials, new equipment, subcontractor effort
    - Sources include **new IR&D funds**, profit or fee from another contract, overhead or capital equipment expense pool
  - **In-Kind:** Reasonable value of equipment, materials or other property used in performance of OT work



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## ***Advantages of an Other Transaction***

- Relief from FAR and supplemental regulations
  - FAR, DFAR, AFAR not applicable
- Competition only to maximum extent practicable (CICA not applicable)
- Negotiable/Flexible
  - Don't feel constrained by previous USG contract practices and conventions.



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## *Advantages of an Other Transaction*

- Changes
  - No automatic unilateral changes or equitable adjustment
- Termination
  - No automatic Termination for Convenience or Default
- Flexible payment provisions (**payable milestones**)
- Intellectual Property negotiable
- Government/Industry Collaboration early and continuous



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## ***Advantages of an Other Transaction***

- Costs
  - No mandatory cost accounting standards/ reporting
  - No certified cost and pricing data
  - Commercial standards
  - No DCAA oversight
- Management Structure
  - Prime/sub relationship not required (teaming)
  - Subcontracting
    - No mandatory clause flowdowns



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## What Does Not Apply?

- Competition in Contracting Act
- Bayh-Dole & Rights in Technical Data
- Truth in Negotiations Act
- Contract Disputes Act
- Procurement Protest System
- Procurement Integrity Act
- Grants and Agreements Regs (DODGARS)
- See DOD Prototype Guide, Appendix 1



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## Consortium Approach

- Consortium defined as: an association of two or more individuals, companies, organizations or governments (or any combination of these entities) with the objective of participating in a common activity or pooling their resources for achieving a common goal.
- Some benefits:
  - Establishes business and governmental relationships that otherwise may not have occurred
  - Allows for Government/Industry to communicate in one forum
    - Leveraging Industry Wide capabilities
    - Better understanding of Government (and Industry) needs/priorities/challenges
  - Effective competition can be maintained
  - Can allow for obligation of funds early in cycle



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## ***Consortium Approach***

- Consortium Member Agreement (CMA)
  - A set of rules and procedures which govern the activities and relationships of the industry participants to the Agreement
    - Allocates risks, responsibilities, rewards
    - Establishes and maintains relationship
    - Someone Firmly in charge/ focus for USG
  - Not part of the OT Agreement
    - Referenced in the OT
    - USG not a member or signatory



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## ***Consortium Approach***

- Lessons learned reveal interaction with Government works best when:
  - Consortium designates one entity as lead
  - OR**
  - Employs an entity to act as Single Point
  - OR**
  - Forms a separate and distinct company for this purpose

All above provides a structure for early fund obligation



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## *Lessons Learned*

- Use of Administrative Agent
  - Ability to obligate funds early in cycle
  - Conduct of Cost/Price Analysis
- Use of basket Provision
- Use of White Papers and open communication with Consortium membership



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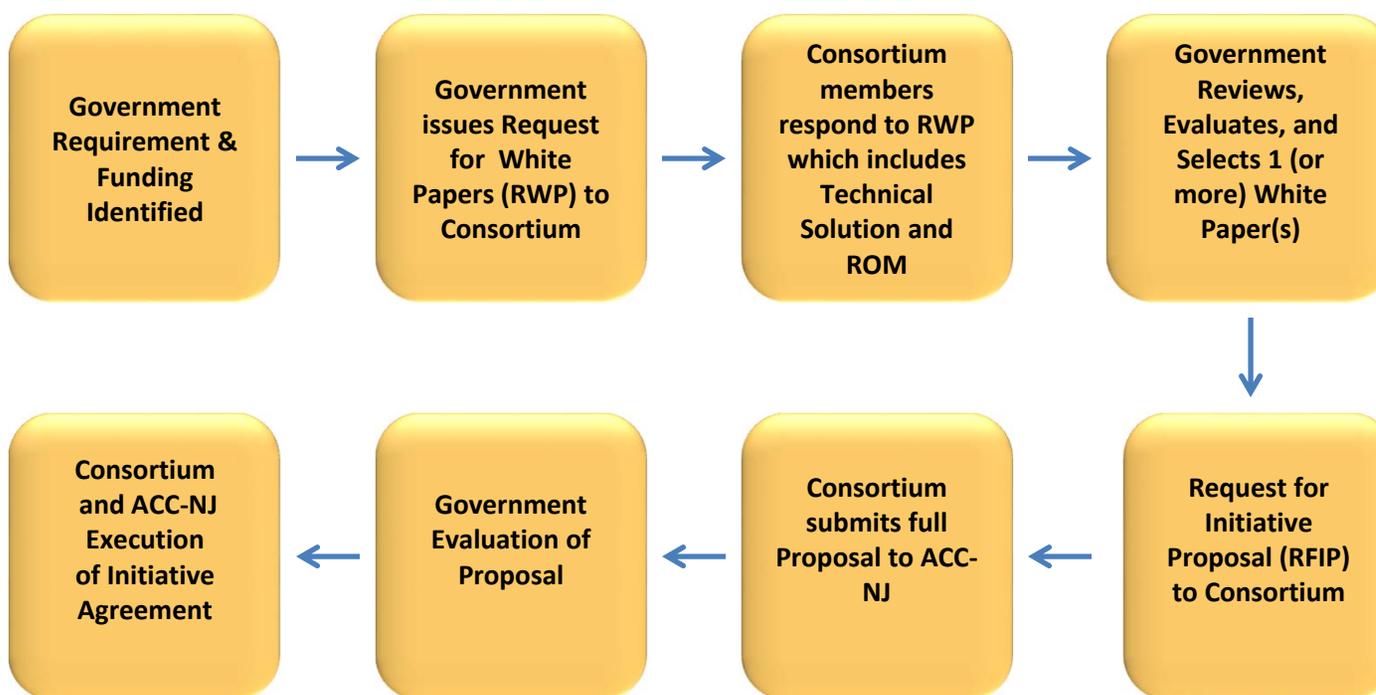


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# OTA Notional Operating Procedures





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## ***Current OTAs/Value/Sponsor***

- Defense Ordnance Technology Consortium (DOTC)  
\$1.5B/OSD
- Robotics Technology Consortium (RTC) \$700M/OSD
- Vertical Lift Consortium (VLC) \$20M/OSD
- Homeland Defense OTA \$100M/ARDEC
- Consortium for Energy, Environment, and Demil (CEED)  
\$100M/ARDEC
- Consortium for Command, Control, Communications, and  
Computer Technologies (C5) \$100M/ARDEC



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# QUESTIONS



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