

# ***Headquarters U.S. Air Force***

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*Integrity - Service - Excellence*



**Everything you always wanted to know  
about Other Transaction Authority\***

***\*But were afraid to ask***

**March 2016**

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# *What is OTA?*

- **Other Transaction Authority (OTA) is derived from 10U.S.C.2371**
  - **2371 describes the general authority for RDT&E activities**
  - **2371b describes OTA for “prototypes”**
  - **Originally introduced in 1989 NDAA**
  
- **This briefing deals only with the Prototype authority.**
  
- **An Other Transaction (OT) is defined by what it is not:**
  - **It is a legally-binding instrument that is not a standard procurement contract, grant, or cooperative agreement.**
    - **As such, it is not generally subject to acquisition laws and regulations governing such contracts, grants, or cooperative agreements.**



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# Why OTA?

- **Acquisition Agility**: OTA empowers DoD to structure business arrangements to specific needs and circumstances.
- **Access to Innovation**: The vast majority of American industry does not want to do business with the government. OTAs can limit those barriers to participation.
- **Tech Transition**: OTA provides a streamlined and effective means to transition from RDT&E to production.





# *When may OTA be used?*

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- **OTA may be used for prototype projects directly relevant to:**
  - **Enhancing mission effectiveness of military personnel and the supporting platforms, systems, components, or materials proposed to be acquired or developed; or**
  - **Improvement of platforms, systems, components, or materials in use by the armed forces.**
  
- **The services may award an unlimited number of OTs, with each OT limited to \$250M.**
  - **Above \$50M, SAEs must approve the OT.**
  
- **USD(AT&L) may approve an unlimited number of OTs above \$250M with a 30 day Congressional notification.**



# *What constitutes a prototype?*

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- There is no statutory definition for a prototype, but OSD OTA Guide conveys the following general descriptors:
  - A physical or virtual model;
  - Used to evaluate technical feasibility, manufacturing feasibility, or military utility; and
  - Related to a particular technology, process, concept, end item, or system.
  
- Prototypes should be acquired in the minimum quantities necessary.
  
- OTA generally ends at LRIP, where relevant, **BUT** the authority allows for the transition to a follow-on production contract or transaction (more on this later)



# *Who is eligible for an OT?*

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- **Any company may participate in an OT, but there are some additional conditions for traditional defense contractors.**
  - OTs are to be competed to the maximum extent practicable, but standard competition processes are not necessary.
  - OTs may not be protested.
  
- **Any small business, non-traditional defense contractor, or partnership thereof may receive an OT award without restriction.**
  - Non-traditional defense contractors are those that are not performing, and have not performed for at least one year from the time of a solicitation, work for DoD that is subject to full coverage under government cost accounting standards.
  
- **Commercial divisions of traditional defense contractors may be considered non-traditional under OTA.**



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# ***When may traditional defense contractors receive an OT?***

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- **Traditional defense contractors may receive an OT when any of the following conditions apply:**
  - **The contractor partners with a non-traditional defense contractor to a “significant extent”**
  - **The contractor contributes at least a 1/3 cost share**  
or
  - **The SAE certifies a need to use OTA**



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# *How can we transition from an OT to Production?*

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- An OT can transition to a follow-on production contract or transaction without further competition, if:
  - The original OT was competitively awarded; and
  - The participants in the original OT successfully completed the prototype project.
  
- The follow-on production contract/transaction may be established at the time the original OT is issued.
  
- OSD is authorized to create regulations that would enable follow-on production contracts/transactions to be non-FAR based.
  - Otherwise, the follow-on production contracts may use FAR Part 12 or 15.



# *Answers to common questions*

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## **■ How do I sustain a system developed through an OTA?**

*Sustainment may be included in the follow-on production contract/transaction or an OT can be used to accommodate certain sustainment activities – as long as the scope of work meets the statutory definitions described above. OTs may utilize multiple colors of money.*

## **■ Why not use BAAs or multi-award IDIQs instead of OTA?**

*We encourage programs to use all available means to innovate within the acquisition system. OTA is a very powerful tool, but it is not a silver bullet answer for every challenge. In cases where flexibility is important and/or there is a large commercial base, OTAs provide a great option.*

## **■ If we use this authority too much, won't Congress take it away?**

*Since its inception within DoD, every instance where Congress has addressed OTA has been to expand or strengthen the authority. This includes the 2016 NDAA, where Congress made the authority permanent.*



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# ***Conclusion***

- **Other Transaction Authority is a powerful but underutilized acquisition tool for the Air Force.**
- **There are good examples of the authority being used to meet specific needs that would otherwise be impractical or not feasible.**
- **Greater understanding and awareness of OTA is key to its effective use.**
- **SAF/AQ-OTI is working with NDIA and other industry groups to provide additional government and industry training.**



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***Questions?***



# What does “significant extent” mean?

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- There is no statutory definition for what constitutes non-traditional participation to a “significant extent.”
  
- The following working definition has typically been applied:
  - The non-traditional defense contractor is supplying a key new product or technology to the project.
  - A significant amount of the effort is being performed by the non-traditional defense contractor.
  - The work performed by the non-traditional defense contractor is intended to result in a material reduction in cost or schedule or an increase in performance.
  
- There is no monetary requirement.





# *How is a cost share applied?*

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- **Traditional defense contractors may commit to a 1/3 cost share (or greater) in lieu of partnering with a non-traditional and in the absence of an SAE authorization.**
  
- **There is no standard means defined in statute for validating sufficient cost share, but OSD Comptroller is allowed to review the records of the contractor up to 3 years following completion of work.**
  
- **Costs incurred prior to execution of the OT are only allowable if the government official responsible for the OT certifies in writing:**
  - **The party incurred the costs in anticipation of entering into the OT; and**
  - **The incurred costs were appropriate to ensure the successful implementation of the OT.**





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# *What does the SAE certification requirement?*

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- If a cost share is not provided and a non-traditional contractor is not involved to a significant extent, the SAE may authorize an OT to a traditional contractor by certifying:
  - Exceptional circumstances justify the use of OT to achieve innovative business models or arrangements that wouldn't otherwise be feasible or appropriate; or
  - The OT would provide an opportunity to expand the defense supply base in a manner that would otherwise be impractical or not feasible.
  
- For OTs valued over \$250M, this certification would be provided by USD(AT&L)

