

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 prototype projects and include the option to extend to production. 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 OT agreement can come in a variety of forms and is typically distinguished by whether its purpose is for a research or a prototype project. This document focuses primarily on Other Transaction Authority (OTA) for prototypes. By definition, a prototype developed through OTA may include “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.” Hence, a very wide range of activities can be pursued under an OT for prototypes.

OTA for prototypes was originally authorized by Section 845 of the FY1994 National Defense Authorization Act (NDAA); Section 845 authority has since been amended and was recently codified by Section 815 of the FY2016 NDAA. Section 815 added Section 2371b to title 10 of the United States Code, making OTA for prototypes permanent and easing the ability to transition to the follow-on production and sustainment of a successful prototype project. The principal purpose of OTA is for RDT&E activities, however, Congress has provided the authority to link a sole-source, FAR-based production contract or transaction to an OT for prototypes when the OT is competitively awarded and successfully completed. Pursuant to Section 815, the Secretary of Defense has the authority to establish regulations to allow for non-FAR based follow-on production transactions.

When may OTs for prototypes be used?

Section 815 reinforces Congress’ previous expansion of OTA 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.”

Each military service has authority to execute OTs up to \$250M, and there are no limits on how many OTs may be executed by the services or the cumulative value of such awards. Beyond the \$250M 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 the aggregate.

While OTs for prototypes should be competitively awarded, 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.

How are follow –on production contracts or transactions entered into under OTA for prototypes?

In drafting Section 815, Congress acknowledged the need to create a more flexible transition into production and sustainment following successful completion of a prototype project. Section 815

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expanded OTA to include the ability to link a sole source, FAR-based production contract or transaction to an OT for prototypes under the following conditions:

- The initial OT is competitively awarded; and
- The prototype project is successfully completed.

While follow-on FAR-based contracts are typically created under FAR Part 12 or FAR Part 15, the Secretary of Defense has the authority to establish regulations to allow for non-FAR based follow-on production transactions.

Who is eligible to receive OT awards for prototypes?

Congress expanded OTA in hopes of attracting innovative technology companies and small businesses who have largely been deterred by complex government procurement statutes and regulations. However, any commercial or academic institution (traditional or non-traditional) is eligible to receive an OT award. OTs may only be executed in the following circumstances:

- The awardee is a non-traditional defense contractor OR a small business:
 - “Non-traditional defense contractor” is defined by statute as “an entity that is not currently performing and has not performed, for at least the one-year period preceding the solicitation sources by the Department of Defense for the procurement or transaction, any contract or subcontract for the Department of Defense that is subject to the full coverage under the cost accounting standards prescribed pursuant to Section 1502 of title 41 and the regulations implementing such section.”
 - “Small business” is defined under section 3 of the Small Business Act (15 U.S.C. 632).
- The awardee is a traditional defense contractor, but at least one of the following applies:
 - At least one 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 the benefit of using OTA?

An OT can allow for much greater speed, flexibility, and accessibility in performing research and prototype projects. OTA also promotes the engagement of non-traditional and small business contractors and can be used to design and implement innovative business models 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.