



# Other Transactions

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**OUSD(A&S)/DPCAP**





# Other Transactions Authorities

## DoD has statutory authority to award Other Transactions (OT)

- **OTs for Research – 10 U.S.C. 4021**

The Secretary of Defense and the Secretary of each military department may enter into transactions (other than contracts, cooperative agreements, and grants) in carrying out basic, applied and advanced research projects - OUSD(R&E) manages

- **OTs for Prototypes – 10 U.S.C. 4022**

DoD may use the authority to carry out prototype projects that are 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 improvements of platforms, systems, components, or materials in use by the armed forces - OUSD(A&S) manages

- **OTs for Production – 10 U.S.C. 4022(f)**

A transaction entered into under this section flows from the prototype authority as a follow-on production contract or transaction to the participants in the prototype transaction if the prototype phase was competitively awarded and successfully completed



# Summary of OT Prototypes (10 U.S.C. 4022)

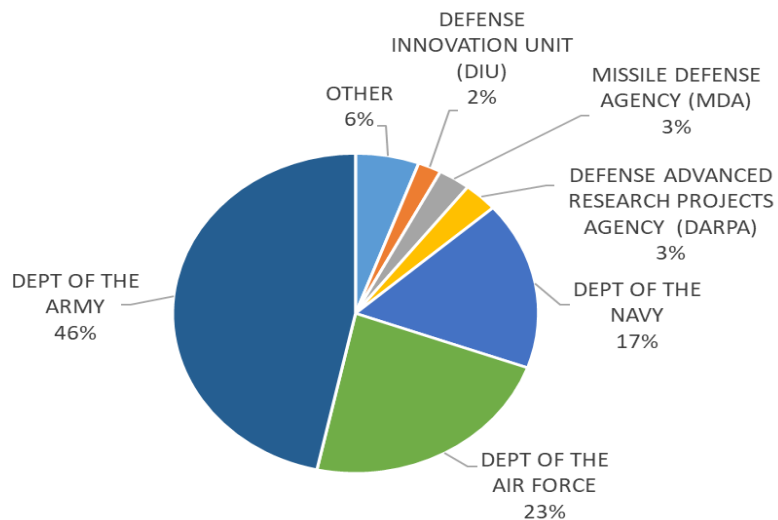
- **Defense Pricing, Contracting, and Acquisition Policy (DPCAP)** provides policy, guidance and advocacy on the use of OTs for Prototype Projects under OUSD(A&S),
- OT authority provides flexibility to negotiate a business arrangements using non-FAR based acquisition terms and conditions
- Intended to attract small businesses and nontraditional defense contractors (NDCs) that otherwise may not choose to engage DoD
- DPC published an updated Other Transaction Guide in July 2023 with new consortium guidance (Appendix F)
- OT Guidance continue to evolve to not just as a policy document, but a tool for the DoD acquisition workforce, informed and co-developed by field representatives
- DAU offers the CCON 023 Credential and the OT Community of Practice on how to use OTs with training, webinars, events, blog posts, ready references, and OT samples
- OT use continues to grow with obligations increasing from under \$1B in FY15 to over \$15.5B in FY23
- In FY20 and FY21 OTs obligations were related to COVID-19 R&D, primarily for vaccine and therapeutic development

| Department of Defense |               |                  |
|-----------------------|---------------|------------------|
| Fiscal Year           | Total Actions | Total Dollars    |
| 2018                  | 808           | \$3,982,545,323  |
| 2019                  | 1,702         | \$7,378,804,576  |
| 2020                  | 3,234         | \$16,023,234,473 |
| 2021                  | 4,086         | \$14,291,798,136 |
| 2022                  | 4,391         | \$10,696,967,709 |
| 2023                  | 5,293         | \$15,583,251,044 |

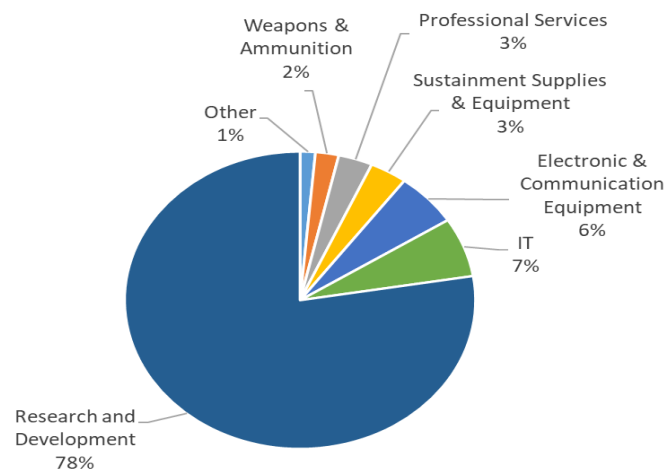


# DoD OT for Prototype Statistics

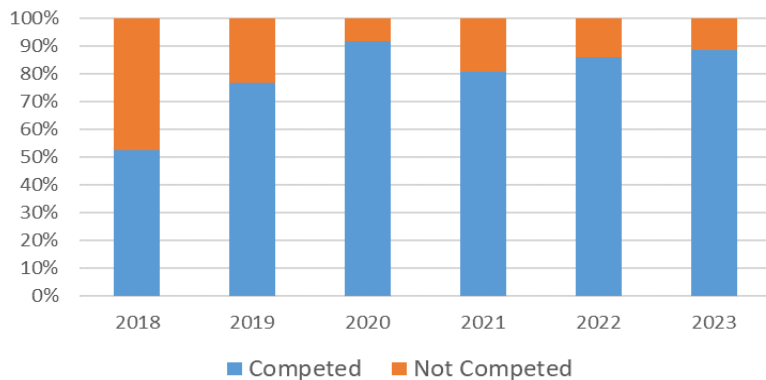
FY 2023 Obligations by Contracting Agency



FY 2023 Obligations by Spend Category



OT Competition Trend



FY 2023 OT Obligations by Consortia





# Other Information/Developments

- DoD issued an updated OT Guide in July 2023
- Data collection and reporting requirements for DoD
- DAU OT Community of Practice
- GAO Engagement – DOD's Use of Other Transaction Agreements
- Fiscal Year 2024 National Defense Authorization Act



# New DoD OT Guide

## Updated DoD OT Guide released in July 2023

[https://www.acq.osd.mil/asda/dpc/cp/policy/docs/guidebook/DoD%20OT%20Guide\\_July%202023.pdf](https://www.acq.osd.mil/asda/dpc/cp/policy/docs/guidebook/DoD%20OT%20Guide_July%202023.pdf)

- The philosophical approach and substantive guidance regarding OTs has largely remained the same
- The updated addresses changes in statute and regulation since the prior version was release in 2018 to include:
  - increased access to production authority
  - guidance and consideration for use of consortium model (Appendix F)
  - guidance on what constitutes a successful prototype effort
  - reporting requirements
  - information and best practices on funding
  - validation, participation of non-traditional defense contractors (NDCs)
  - updated definitions, resource sharing, protest procedures
  - agreement officer warranting and training

Note - update to 32 Code of Federal Regulations (CFR) Part 3, Transactions Other Than Contracts, Grants, or Cooperative Agreements for Prototype Projects is in process



# Data Collection and Reporting

## **DPCAP leads the DoD data collection and reporting activities**

<https://www.acq.osd.mil/asda/dpc/cp/policy/other-policy-areas.html>

- Report to Congress on the use of OTs
- Standard reporting format using FPDS OT module expanded to include additional requirements in Excel file format
  - By Service or agency, major command, contracting activity
  - Purpose, description, and status of projects
  - Vendor/Subawardee (primary performer)
  - Award value
  - Appropriation used
  - Budget line item
  - Obligations to date
  - Product service code
  - Quantities
  - Period of performance
  - Highlights of OT successes and challenges, including case examples



# DAU OT Community of Practice

- **Defense Acquisition University (DAU) maintains the OT CoP designed as a destination of choice for information regarding OTs within the DoD <https://www.dau.edu/cop/ot#tab6>**
- **Information includes history of OTs; links to statutes, policies, and guidance relative to OTs; access to OT training; information about upcoming OT events; and lessons learned from others in the OT community**
- **DAU offers an OT Credential (CCON 023) comprised of 5 Assets:**
  - CON 0660 (replaced CLC 066) online course focused on Research OTs and Intellectual Property Concerns Common to OTs
  - CON 2880
  - IP video
  - Pricing OTs video
  - CON 2990





# GAO Engagement

## New GAO Engagement on DOD's Use of OT Agreements

### Objectives:

- To what extent has DOD used other transaction agreements from fiscal years 2021 through 2023
- What steps has DOD taken from fiscal years 2021 to 2023 to improve visibility into consortia and nontraditional defense contractor participation in other transaction agreements
- In selected cases, to what extent has DOD transitioned non-traditional defense contractors from prototype other transactions agreements to follow-on production



# National Defense Authorization Act

## **FY 2024 NDAA Amendments**

- Clarification that award of follow-on production does not need to be an NDC if the prototype OT made the determination with a corresponding change for higher dollar value OTs (>\$100M)
- Amendments Additions to FY23 NDAA Pilot Authority for Use of OTs for Installation or Facility Prototyping
- Defense Innovation Unit (DIU) Amendment - granted DIU Director authorization comparable to DARPA and MDA throughout 10 U.S.C. 4022 (including as a “covered official”)
- Further amendments under consideration in the FY 2025 NDAA (e.g., rules for approval thresholds)



# BACK-UP



# Questions from Defense Manufacturing Community

## General questions

- **What is the best way for organizations to identify OTA solicitations and/or proactively partner with the DOD contracting offices?**

DPCAP has posted a special notice on SAM.gov to provide a list of Other Transaction (OTA) Consortia with a list of active OTA consortia, the sponsor, a brief description, and link to current opportunities for each consortium to fulfill the section 833 requirement. The special notice may be viewed online at: <https://sam.gov/opp/a95683ce13a14f5fa237595ce9954b41/view> The special notice provides a link to Other Transaction (OT) Consortia that announce or otherwise make available opportunities to enter a research or prototype project OT under the authority of 10 USC 4021 or 4022.

- **Why are there OTA process differences amongst DOD contracting offices, some being more complex than others? Are there intentions to streamline the process?**

OTs are intended to provide flexibility to the user (e.g., contracting/agreements officers) to adopt and incorporate commercial business practices that reflect industry standards, which allows the practitioner to negotiate business arrangements unique to the technology/industry to attract nontraditional defense contractors and small businesses that may otherwise choose not to engage DoD. The Defense Commercial Solutions Opening (CSO) contracting process in DFARS 212.70 provides a streamlined traditional (FAR based) contracting solutions to solicit, compete, and award contracts for innovative commercial items, technologies, or services using a streamlined process like Broad Agency Announcements under FAR 35 for R&D projects.

- **Do military service/DOD agency contracting offices operate independently from one another or are they governed under OSD/A&S?**

DPCAP provides pricing, contracting, and acquisition policy across the Department by executing statute, executive order, and administration policy to update the FAR, DFARS, DoD issuances, memoranda, and guidance. OT for prototype authority (10 USC 4022) extends beyond traditional these contracting process. OT for prototypes authority has been expanded to all DoD components with acquisition authority. DPCAP provides policy and guidance in memos and through the DoD OT Guide to include best practices and lessons learned associated with the planning, publicizing, soliciting, evaluating, negotiation, award, and administration of prototype and production OTs.



# Questions from Defense Manufacturing Community

## Questions related to consortium-based OTAs

- **Are there instances where a single OTA solicitation is issued by a group of DOD offices?**

Yes, there are a variety of Joint Program Executive Offices in DoD (e.g., JPEO-Chem-Bio Defense, DARPA, SBIR program) that issue a single OT solicitation for a topic or technology area.

- **Do DOD contracting offices have standards/requirements for consortia/ CMOs that they may engage with?**

See the DoD the OT Guide, Appendix F – Use of Consortia in Prototype and Production OTs under 10 USC 4022 for consideration when using a consortium. The OT authority neither defines nor limits the types or uses of consortia, and agreements officers have broad discretion to leverage consortia in using the authority to award OTs. Many teaming arrangements are permitted, including award to a single company, joint venture, partnership, consortium (through its members or authorized agent), or a prime performer with subcontract relationships. Each construct has its advantages and issues, and each situation may dictate a different approach. Given the wide variety of structures and functions, appendix F sets forth considerations for agreements officers to review and document when using a consortia.

- **Are DOD contracting offices open to working with sub-national consortia?**

Yes, the OT Guide provides guiding principles that support and promote collaboration, gain exposure, and access to a variety of potential performers to facilitate adoption of innovative technologies, efficient business practices, and access to a ready network of suppliers with specialized capabilities. Ideally, the Government should allow the performers to determine the best way to organize their teams. Artificially forcing performers into a particular team structure often has adverse effects on efficiency and performance. When contemplating use of a consortium to its market intelligence efforts to target the community/communities of potential performers



# Questions from Defense Manufacturing Community

## Questions related to consortium-based OTAs (continued)

- **What is the best approach for consortia to identify consortium-based OTA solicitations and/or proactively partner with the DOD contracting offices?**

There is no best way for consortia to identify customers or partner with contracting offices. Consortia use market intelligence to target communities of potential customers and performers through a variety of events, and activities to provide for the collection of potential solicitations. Examples of creative outreach include tech demonstrations, design sprints, hackathons, innovation workshops, rodeos, "Shark Tank"-like presentations, and prize contests. Such activities can be conducted by the requiring activity, through other Government resources (e.g., [www.challenge.gov](http://www.challenge.gov)), or through other Government-sponsored arrangements. The selected approach should be tailored to the complexity and potential value of the problem set.

- **Is there a database listing for DOD Acquisition community outreach that new consortia that have not executed OTAs before can join?**

There is no database per se but the following website <https://aida.mitre.org/ota/existing-ota-consortia/> provides a list of existing consortia used by DoD to announce or otherwise make available opportunities to enter an OT under the authority of 10 USC 4021 and 4022.

- **What type of OTA solicitations typically seek to work with consortia instead of working directly with organizations?**

Because there are a wide range of methods to research and publicize OT solicitations, there is no preferred solicitation type dictating a requirement to work with a consortium, and the decision of whether to create a new consortium, leverage an existing consortium, or work directly with the performing organization falls within the discretion of the agreements officer.

- **Are DOD contracting offices open to working with new consortia/CMOs, or is there preference to work with consortia/CMOs that have executed OTAs in the past?**

There is no preference to work with consortia/CMOs - see above responses.



# Award Authority Delegations

The statutory authority is given to the Secretary of Defense, the Secretaries of the Military Departments, DIU, MDA and DARPA

OSD policy has delegated the authority further

- Directors of the Defense Agencies
- Commanding Officer of Combatant Commands (CCMDs) with contracting authority
- Directors of Field Activities (FAs) with contracting authority



# Approval Levels

| Organization                           | Up to \$100M                 | \$100M to \$500M              | Over \$500M           |
|--|------------------------------|-------------------------------|-----------------------|
| CCMDs with contracting authority       | Commanding Officer           | USD(R&E) or USD(A&S)*         | USD(R&E) or USD(A&S)* |
| DAs/FAs with contracting authority/DIU | Director                     | USD(R&E) or USD(A&S)*         | USD(R&E) or USD(A&S)* |
| Military Departments                   | Senior Procurement Executive | Senior Procurement Executive* | USD(R&E) or USD(A&S)* |
| DARPA<br>MDA                           | Director                     | Director*                     | USD(R&E) or USD(A&S)* |

**\* The determinations at these levels are nondelegable. Additionally, OTs over \$500M must give 30 days advance notice to the congressional defense committees before award**





## Approval Levels

**Approval levels will be determined on the value of each OT transaction, including:**

- All options with established prices and
- Any cost-shared amount required to be provided by the performing team

**Approval levels will not be based on the total value of all OTs that might be executed for a specific prototype project or program or for follow-on production**

**Regardless of value, a separate approval is required for each phase – prototype or production**



# Tool Box of Authorities

| Pathway                 | Acquisition                 |   | Financial Assistance                                |  |                                  |
|-------------------------|-----------------------------|---|---|--|----------------------------------|
| Instrument              | Contracts                   | Other Transactions for Prototype Projects | Grants  | Cooperative Agreements   | Technology Investment Agreements |
| Authority               | 10 U.S.C. 2358              | 10 U.S.C. 2371b                           | 10 U.S.C. 2358                                      | 10 U.S.C. 2358   | 10 U.S.C. 2358<br>10 U.S.C. 2371 |
| Fiscal Year Obligations | 98%                         | < 1%                                      | < 1%  | < 1%   | < 1%                             |
| Purpose                 | To acquire                  | To acquire via prototyping                | To support / stimulate                              | To support / stimulate with substantial Gov't involvement expected |                                  |
| Outcome                 | Direct Gov't benefit or use |   | Carries out a public purpose authorized by U.S. law |  |                                  |