



# Other Transaction Prototype Projects

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*Presented by:*  
**Tracy Medford**  
NAVAIR Enterprise Procurement Support Division Director  
COMFRC Procurement Group Head/Chief of the Contracting Office



# Market Changes in the Science and Technology Community



- ❖ Innovation fueled by Government
- ❖ Commercial sector wanted to work with the Government
- ❖ DoD was primary driver of technology innovation by making substantial investments in R&D in the defense industrial base
- ❖ DoD powered a technology advantage on the battlefield with its investments in R&D



- Innovation fueled by commercial market
- Cutting edge commercial firms with large R&D investments are reluctant to work with the Government
- The focus and pace of S&T innovation and its environment in leading technology areas shifted from Government to commercial sector
- DoD needs to work with commercial sector to maintain a technology advantage on the battlefield



# What is an OTA?



DoD has statutory authority to award Other Transactions (OT)

- Research OTs – 10 U.S.C. 4021 (formerly 10 U.S.C. 2371)
- OTs for Prototypes and Production – 10 U.S.C. 4022 (formerly 10 U.S.C. 2371b)



## An Other Transaction Agreement (OTA) is:

- An acquisition instrument which allows agencies to enter into transactions “other than” standard Government contracts, grants and cooperative agreements.
  - Is **not** a standard FAR-based contract, grant or cooperative agreement
- **OTAs** are not subject to the FAR, DFARS, and many other statutes and regulations associated with Federal Government contracting.
- **OTAs** provide a commonsense, flexible, efficient and user-friendly way of linking Government buyers and commercial sellers of advanced technologies.

***OTAs are an additional tool to assist Government program managers in accomplishing their mission. An OT is not appropriate for all acquisitions. Fairness and transparency is paramount to success.***



# Other Transactions for Prototypes

## 10 USC 4022



- **10 U.S.C. § 4022: Authority of the Department of Defense to carry out certain prototype projects** (2021—Pub. L 116-283, § 1841(b)(1), as amended by Pub. L 117-81, § 1701(u)(2)(b), renumbered section 2371b of this title as this section).

*A Prototype Project must be “directly relevant to enhancing the mission effectiveness of personnel of the Department of Defense or improving 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”*

- **Both dual-use and defense-specific projects are encouraged.**

**An OT is NOT for Services, Maintenance, or Construction**



# What is a Prototype?



There is no established definition within the Statute, but GAO has recognized the DOD's definitions:

## **From the DOD Prototyping Guidebook (Oct 2022):**

*"Prototype: a model (e.g. physical, digital, conceptual, and analytical) built to evaluate and inform its feasibility or usefulness."*

## **From the DOD Other Transactions Guidebook (July 2023):**

*"The definition of a "prototype project" in the context of an OT is as follows: (A) a prototype project addresses a proof of concept, model, (B) reverse engineering to address obsolescence, (C) a pilot or novel application of commercial technologies for defense purposes, (D) agile development activity, (E) the creation, design, development, demonstration of technical or operational utility, or (F) 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."*





# Prototype Project Requirements for participation under 10 USC 4022?



**10 U.S.C. § 4022 requires that an agency may only enter into an OT for a prototype project if one of the following conditions is met:**

- a. There is at least one nontraditional defense contractor (NTDC) or nonprofit research institute (NRI) participating to a significant extent in the prototype project;
- b. All significant participants in the transaction other than the Federal Government are small businesses, NTDCs or NRIs;
- c. At least one third (1/3) of the total cost of the prototype project is to be paid out of funds provided by parties to the transaction other than the Federal Government; **or**
- d. 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 contract or would provide an opportunity to expand the defense supply base in a manner that would not be practical or feasible under a contract.



# So what REALLY is a Non-traditional Defense Contractor (NTDC) or Nonprofit Research Institute (NRI)



- **The definition of “non-traditional defense contractor” is in 10 U.S.C. 3014 (formerly 10 U.S.C. § 2302(9))**
  - An entity that is not currently performing or has not performed in the last one-year period preceding the solicitation of sources by the Department of Defense (DoD), any contract or subcontract for the DoD that is subject to full coverage under the Cost Accounting Standards (CAS).
    - The current definition was enacted in the FY16 NDAA and is significantly broader than the previous definition.
  - By definition, small businesses are considered NTDCs.
- **The definition of “nonprofit institution” is in 15 U.S.C § 3703(3)**
  - An organization owned and operated exclusively for scientific or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.



# What does “Significant Participation” mean?



*It means you can't complete the project without that participant and technology/support.*

*The % or \$ amount of the contribution is irrelevant.*

## Examples of *Significant* Participation:

Supplying a  
key  
technology,  
facility or  
unique  
capability



Causing a  
material  
and  
quantifiable  
reduction in  
the project  
cost or  
schedule



Causing a  
measurable  
increase in  
the  
performance  
of the  
prototype







# Types of Cost Sharing



## Software



## Hardware



## Cash

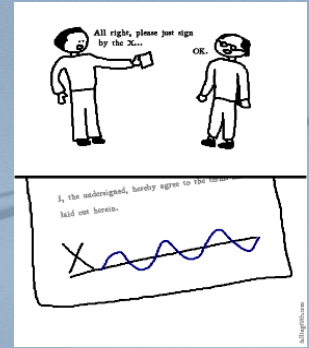
Outlays of funds to perform the OTA project

- Includes cash, labor, materials, new equipment and subcontractor efforts
- Sources include, third-party financing, new IR&D funds, etc.



## In-Kind

Reasonable value of equipment, materials or other property used in performance of the OTA project



***The term "Cost Sharing" can mean either 'cash' or 'in-kind' or a combination of both***



# Can a Prototype OT include the potential for Follow-on Production?



## Yes, it can IF....



- **Per 10 USC 4022(b)(f)(2), a Production OT may be awarded to participants in the transaction without the use of competitive procedures if:**
  - *Competitive procedures were used for the selection of parties in the transaction; and*
  - *The participants in the OT transaction successfully completed the prototype project provided for in the transaction*
- **Best Practice for Solicitations and awards of prototype OTs to include notice that a follow-on production OT or contract is contemplated.**
  - *At present, 32 CFR §3.9 also stipulates that the prototype project should specify the production quantity and target prices in the prototype project agreement.*
- **The follow-on effort will be awarded to the participants in the OT Prototype transaction.**
- **Follow-on production can be accomplished by:**
  - *Production phase in the original prototype project award*
  - *Separate OTA*
  - *FAR Procurement*
- **In cases where you award multiple prototype projects for the same problem set, consideration will be included on the potential selection for production or additional requirements.**



# OT 'competitive process'



- OTAs should be “competed” to fullest extent possible. **HOWEVER**, the Government has flexibility to define what **COMPETITIVE PROCESS** is utilized. Examples are:
  - **Broad Agency Announcements (BAAs)**
    - Typically allows for the award of procurement contracts, grants, cooperative agreements, or both types of OTs (with potential follow on production if applicable)
    - The solicitation process is governed by FAR Part 35
    - NAWCAD agency-wide BAA: N00421-23-S-0001
    - NAVAIR North Star BAA: N00019-23-S-0001
  - **Competition within a consortium**
    - There are various consortia across DOD
    - Naval Aviation Systems Consortium (N00421-19-9-0001) is available for use by NAVAIR HQ and NAWCs
  - **Program Solicitations (PSs)**
    - This solicitation can be named whatever you choose (i.e. Commercial Solutions Opening, Program Announcement)
    - A determination is made at the outset that only OTs for Prototypes will be awarded. If considering production follow-on, this must also be included.
    - Solicitation process is governed by the document itself and can include unique terms and conditions



# What is a Consortia?

- An agreement that establishes a 'team' to allow for targeted/competitive processes with OT and other NON FAR based activities.
- There are approximately 35 consortia established with the U.S. Government; most targeting a specific area of interest/technology.
- The Agreement establishes a teaming agreement or Articles of Collaboration
  - Includes a set of terms and procedures which will govern the activities and relationships of the participants in the team and how they will interact as a group with the Government under the OT
    - Management structure
    - Process for inclusion or removal of team members
    - Disputes procedure
    - Technology and information sharing
    - Intellectual property handling
    - Payment mechanisms
    - Agent election

***Being a member of a consortia is not REQUIRED to participate in an OT... but does provide support in the transition of requirements, terms and conditions and management support; specifically for Non Traditional companies not familiar or experienced working with DoD.***



# What is NASC?



- The Naval Aviation Systems Consortium (NASC) is a consortium composed of leading companies and academic institutions with demonstrated capabilities in the Naval Air Warfare Center Aircraft Division's (NAWCAD) required technology areas.
- Agreement No.: N00421-19-9-0001
- Agreement Term: The term of this Agreement is ten (10) years from the date of award (06 Jun 2019 – 05 Jun 2029).
- NAVAIR Enterprise Access (NAVAIR HQ, NAWCAD Pax, NAWCAD Lakehurst, NAWCTSD Orlando, NAWCWD China Lake and COMFRC) have authority to use the NASC.



# NASC TECHNOLOGY FOCUS AREAS

- ✓ Air Vehicles
- ✓ Propulsion and Power
- ✓ Avionics
- ✓ Human Systems
- ✓ Weapons and Energetics
- ✓ Support Equipment and Aircraft Launch and Recovery Equipment
- ✓ Warfare Analysis
- ✓ Research and Intelligence
- ✓ Test, Evaluation and Engineering
- ✓ Simulation and Modeling
- ✓ Digital Transformation



# SUMMARY PROJECT AWARD PROCESS





# How does industry join NASC?



- The Consortium is open to large and small businesses, nonprofits and academic institutions.
- New members can join at any time by completing a simple online application.
- Membership dues are waived for all new members in their first year. Annual dues thereafter will be \$500. All academic institutions are exempt from paying membership dues.
- To become a member of NASC, visit <https://nasc solutions.tech/>





# Points of Contact



- Tracy Medford, Procurement Group Enterprise Contracting Support, [tracy.a.Medford.civ@us.navy.mil](mailto:tracy.a.Medford.civ@us.navy.mil)
- Kathryn Matisick, Enterprise Agreements Officer, [kathryn.g.matisick.civ@us.navy.mil](mailto:kathryn.g.matisick.civ@us.navy.mil)
- Zachary Bongianino, NAWCAD DAiTA Group NASC OTA Program Manager, [zachary.s.bongianino.civ@us.navy.mil](mailto:zachary.s.bongianino.civ@us.navy.mil)



**Questions?**

**Thank you for this opportunity.**