



Other Transaction Agreements

Chemical Biological Defense Acquisition Initiatives Forum

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Other Transaction Overview

- Topics:
 - Definition of OTA
 - Authority
 - Benefits
 - Consortium Approach
 - Lessons Learned
 - OTA Notional Operating Procedures
 - Current OTAs
 - JPEO-CBD/JPM-MCS





Other Transactions – Prototype Projects

- Authority: Section 815 of National Defense Authorization Act (NDAA) of 2016
 - Used 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 carried out by the DoD, or to improvement of platforms, systems, components, or materials in use by the armed forces.
- Must be at least one nontraditional defense contractor participating to a significant extent in the project **OR**
- All significant participants in the transaction, other than the Federal Government are small businesses or nontraditional defense contractors, **OR**





Other Transactions – Prototype Projects Con't

- 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.
- Other Transaction Guide for Prototype Projects
 - Under Secretary of Defense for Acquisition, Logistics & Technology, 21 December 2000





WHAT IS AN OTHER TRANSACTION (OT)?

- A legally binding instrument
 - Not a **procurement** (FAR) contract/grant/cooperative agreement
 - For prototype projects that are directly relevant to enhancing the mission effectiveness of military personnel and the supporting platforms, systems, components, or materials (**Prototype OT/Section 815 OT**)





What is a Prototype Project?

- No statutory definition BUT current DoD OTA guide says:
 - 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.





Prototype OT Authority

- Authority to enter into an OT for Prototype projects originates under Section 815 of the FY16 NDAA
 - Access R&D efforts being accomplished by nontraditional defense contractors and small businesses
 - Pursue commercial solutions to defense requirements
- Approval authority for each project under these instruments delegated to different levels dependent upon dollar value:
 - Up to \$ 50 Million *
 - PARC
 - Over \$50 Million up to \$250 Million *
 - Senior Procurement Executive (ASAALT)
 - Over \$250 Million
 - Under Secretary of Defense (ALT)
 - * **presently awaiting delegations**





Non-Traditional Defense Contractor

- **Defined:** an entity that is not currently performing and has not performed, for at least the one-year period preceding the solicitation of sources by the DoD for the procurement or transaction, any contract or subcontract for the DoD that is subject to full coverage under the cost accounting standard prescribed pursuant to section 1502 of title 41 and the regulations implementing such section.





Significant Participation of a Non-Traditional or a small business

- 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.





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





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.





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





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





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





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





Consortium Approach (continued)

- 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
 - Defines rules and procedures regarding intellectual property and Data Rights amongst members
 - Not part of the OT Agreement
 - Referenced in the OT
 - USG not a member or signatory





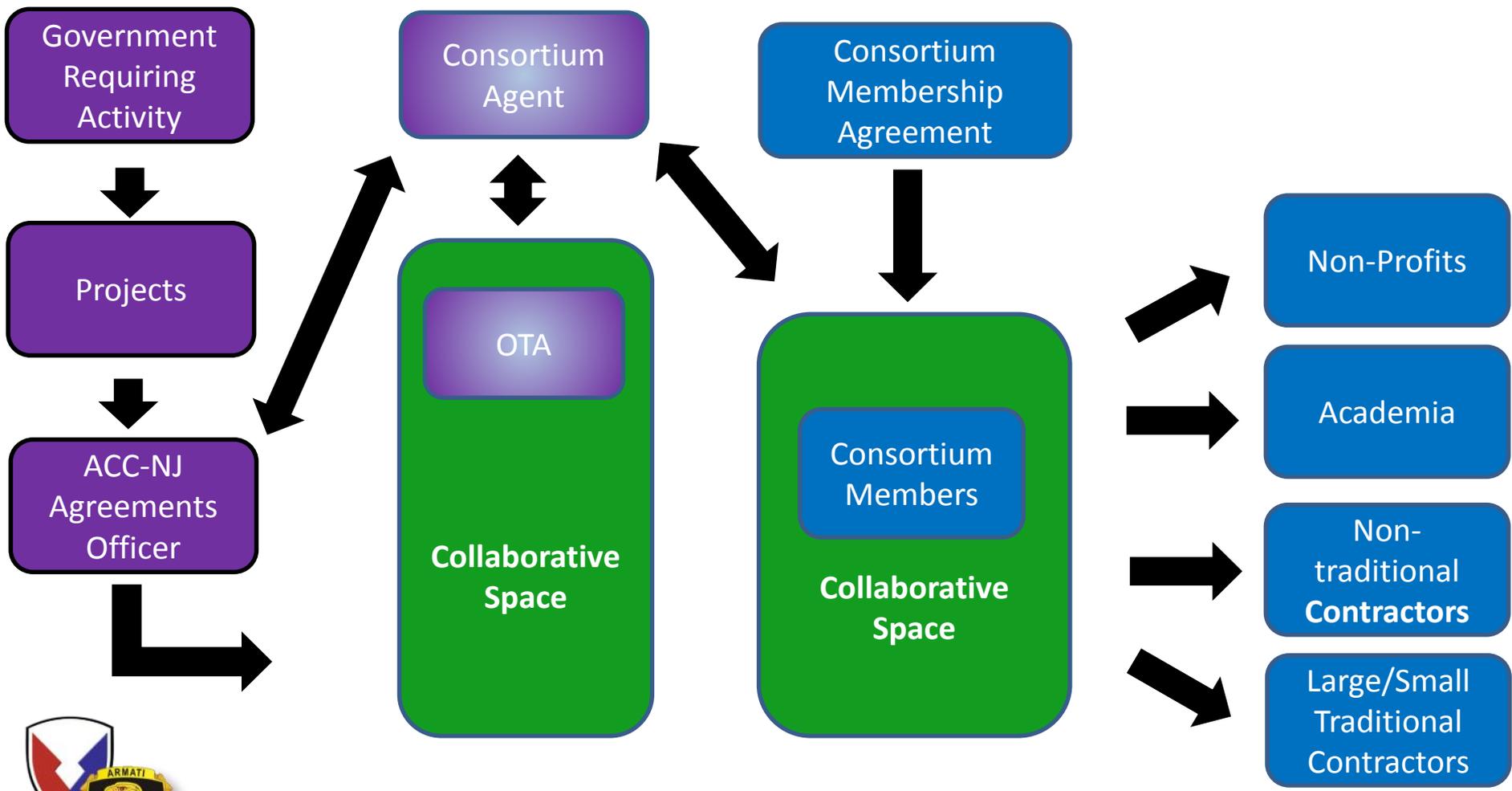
Consortium Approach (continued)

- Lessons learned reveal interaction with Government works best when:
 - Consortium designates one entity (Consortium Agent) as lead
OR
 - Employs an entity (Consortium Agent) to act as Single Point
OR
 - Forms a separate and distinct company (Consortium Agent) for this purpose
- The Consortium Agent interacts with the Government and acts as a third party intermediary
- All above provides a structure for early fund obligation





OTHER TRANSACTION AGREEMENT CONSORTIUM MODEL





Challenges for an Organization initiating Section 815 Prototype OTAs for the First Time

- Experienced Staff Needed
- Legal Support
- Limited Guidance
 - No FAR “crutch”
 - 90% of Terms and conditions negotiable
 - Data Rights
- No Formal Training Support





Lessons Learned for Consortium Approach

- Use of Consortium Agent
 - Ability to obligate funds early in cycle
 - Conduct of initial Cost/Price Analysis
- Use of basket Provision
- Use of White Papers and open communication with Consortium membership
- Flexibility to revise OTA Structure and processes and allows for constant process improvements





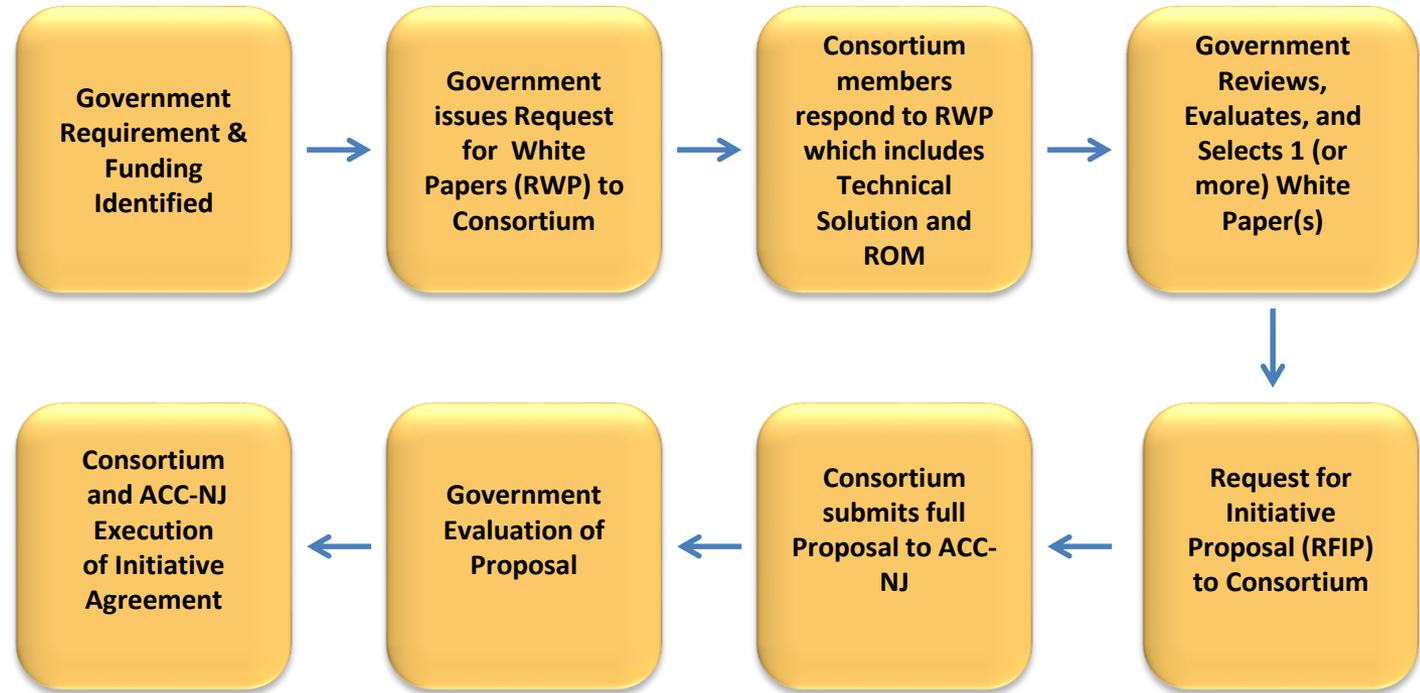
OTA Notional Operating Procedures

- Customers/requiring activities (RAs) submit technical requirements to DoD
- Government requests Project White Papers through the Consortium Agent
- Government evaluates Project White Papers
- Government Source Selection
- Full proposals submitted through the Consortium Agent based on selections
- Government & Consortium member negotiate SOW, data rights, and price for individual Project Initiative
- Initiatives Awarded





OTA Notional Operating Procedures





Current OTAs/Value/Sponsor

- Defense Ordnance Technology Consortium (DOTC) \$1.5B*/OSD
- Ground Vehicle Systems \$700M*/OSD
- Vertical Lift Consortium (VLC) \$20M*/OSD
- Consortium for Energy, Environment, and Demil (CEED) \$100M*/ARDEC
- Consortium for Command, Control, Communications, and Computer Technologies (C5) \$100M*/ARDEC
- National Security Technology Accelerator (NSTXL) Consortium \$100M*/OSD
- National Spectrum Consortium \$1.25B*/OSD

***Value of projects estimated over the period of performance**





OTA for JPEO for Chemical & Biological Defense Joint PM for Medical Countermeasure Systems

- **Objective:** Provide Acquisition and Operational Approach to Facilitate the Collaboration of Non-Traditional/Traditional Contractors, Small Businesses, Government, and Academia in providing an effective contracting platform for DoD's medical, pharmaceutical and diagnostic requirements as related to enhancing the mission effectiveness of military personnel.





Conduct of Acquisition Operations

- The Other Transaction Agreement (OTA) will be conducted in partnership/collaboration with a consortium comprised of non-traditional/traditional contractors, small businesses, non-profits, and academia, involved in safe, effective, and innovative medical solution to counter Chemical Biological, Radiological, and Nuclear Threats
- Government will enter into OTA with **only one (1) Consortium.**
- Acquisition of requirements will be executed through the use of a prototype OTA instrument
 - **Interfaces will be through the designated consortium entity exclusively**





Milestones/Status

- Industry Day Conducted
- Government requested Letters of Intent from new or existing consortiums
- Multiple submissions from consortiums received
- Government evaluation of Letters of Intent
- Government to select consortium that can best meet the requirements
- Submission of CMA to the Government for Review from winning consortium
- Negotiate Agreement Terms and Conditions with winning consortium
- Other Transaction Agreement is Executed





Formal Letter of Intent Submission

- Vision, mission statement, and goals
- Membership list [indicate traditional (large and small businesses) and non-traditional defense contractors, academia, etc.]
- Market Representation
- Management framework, articles of collaboration/by-laws
 - Government looking for low barriers for membership
- Accounting practice and fee structure





Formal Letter of Intent Submission Continued

- Relevant FDA experience and capabilities of members
 - Examples of FDA experiences and demonstrated success at all levels of development
 - Link capabilities to scope and objectives
 - Demonstrate how consortium capabilities and experiences meet requirements
- Draft Consortium Membership Agreement (CMA)
 - Include draft Intellectual Property (IP) Plan (how members will manage IP within consortium)
- Suggestions for Government/Consortium Interactions





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QUESTIONS



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