

The DAU OT Team has heard lots of stories about dysfunctional other transaction (OT) teams. We spend a great deal of time in training talking about how to interact with industry and how agreements officers (AOs) have flexibility and should be creative. But what about how to effectively obtain legal advice on issues other than for the narrow topic of intellectual property? How do you successfully work with your attorney as a team member? Here are a few thoughts:

- Include your attorney early in the process. A little-known fact is that attorneys learn commercial law in law school – not the FAR or DFARS. If your assigned attorney is experienced with OTs they can help you understand when and why to engage them. For attorneys who are less familiar with this contract vehicle, give them context (Why are you using an OT? What are you trying to accomplish?) from the start and give them time to get up to speed on the OT authorizing statute.
- Invite your attorney to your periodic meetings to discuss progress. Attorneys should be included as part of your team – not a gate to rush through at the end. While some are not staffed to attend multiple meetings, giving them the opportunity to attend is a courtesy that many AOs and program representatives ignore. Bonus points if you assign someone to take notes and share them with those – including the attorney – who aren't able to attend.
- Make sure your attorneys know the leadership and other members of the team. In a room full of program managers and deputy program managers for major weapons systems, only one raised his hand when asked if they had a meeting scheduled with counsel upon joining a new command. You want your counsel invested in the success of the project (they are human!). You also don't want your attorney to be limited to interfacing with an AO if their questions relate to, for example, logistics or engineering – that kind of AO portal can waste time and cause a telephone game in terms of getting to the bottom of legal concerns.
- Take your attorneys to prototype events. It's a different experience to attend a demonstration and watch the engineers work or see how those in uniform react to a prototype. Including your counsel in these events can be a game-changer in terms of feeling like you are on the same page. OTs can also be a bumpy ride when conflicts arise or performer employees admit to violating safety standards - you may want counsel at your side in unexpected circumstances.
- Suggest attending training together with your attorney and use those topics as an opportunity to discuss how issues may impact your OT project before they become an issue. DAU has multiple training sessions available to all members of the Government OT team such as OTA Today, OT Huddle, and OT Counsel Corner as well as formal training such as CON 2880 and CON 2990. Keep an eye out on the DAU Other Transactions Community of Practice page for OT training conducted by other agencies (for example, DARPA regularly holds a 2-day training session) as well as training by third parties available to federal employees. The American Bar Association Section of Public Contract law has held a number of lunch-time sessions on aspects of OTs and attendance is not limited to ABA members. AOs may see National Contract Management Association sessions or other industry events on a topic of interest. Note that we aren't advocating for any particular organization – these just happen to be events we are aware of and we'd be happy to share information on any training session on the DAU OT Community of Practice page. But the more you engage with your counsel the better everyone has a sense of how each other prefers to work and any sensitivities.
- Consider what is effective (as opposed to ineffective) communication with your attorney. Attorneys typically believe they are hired to think independently and use their professional

judgment to advise their client. They rarely hear “the other agency was allowed to do it this way” and find that persuasive. To attempt to run the issue up your management chain to force the attorney to change their position without any meaningful dialogue is likely to end up with your attorney digging in their heels. As a threshold matter, consider holding a discussion with your attorney so that you understand the underlying issues for their comments or concerns, and include others on the team to see if they hear the same thing you do. If the attorney is providing a source of law, do some research and see if perhaps there is alternate authority that provides an exception for your program or was recently issued. Instead of telling your attorney the other guy did it and questioning why you can’t, try to find out why the other guy was told he could do it and ask for their counsel’s contact information to see if your attorney is willing to compare notes with theirs. But note that different facts often lead to different outcomes.

- Give your counsel sufficient time to review. AOs and KOs outnumber attorneys at every command. OT authority may be new to your assigned attorney. They need time to review documents, research concerns and then provide comments. Dropping hundreds of pages of poorly written documentation on your attorney without warning on one afternoon and setting a next day noon deadline happens all too often, and if that’s happened with your assigned attorney (even if it wasn’t you or your fault) you’re likely to have someone reluctant to agree to a hard deadline and who will push back quickly.
- Don’t forget the attorneys that are part of the legal review process at other levels. If there are additional legal reviews (especially for novel uses of authority or due to larger dollar thresholds) at other levels or other organizations, discuss with your attorney how to best prepare the attorneys involved in other levels of review and in other organizations so they are not caught off guard. Sometimes a pre-brief by one attorney to another goes a long way to eliciting any concerns they may have and lets you address them without impacting your timeline to award.
- Establish a negotiation plan before talking to industry. OTs require a great deal of negotiation and attorneys are often quite skilled at proposing alternative terms and conditions and negotiating solutions to issues, particularly if they have had prior professional experience doing so. While most contracting officers only learn the FAR, attorneys are trained in commercial law and are often more familiar with the range of possibilities the law provides. Best practice for negotiations is to have a negotiation plan with a desired outcome, what you’re willing to negotiate away and a series of positions (first position, fall back position, non-negotiables). Include your attorney actively as part of the team (practice note: this is not giving them the 5 minute overview of the 3-week negotiation and expecting them to be able to do an on-the-spot review).
- Take time to digest your attorney’s concerns. Attorneys do not have a list of topics that they have identified as “legal sufficiency” issues that they just insert into a document. Program attorneys are likely to provide editing comments that, when the text is revised, reveal potential concerns that depend on the way the document is revised. You don’t have to go through every spelling error on a call to discuss comments but do take your attorney’s concerns into account and share how you intend to mitigate the risk or revise the text to address the issue to ensure that you captured the underlying issue as opposed to marking it “considered and addressed” with nothing more.
- Think about where it makes sense for your attorney to take a lead role in negotiations. Not every attorney is a good negotiator, but many (especially those with settlement or private sector

experience) have significant negotiation experience. In many commercial industries, while companies may have a contracts team to handle day-to-day negotiations, large deals and anything outside of the company's standard paper requires the company's counsel to be involved. AOs would be wise to work with their counsel to determine their best approach before assuming that because they have a warrant they are the best lead to do the talking in contract negotiations. The idea is not to replace the AO – who should also be present – but to divide responsibilities appropriately to efficiently tackle negotiations, which can be a huge barrier to production. (practice note: attorneys in the Government should make sure the other side knows that the AO is the only person that can bind the Government.)

- Give your attorney some credit when credit is due. It's pretty common that when the teams are submitted for awards no counsel is included in the list. Think about what it's like to be a member of a team that is the first to be blamed for delays but rarely receives credit for good ideas or praise for going the extra step to keep a project on schedule. If your counsel has provided good support, make sure they are included as part of the team that is recognized for good work.

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