



Other Transaction Authority at HHS

Glynis Fisher, Sr. Contracting Officer
Section Chief, BARDA/AMCG
&
John Ablard, Consultant
BRTRC

June 8, 2011



Agenda

- Overview of OT
- Benefits of OT
- Important definitions
- Solicitation Procedures
- Limitations
- Cost Share Requirements
- Questions ?



HHS's Other Transaction Authority

- In PAHPA,* the Secretary of HHS was granted new authority called **Other Transactions**. This authority previously has been granted to DoD, DoE, DHS, and others.
- OTs name comes from the statute definition
 - “Transactions other than procurement contracts, grant and cooperative agreements”
- Two types have been generally defined and used
 - Other Transactions for Research
 - ❖ Stimulate advancement in bio-medical products and countermeasures
 - Other Transactions for Prototypes
 - ❖ Alternative to the FAR acquisition instrument
- At this time, HHS Office of the Assistant Secretary for Preparedness and Response (ASPR) Office of Acquisition Management, Contracts & Grants (AMCG) will be using OTs only for Research

* **Pandemic and All Hazards Preparedness Act of 2006**



Why OT's is Important

- OT's provide opportunity for:
 - AMCG to reach out to new , non-traditional government contractors
 - ❖ Broaden the industrial base
 - ❖ Encourage Commercial investments in critical Bio-medical countermeasures
 - AMCG to create new relationships with existing government contractors to increase efficiencies and effectiveness of performance over existing contractual relationships



The Benefits of OT Authority

The process is viewed as a win-win negotiation because OTs for Research:

- Allow for Generally Approved Accounting Procedures rather than Government cost accounting standards
- Allow cost and pricing data and certifications to be negotiable rather than mandatory
- Allow for commercially friendly intellectual property provisions
 - ❖ Handling of patents
 - ❖ Handling of technical data



The Benefits of OT Authority

- Allow partnering between AMCG and “teams” of entities generally called consortium
- Allow for flexibility in management of agreements
 - ❖ Innovative business arrangements
 - ❖ Open lines of communications among “team”
 - ❖ Industry’s internal management
- Allow for supply chain relationships
 - ❖ Long-term strategic relationships with key suppliers



The Benefits of OT Authority

- Allow for payment methods focused on technical accomplishments
- Allow for the use of traditional government contractor's IR&D as investment funds (cost share)
- Potentially result in a faster award because of exemption from FAR and HHSAR requirements



Tool Box

Acquisition

Non-Acquisition

Procurement (inclusive of R&D) Contracts		Non-FAR Contracts	Grants	Cooperative Agreements	Other Transactions (OTs)	
<p>31 U.S.C. 6303</p> <p>↓</p> <p>Federal Acquisition Regulation</p>		<ul style="list-style-type: none"> • Homeland Security Act, Section 831 • National Aeronautics & Space Administration (NASA) Space Act • 1994 National Defense Authorization Act (NDAA), Section 845 • Transportation Equity Act for the Twenty-First Century (TEA-21), Section 502 • FAA authority 	31 U.S.C. 6304	31 U.S.C. 6305	<ul style="list-style-type: none"> • PAHPA 2006 • HHS 	<ul style="list-style-type: none"> • PAHPA 2006 • HHS
Part 15	Part 12			Traditional/ Flexible	OT's for Research: Consortium/ Multi-Party Commercial Firm	OT's for Other Bailments Lease Arrangement Loan-to-Own
Cost/ Price Based	Price Based					



Use of Other Transaction Authority

- HHS's authority points back to DoD's statute 10 USC 2371.
- Key elements of the HHS OT authority are as follows:
 - Must use competitive procedures to the maximum extent practicable.
 - ❖ AMCG will use Broad Agency Announcement (BAA)
 - Does not require 50/50 cost sharing, as practicable.
 - ❖ But AMCG will seek and accept it as appropriate.
 - Must be used for Research.
 - ❖ These terms are not defined in 10 USC 2371
 - ❖ PAHPA does give guidance



Research as Defined by ASPR AMCG

- Research is a broad term that allows HHS flexibility on when this authority can be used
- It relates to potential or qualified countermeasures and pandemic or epidemic products
- Research is any activities after basic research and preclinical development of the product, such as:
 - Testing
 - Design and development of tests or models
 - Facilitation of manufacturing of product on commercial scale
 - Activities to improve shelf-life of product or technologies for administering the product



Research as Defined by ASPR AMCG (continued)

- Activities that improve bio-medical research tools and other devices and technologies
- Activities that improve rapid diagnostics, broad spectrum antimicrobials, and vaccine manufacturing technologies
- Other activities that are part of the advanced stages of testing, refinement, improvement or preparations of product as specified by the Secretary
- This definition provides great flexibility!



OTs Exempt from Laws/Regulations

- Generally not subject to federal procurement and assistance laws and regulations governing procurement contracts, grants and cooperative agreements
 - OTA is not subject to Bayh-Dole Act. However, OTA Contracting Officer may still include Limited-Rights Data clause (FAR 52.227-14 Alternate II) if appropriate.
- Other federal laws are applicable:
 - Fiscal laws
 - Laws of general applicability, e.g., Civil Rights Act and Clean Air and Water



Solicitation Procedures

- Broad Agency Announcements (BAAs)
 - Tech Watch
 - White Paper/ Quad Chart
 - Full Proposal
- The BAA will be structured to provide the flexibility to award a procurement contract should the conditions not support the use of an OT. The most useful approach for BARDA is to allow awards of either contract, grants, Cooperative agreements or Other Transactions



Limitations

- AMCG is looking for Non-traditional contractors to participate either in teams or alone
- Win-Win deals may take additional time to award
- OT's requires more OGC support, especially in the area of Intellectual Property
- Limited applicability, I.e., many awards will still have to be a contract
- Final approval for OT use is required from the SPE of HHS for actions greater than \$20M



Cost Sharing, if desired

- Types
 - Cash
 - In Kind (the value of equipment, materials, or other items used to perform the effort)
- Cash cost share is defined as an outlay of funds such as labor costs, material costs, or overhead expenses
 - The desired kind of cost share



Summary of OTs

- Historically, OTs encourage:
 - The use of commercial technology and
 - Participation of commercial sources
- Flexibility by both industry and HHS is the key



United States Department of

Health & Human Services

Office of the Assistant Secretary for Preparedness and Response (ASPR)



Questions

