

The Most Important Other Transaction Agreement

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What is the most important OTA? Most likely it is an OTA that hasn't been invented yet. For some organizations the most important OTA may be a replication or slight modification of something that has already been pioneered. For others it could be something never seen before! In fact, any reader of this article may be involved in its invention. So, how do you start? It would probably help to start by considering the art of the possible. Understanding what has been done in the past may be the first step to envisioning what could be done in the future. What problem are you trying to solve? What is the best means to achieve goals that address the problem? Combining ideas for what needs to be done with an understanding of what is possible using OTA's could be the start of inventing the most important OTA.

In this article we are considering the importance of the *agreement*, not necessarily the most important OT *program* or *project*. A very important project might be executed through simple, even mundane agreement. However, in some cases, absent an innovative agreement structure, some projects might never succeed or even get off the ground.

Some organizations use OT authority to work around certain aspects of FAR contracting. They basically structure their OT in ways familiar to a FAR contract. They may construct a multiple award/task order contract and call it a *consortium* – a support services contractor (or *consortium management firm*) that helps manage the projects is the only signatory of the OTA (details of the CMF role vary; some have engaged funding sponsors in project management as well as encouraged collaboration among consortium members). Other organizations load up their OT's with FAR clauses even though they may not have the same meaning or effect in an OT context. Workarounds and adaptations of FAR contracting may be useful and convenient. Their appeal is primarily as an "easy button" compared to conducting a full up FAR Part 15 procurement. Useful and convenient perhaps, but not creative or powerful when considering the full potential of an OT.

Below are just a few examples of how creative program, legal, contracting specialists and other OT team members have crafted OTA's to meet the needs of their programs. The examples all began with a problem and a strategy to address the problem: (1) how to conduct complex, deep penetration air attack missions confronted by highly lethal integrated air defense systems without high pilot losses, an issue confronting both Air Force and Navy which had different basing approaches; (2) how to increase jet engine performance across a wide spectrum of industry not just in a particular manufacturer; and (3) how to exploit a highly successful research project that created an operational capability which was not anticipated and with no transition plan. Hopefully readers of this article will feel their creative juices begin to flow as they read and possibly remember it when the opportunity arises to invent their most important OTA.

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Joint-Unmanned Combat Air System (J-UCAS). This DARPA, USAF, USN program had many successes but ultimately failed to do what it was intended to do – change people’s minds (or perhaps only now is changing minds). Both the Boeing X-45 and Northrup X-47 successfully completed their advanced technology demonstration programs. The Air Force rejected a scaled-up follow-on version of X-45 in favor of a new manned bomber program. Considering the current USAF pilot shortage that decision is more than ironic. The Navy produced a scaled-up X-47A version which resulted in many firsts. These included various carrier operations including the first autonomous carrier landing (Collier Trophy 2013) and autonomous air refueling. However, like DARPA’s Grand Challenge (driverless ground vehicles) while these technologies will eventually be fielded, business as usual old think has delayed them for years if not decades. Whatever one might think of the J-UCAS *program* the *agreement* structure was unique and innovative.

A unique attribute of this program was the coordinated development of a Common Operating System (COS) that provided the mission functionality for the unmanned combat air vehicles within the system with potential for extension to many other platforms and systems. The COS was developed by the two vehicle prime contractors in collaboration with Johns Hopkins University Applied Physics Laboratory serving as the integrator/broker. This consortium-like business arrangement sought out other technology contributors to provide advanced software applications and “best of breed” algorithms.

A key integrator-broker role was to facilitate collaboration among the members of the program to assure the efficient development and maturation of the COS. There was no requirement to guide discussions between primes on data sharing, per se, other than common use information required for COS integration.

There was no consortium agreement as such. Rather each billion-dollar plus prime OT agreement had an interdependency clause specifying the need to cooperate among primes and with the integrator/broker. Speaking of clauses – the hard copy prime agreements were nearly an inch thick. Most of this was technical in nature both laying out government objectives and a specific statement of work that would hopefully result in achievement of those objectives. The T&C’s upon which an Agreements Officer typically labors including the schedule of payable milestones was about forty pages; a significant effort but well within the capability of a motivated, well-educated OT execution team.

IHPDET Consortium. Today’s high-performance jet engines such as the F-119 and F-135 incorporate ceramic matrix composite components to save weight and allow for higher temperature operations. The IHPDET ceramic fiber project was a big step toward today’s technical state of the art. It was executed through an OT agreement that had several unique features. Seven gas turbine engine manufacturers came together to jointly fund projects aimed at developing components (not just contributing to technical literature or developing IP) with the government. There was no traditional “prime contractor”. All seven companies, large industry leaders as well as smaller companies, signed the agreement. Industry decided on its own governance structure in consultation with government. A clear interface between government and industry was established. Industry made strategic decisions on projects to be funded. Funding decisions were all open. Uses made of the developments could be kept proprietary. Anyone (large or small industry, academia, garage startups) could perform research but were required to partner with a materials manufacturer. The goal was clear – components demonstrated in engines, not reports. Administration of the funded projects (solicitation, refinement of concepts, briefing to industry board, oversight) was conducted by a non-profit organization on a fee for service basis; there was no percentage tax on funds flowing to performers.

Industry and government each contributed half the funds. Funds were obligated upon signing of the agreement and sequestered in a joint bank account to be dispersed to support projects as they were selected. Government funds came from DARPA which executed the OT agreement on behalf of the government, Air Force, and NASA. Air Force was the most immediate beneficiary of the results of the agreement but both DARPA and NASA had materials programs related to advancing the state of the art of ceramics for aerospace applications.

IFSARE Commercialization. DARPA developed an interferometric synthetic aperture radar for terrain elevation mapping through a standard cost-reimbursement procurement contract. The radar installed in an aircraft proved to have outstanding capabilities and potential for immediate operational use. The DARPA program manager contacted DOD and other government agencies whose missions indicated they could use the radar. None had current operating funds available to take over the radar. The developer was a non-profit research organization and had no interest in conducting a business of selling mapping imagery. Other domestic companies were contacted with no takers. There was foreign interest but the algorithms in the radar were export controlled and it could not be transferred to a foreign company. Rather than crate up the radar and send it to a warehouse at additional expense to the government, the flexibility of OT authority allowed a different strategy to be developed.

An OT agreement was crafted between the government, the non-profit developer, and a new U.S. company (the non-profit provided technical support; additional tech support and investment came from a Canadian company) started expressly for the purpose of using the radar. DARPA allowed the radar to be used for commercial purposes. The non-profit also allowed its aircraft to be used. The new company agreed to operate the radar, pay all operating and maintenance cost as well as upgrades of capability. Its product was imagery produced by the radar. The U.S. government could purchase imagery on a best customer pricing basis and go the head of the line for access in the event of a national contingency. Most customers of the imagery were commercial, domestic and foreign (the imagery was not export controlled). If the company made a profit two quarters in a row, DARPA agreed to transfer title of the radar to the non-profit (which would turn it over to the company). The company paid royalties for use of the radar. Eventually the U.S. government recovered the entire development cost of the radar. The company was successful and became a world leader in its field with its only competitors being foreign companies.

Conclusion. An in-depth understanding of the OT statutes and their history is critical to effective OT contracting. Equally critical is the spirit of OT's: goal oriented, problem solving win/win contracting that goes beyond business as usual concepts. Embrace the vision of OT's in order to use them to optimum effect.

Most OT programs have been generally well managed, some have not. One of the aphorisms we use at Strategic Institute: "OT's make you think; they don't make you smart." Take advantage of industry as well as government expertise. OT contracting requires a multi-faceted team effort: not just any team but a team of motivated, educated and smart people. Don't try to invent the most important OTA without one!

written by Richard L. Dunn

▼Most important Other Transactions Agreement, Other Transactions project, other transactions team

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