



THE FOUR C's

FOR SUCCESSFUL OTHER TRANSACTIONS

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Other Transactions (OT) have boomed in popularity in recent years at the Department of Defense (DoD). The trends show no signs of reversing as the United States remains in a dynamic environment where it must significantly transform business practices to keep pace with technology and Warfighter needs.

While OTs are not new to the DoD, they are more widely used and preferred for science and technology and research and development efforts. Modernized contracting instruments allow DoD organizations to innovatively engage with industry partners and more efficiently respond to emerging threats from adversaries, such as those in the cyber and space areas. OTs help provide military personnel the relevant capabilities necessarily for the United States to retain its competitive advantage for national defense. If acquisition personnel have not already been exposed to OTs, it is almost certain that they will be in the near future. With flexibility and innovation come additional risks and uncertainties. However, OTs should still be pursued over traditional contracting instruments when it makes the most business sense. Culture change, collaboration, creativity, and competition are all crucial characteristics for OT success. This article provides essential lessons learned from past experiences to assist organizations and acquisition professionals making future use of OTs.

OTs are flexible and innovative contracting instruments, authorized in the United States Code (U.S.C.), that permit DoD organizations to conduct research, prototype, and follow-on production projects. OTs are not required to adhere to all acquisition statutes and regulations. They are different than traditional procurement contracts, cooperative agreements, grants, and procurements for experimental purposes. The primary intent of OTs is to help the DoD broaden its industrial base, conduct business in forms more similar to those within the commercial industry, and attain access to state-of-the-art technology

solutions with dual-use or military utility. OTs allow the DoD to engage with industry partners of all shapes and sizes, including traditional and non-traditional defense contractors, non-profit organizations, research institutions, academic institutions, and small businesses (including partners from certain foreign countries if security procedures allow).

DoD's OT use since Fiscal Year (FY) 2018 has skyrocketed. According to data from the Federal Procurement Data System, the DoD obligated a total of \$4.4 billion for OTs in FY 2018 and \$7.4 billion in FY 2019. Preliminary data for FY 2020 is expected to show more than \$15 billion for OTs. The growth is not surprising as Congress enacted several laws since FY 2016 to clarify and authorize expanded use of OTs. For instance, in FY 2018, Congress enacted a law requiring the DoD to prefer the use of OTs for science and technology and prototype programs. DoD leadership also released expanded OT guidance through an updated OT guide and various policy memorandums. For example, in FY 2020 at the beginning of the global COVID-19 pandemic, DoD leadership expanded OT approval authority thresholds and delegation abilities for DoD organizations. The OT growth trends will likely continue, especially if DoD's budgets for research and development increase or become a larger percentage of the DoD's overall budget. While each OT project will differ and there is no one-size-fits-all OT option, four common characteristics will best position DoD organizations for successful use and favorable outcomes to support national defense transformation priorities. The sections below expound on the "C's" and lessons learned.



CULTURE CHANGE

OT success is easily achievable for organizations that are willing to adapt and strategically take risks. Personnel across the organization must support the transformative means of conducting business. While all personnel share the responsibility, leadership must be aware of and support OTs and all associated efforts. Although use of OTs has grown in recent years, some personnel (including those within organizations that have OT authorities) have not received sufficient training or opportunities to support OTs. As a result, personnel at all levels and from various functional areas have not learned the nuances of the flexible instruments or possible situations for determining when OTs may be the preferred choice over traditional options. Leadership must trust and enable its workforce to pivot from traditional business practices when OTs are most appropriate, given the identified requirement. If leadership does not support OTs or resists change, the program or project is less likely to obtain the necessary approvals or resources (funding or personnel) for using OTs or to have good results.

Information is power because the lack of a general understanding

can stymie efficient and effective OT efforts. Knowing specifically what does or does not apply holds equal value in maximizing the flexibility of the authorities and complying with the law. Personnel, including those in contracting, program management, and other functional areas, shall capitalize on professional development events to gain a solid foundation and obtain the necessary information needed for sound OT planning, execution, and administration. Training is valuable for those, whether they have or do not have any OT experience. In addition to being promoted by leadership, worthwhile training should outline current OT authorities, identify key terms and responsibilities, describe real-world OT uses across the DoD, and debunk myths. Training becomes more important as Congress and DoD modify laws and policies regarding OT use. Organizations should consider creating in-house training and other resources if sufficient training is not readily available.

Also, consider the culture of the potential industry partners. While OTs tend to focus on the non-traditional defense contractor, the OT strategy may include traditional defense contractors. For traditional

defense contractors accustomed to doing business under a procurement contract (based on the Federal Acquisition Regulation (FAR)), similar cultural changes and training may be necessary to succeed when pursuing the use of OTs.

LESSONS FROM PAST EXPERIENCE

Be an agent for change, when necessary, to enable an OT-inclusive culture. Regularly engage with leadership to (1) strategically identify how the organization can use OTs to achieve the organization's mission and (2) gain top-level buy-in for acquisition personnel to complete appropriate training. Remain a trusted business advisor who is accessible on demand. Work to ensure that professional development opportunities and resources are available to familiarize personnel with OTs. Develop multiple training events for leadership and the general workforce about a specific functional area or audience need. Develop resources, such as a guide, record of lessons learned or best practices, and frequently asked questions, to streamline processes and operations. If resources permit, assign seasoned contracting and acquisition professionals to provide OT assistance and guidance across the organization.



COLLABORATION

OT success depends upon effective collaboration. Regular open and effective collaboration between the government and the industry partner(s), such as during project pre-award and execution phases, is critical to achieving desired technical, schedule, and cost results. Collaboration builds more trust between the parties and enables more relational (vs. transactional) business relationships. While the FAR environment allows collaboration, the tendency of many government organizations is to remain very conservative in communications with industry partners. OTs allow and encourage collaboration, and the government team should use this to gain additional insight into the technology. Teams can also clarify requirements for the industry partners and collaborate throughout the performance on technical, schedule, or cost trades to best meet the government's needs. Remember that OTs involve government and its industry partners working together, in ways similar to the collaboration between private sector entities. Although OTs replace certain traditional bureaucratic processes and requirements with flexible terms and conditions, the increased flexibility can be as challenging for the government team as it is for industry partners. Contracting and acquisition personnel

must put themselves in the shoes of the performer or potential performer, especially those who have never previously performed work via OTs with the DoD.

There also must be collaboration as needed between teams within DoD and other government organizations. Government personnel from various functional areas (in addition to contracting and program management) must participate regularly and actively, from project initiation through completion. Examples may include participation from the legal, cybersecurity, financial management, and logistics communities. Who will determine if the efforts meet the intention of and comply with the OT authorities? *Legal*. Who will assist with fine-tuning and enforcing necessary cybersecurity requirements? *Cybersecurity*. Who will generate legitimate cost estimates and formulate budget requests to obtain adequate resources from Congress? *Financial management*. Who will ascertain product support requirements and maintain life-cycle sustainment plans (if applicable)? *Logistics*.

A dynamic team will contribute to efficient operations and produce a steeper learning curve for the organization, especially for the various

functional areas that provide valuable inputs to each project.

Collaboration also may involve engagement with other government agencies (OGAs), including those outside the DoD. Examples of DoD OGAs are the Defense Advanced Research Projects Agency (DARPA), the Defense Innovation Unit (DIU), the U.S. Air Force, the U.S. Army, and the U.S. Navy. Examples of non-DoD OGAs are NASA and the National Institutes of Health. DoD organizations and their personnel should leverage best practices and lessons learned from others with sufficient and valuable past experience. Proactive collaboration can help less-experienced teams avoid common pitfalls or unsuccessful OT use and duplication. DoD and non-DoD organizations could strengthen business practices by openly sharing information and resources. Regardless of OT effort type or size, the DoD organization should always collaborate in fair and transparent forms throughout the project.

LESSONS FROM PAST EXPERIENCE

At project initiation, specifically for initial planning or strategy development, and during execution, ensure participation by the right teammates from the appropriate functional areas. There is no universal

listing or roster for the “right” participation, but teams will develop a better feel for appropriate functional area involvement with experience. Reach out to DoD OGAs that possess valuable OT experience, such as DARPA and DIU, for assistance. Collaboration with DoD OGAs and non-DoD OGAs identifies potential

teaming opportunities on mutually beneficial projects. Also, teams can identify information for doing business with consortia or engaging with innovative industry partners that have never previously worked with the DoD. Finally, keep open lines of communication with all interested performers for each project. Flexible,

fair, and transparent collaboration helps attract the widest group of potential performers. It also generates trust between stakeholders and helps industry partners achieve all technical, cost, and performance goals for successful outcomes.



CREATIVITY

Organizations must apply maximum creativity to ensure OT success. OTs are simply synonymous with flexibility. Why? The statutes that provide the authorities are intentionally brief and DoD only has a guide to assist government teams with the unique instruments (as opposed to extensive policies or regulations). The government can develop custom business agreements and terms with industry partners. There also are many ways that organizations can award OTs based on a project’s individual characteristics. For example, teams can directly award OTs after independently conducting solicitation efforts and proposal evaluations. Or teams can utilize a consortium for assistance with the project. Organizations also have tremendous latitude compared to traditional contracting options because many laws and regulations do not apply. Those that do not apply include the Competition in Contracting Act,

the Truthful Cost and Pricing Data Act, Cost Accounting Standards, the Bayh-Dole Act on patenting government-funded developments, the FAR, and the Defense Federal Acquisition Regulation Supplement (DFARS). Because FAR and DFARS do not apply, teams may not need to conduct formal efforts such as market research, acquisitions plans, earned value management, and contractor performance assessment reporting.

Teams also should not limit their solicitation efforts through the normal government platforms such as www.beta.sam.gov and www.grants.gov. Organizations are free to uniquely search for potential solution providers, both traditional and nontraditional, and should pursue all possible paths based on the requirement. Official definitions for the various OT types, or the lack thereof, enable organizations to apply creativity. The various types of research OTs (basic, applied,

and advanced) outlined in the DoD Financial Management Regulation are very broad and generally permissible if the research project will contribute to national security or military needs. Prototype OTs are not officially defined but are broadly described in various sources to help DoD organizations determine use applicability. The statute, Authority of the Department of Defense to carry out certain prototype projects (10 U.S.C. 2371b), refers to a prototype project as any enhancement or improvement of platforms, systems, components, or materials for use by military personnel. The DoD’s *Other Transactions Guide*, published in November 2018, describes a prototype project as an effort that addresses a proof of concept, model, pilot, reverse engineering (as a result of obsolescence), or an innovative use of commercial technologies for military purposes. The guide also specifies that organizations can use prototype

OTs for demonstrating technical and operational utility and for business processes. The DoD's *Prototyping Guidebook* describes a prototype as a model, albeit in physical, digital, conceptual, or analytical form, built to assess and inform usefulness or feasibility.

Table 1 illustrates how some DoD organizations creatively used prototype OTs in real-world projects. The intent of the information is not for others to replicate these projects for their own use but rather to provide notice of the flexibility and creativity applied to meet the statute's intent.

Latitude eliminates some bureaucratic processes but requires that personnel constantly apply creativity and strategic thinking. Organizations are challenged to find the best provider while maintaining a fair and transparent process with sound internal controls. Creativity within federal government acquisition can

be a paradox; however, organizations can achieve successful OT projects by leveraging the full flexibility provided by law and not executing a close variation of traditional contracting instruments like those executed through the FAR.

LESSONS FROM PAST EXPERIENCE

Creativity is easier said than done, especially when government acquisition training certification programs lack expanded curriculum on the subject. So long as DoD organizations have OT authority, leadership and personnel should approach each potential OT project with a "Why Not?" rather than a "Why?" mindset. Creativity largely depends on the organization's culture and personnel with OT experience who shall resist, when appropriate, any temptation to default to or return to traditional contracting instruments with narrower guard rails (simply because of personnel comfort). Personnel should recognize that

Congress and DoD leadership support the use of OTs.

During the initial process of any potential OT effort, teams should flexibly assess whether their need or capability gap could meet the government's broad OT interpretations. Specific to prototype OTs, teams should remain open minded and be cognizant that these projects could be in a physical, virtual, or conceptual form, include more than one unit or system, and include deployable or disposable end items. Creativity does not negate the need to adhere to all laws and regulations. Organizations must still comply with the False Claims Act, the Procurement Integrity Act, the Antideficiency Act, the International Traffic in Arms Regulations, and the DoD Financial Management Regulation. Personnel should always apply professionalism, exercise sound businesses judgment, and maintain key supporting documents for each OT project.

Table 1. Examples of Prototype Other Transactions

DoD ORGANIZATION	PROTOTYPE OTHER TRANSACTION PROJECT DESCRIPTION
U.S. Army	In response to the global COVID-19 pandemic, develop a prototype ventilator that can quickly augment ventilator capacity. Assuming successful prototype efforts, there is a related follow-on requirement to produce 10,000 ventilators that are low-cost, reliable, readily manufacturable, and suitable for operation within eight weeks. The project is a part of a competitive prototyping effort where multiple industry partners could be selected and various opportunities for cash prizes are possible.
U.S. Air Force	Enhance base security and facility operations at Tyndall Air Force Base in Florida. The prototype project consists of developing a system of systems for condition-based maintenance, predictive maintenance, and improved situational awareness for the base's first responders.
U.S. Navy	Improve Navy-wide data management for leadership to make more informed and timely decisions. A primary objective is to centralize data from several different information systems (major exercise documents, historical papers, research materials, and war-gaming materials) and make it readily available.
U.S. Marine Corps	Replace four legacy handheld systems with an upgraded handheld targeting system. The broad objectives are for the new system to be fully compatible with current and future fire support systems and reduce the weight of the existing systems by 60 percent.
Defense Advanced Research Projects Agency	Enhance medium unmanned surface vessels and their ability to navigate through harsh waters. The efforts directly involve the Navy and Marine Corps with the primary objective of overcoming vessel range limitations by exploiting significant reductions in water resistance.
Defense Information Systems Agency	Develop and potentially deploy new technologies (advanced solutions using the electromagnetic spectrum, such as 5G (fifth generation), augmented reality, machine learning, cloud computing, and beam forming) for military personnel. This effort could cost up to \$2.5 billion, with potential future use across the DoD.
Defense Counterintelligence and Security Agency	As the single security clearance provider for all of the federal government, design, build, test, and deploy a new security clearance system. The effort has specific plans to transition from a prototype project to a follow-on production project if the prototyping efforts are successful.

Source: The authors.



COMPETITION

As previously mentioned, the Competition in Contracting Act does not apply to OTs. Should organizations avoid any forms of competitive procedures when seeking to award OTs? The answer is “absolutely not” for several reasons. It is specifically stated at 10 U.S.C. 2371b that organizations shall use competitive procedures to the maximum extent practicable when entering into prototype OTs. Additionally, DoD’s *Other Transactions Guide* states that organizations should use competitive procedures to the greatest extent practicable for research and prototype OTs. Competition is valuable because it can help the DoD save money and promote accountability for project results. Sufficient competition could also draw substantial interest from industry partners, particularly those that do not traditionally do business with the DoD, and thereby help identify the best possible solutions or performers. Bear in mind that OTs are used to broaden the industrial base and attain access to state-of-the-art technology solutions. If maximum competition is not provided, the government risks missing opportunities to do business with performers who can provide the best prices and quality.

The extent of competitive procedures undoubtedly will vary from one project

to another. While organizations have individual discretion to determine and structure competitive procedures, they must apply creativity, fairness, and transparency. For example, teams could structure a competitive prototyping project with phases and down-selects among multiple performers. Such approaches are quite common, factoring in consideration of project technical risk and funds availability, fostering competition among performers, and allowing only a smaller number of performers to advance to a following phase. This form of competitive procedures increases performance, reduces risk, and positions the government to have the most success with the entire prototype OT project and possibly facilitate a follow-on production OT project, if applicable.

LESSONS FROM PAST EXPERIENCE

Organizations can leverage traditional government platforms for competing opportunities, but this may not be the optimum way to identify the best possible performers and capitalize on the most valuable opportunities. Organizations must thoroughly address competitive procedures during the planning stages of each OT project. For each prototype OT, organizations must identify that a follow-on production OT without recompetition is possible within the

original prototype OT solicitation and agreement. This action could increase competition for the particular prototype OT, shorten schedules for follow-on efforts, and insulate the organization from a future protest. As resources permit, use competitive prototyping with phases and down-selects for prototype OTs.

As Albert Einstein said, “A person who never made a mistake never tried anything new.” Culture change, collaboration, creativity, competition are all essential characteristics to support fair, transparent, effective, and successful OT projects. OTs are nontraditional and accompanied by risks, uncertainties, and learning curves. However, they are transformative instruments that will assist current and future national defense objectives and modernization initiatives. DoD organizations must maximize their use of OTs for research, prototype, and follow-on production products when appropriate to help the nation remain relevant and retain its competitive advantage.

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