Other Transactions Guide for Prototype Projects

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Foreword

Congress has provided the Department of Defense (DoD) with a tremendously flexible acquisition tool that creates opportunities to spur innovation among defense contractors, attract companies with leading-edge technologies, and adapt business practices to explore innovative technology rapidly. With the enactment of section 815 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2016, Public Law 114-92,, Congress amended DoD's authority to carry out prototype projects using "other transactions" (OTs).[1] OTs are now permanently codified in 10 U.S.C. §2371b (section 2371b), and offer a streamlined method for carrying out prototype projects and transitioning successes into follow-on production.

Section 2371b, which appears in Appendix 1 of this guide, authorizes DoD to carry out transactions for prototype projects using a legal instrument *other than* a procurement contract, grant, or cooperative agreement. The 2371b instrument is a legally binding agreement between DoD and the participant(s) of a transaction. OTs are defined in this Guide by mainly what the legal instrument is not. This construction gives DoD greater flexibility than otherwise possible or permitted under the statutes and regulations that apply to other legal instruments. OTs for prototype projects are acquisition instruments that generally are not subject to the Federal laws and regulations governing procurement contracts. As such, they are not required to comply with the Federal Acquisition Regulation (FAR), its supplements, or most laws that apply to procurement contracts. This acquisition authority, when used appropriately, is a vital tool that will help the Department to lower barriers to attract non-traditional defense contractors and increase access to commercial solutions for defense requirements.

Issuance of this guide represents the first of a series of revision cycles. The objective of this initial release is to update the technical details in the *"Other Transactions" (OT) Guide for Prototype Projects* from August 2002 that are no longer current, accurate, or applicable. This Guide is intended to provide a framework to consider and apply, as appropriate, when structuring an OT agreement for a prototype project. However, even with this flexible tool, there are some limited mandatory requirements included in the guide that are evident by the prescriptive language used.

Notable changes or updates to the statute reflected in this edition of the guide are:

- The purposes for which the authority may be used for has been expanded;
- The cost-sharing requirement no longer applies to small business concerns;
- Target-pricing for production is no longer required, and follow-on transactions are allowed;
- OT awards must be reported into the Federal Procurement Data System (FPDS); and
- OT awards over a specified dollar amount must be approved by senior agency acquisition officials.

[1] This authority replaces and modifies the temporary OT authority formerly authorized by section 845 of the NDAA for FY 1994, Public Law 103-160, as amended.

Over the years, several Centers of Excellence in the use of OTs have emerged; these organizations and other resources are identified in Appendix 2 of this guide. Leveraging their experience and expertise is strongly encouraged and will allow other entities to benefit from and build on their successes.

OTs are a very valuable tool to enable the Department of Defense to access technology that might not otherwise be possible. But the flexibility to start from what is essentially a blank sheet of paper when drafting an OT eliminates the safeguards inherent in using the standard statutory and regulatory contract language and clauses. Individuals using this authority should have a level of responsibility, business acumen, and judgment that enables them to operate in this relatively unstructured environment. These individuals are responsible for negotiating agreements that equitably reflect the risks undertaken by all parties to the agreement, using good business sense and including appropriate language to further the Government's interest.

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D1. DEFINITIONS

D1.1. Administrative Agreements Officer. An individual who has authority to administer an OT for prototype projects and, in coordination with the Agreements Officer, make decisions related to the delegated administration functions. If administrative functions are retained by the contracting activity, the Agreements Officer serves as the Administrative Agreements Officer.

D1.2. Agency. Any military department or defense agency with authority to award OTs for prototype projects.

D1.3. Agreements Officer. An individual with authority to enter into, administer, or terminate OTs for prototype projects. To be eligible to be an Agreements Officer, the individual must be a warranted DoD Contracting Officer with a comparable dollar value warrant.

D1.4. Awardee. Any business unit that is the direct recipient of an OT agreement.

D1.5. Business unit. Any segment of an organization, or an entire business organization which is not divided into segments.

D1.6. Contracting activity. An agency designated by the agency head and delegated broad authority regarding acquisition functions. It also means elements designated by the director of a defense agency which has been delegated contracting authority through its agency charter.

D1.7. Expenditure-based OT. An OT under which an awardee provides its best efforts to complete a prototype project for an estimated cost and where payments are based on amounts generated from the awardee's financial or cost records or that require at least one third of the total costs to be provided by non-Federal parties pursuant to statute. This includes interim and final milestone payments that may be adjusted for actual costs incurred.

D1.8. Fixed amount OT. An OT under which an awardee agrees to complete a prototype project for an agreed upon total price and where payments are not based on amounts generated from the awardee's financial or cost records.

D1.9. Head of the contracting activity (HCA). The HCA includes the official who has overall responsibility for managing the contracting activity.

D1.10. Key Participant. A key participant is a business unit that makes a significant contribution to the prototype project. Examples of what might be considered a significant contribution include supplying new key technology or products, accomplishing a significant amount of the effort, or in some other way causing a material reduction in the cost or schedule or increase in performance.

D1.11. Nontraditional Defense contractor. Per 10 U.S.C. §2302(9), "an entity that is not currently performing and has not performed, for at least the one-year period preceding the solicitation of sources by DoD for the procurement or transaction, any contract or subcontract

for DoD that is subject to full coverage under the cost accounting standards prescribed pursuant to 41 U.S.C. § 1502 and the regulations implementing such section."

D1.12. Procurement contract. A contract that is subject to the Federal Acquisition Regulation.

D1.13. Project Manager. The Government employee responsible for managing the prototype project.

D1.14. Segment. One of two or more divisions, product departments, plants, or other subdivisions of an organization reporting directly to a home office, usually identified with responsibility for profit and/or producing a product or service.

D1.15. Senior Procurement Executive (SPE) and the Directors of DARPA and MDA. For the purpose of 10 U.S.C. §2371b authority, includes the following positions:

Department of Defense - Under Secretary of Defense (Acquisition, Technology & Logistics)

Department of the Army - Assistant Secretary of the Army (Acquisition, Logistics and Technology)

Department of the Navy - Assistant Secretary of the Navy (Research, Development and Acquisition)

Department of the Air Force - Assistant Secretary of the Air Force (Acquisition)

Defense Advanced Research Programs Agency - Director, DARPA

Missile Defense Agency - Director, MDA

D1.16. Subawardee. Any business unit of a party, entity or subordinate element, other than the awardee, performing effort under the OT prototype agreement, under an agreement with the awardee.

HISTORY

The National Aeronautics and Space Administration (NASA) pioneered the first use of "other transactions" (OTs) following the National Aeronautics and Space Act of 1958 (Pub. L. 85-568). Since then, the term has been generally used to refer to the statutory authorities that permit a Federal agency to enter into transactions *other than* procurement contracts, grants, or cooperative agreements.

In 1989, Congress codified 10 U.S.C. §2371 (section 2371) and allowed DoD to carry out OTs. This authority, commonly known in DoD as "OTs for research," allowed the Defense Advanced Research Projects Agency (DARPA) to carry out basic, applied, or advanced research projects.

Section 2371 was later amended by section 845 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 1994 (Pub. L. 103-160) to include a new authority that allowed DARPA, and later others within the Department of Defense (DoD), to carry out "OTs for prototype projects." In 2015, section 845 was repealed by section 815 of the NDAA for FY 2016 (Pub. L. 114-92) and replaced with section 2371b.

Section 2371 and section 2371b are in addition to the standard, more well-known authorities provided in 10 U.S.C. §2358, which allow DoD to use contracts, grants, and cooperative agreements for basic research, applied research, advanced research, and development projects. This guide is limited to OTs awarded under the authority of section 2371b, but related authorities are briefly described below.

The purpose of this guide is to assist Agreements Officers in the negotiation and administration of OTs (also referred to herein as "OT agreements" and "agreements") for prototype projects. It is also meant to aid DoD personnel who are interested in understanding OTs and discerning their usefulness in broadening DoD's ability to access commercial and cutting edge technology from companies or individuals which are unable or unwilling to enter into procurement contracts. Given the flexibility associated with the use of OTs and the inability of this guide to cover every nuance of statute and regulation, legal counsel should be consulted whenever the award of an OT is contemplated

C1. CHAPTER 1

AUTHORITIES AND RESPONSIBILITIES

C1.1 BACKGROUND

C1.1.1. General. Section 2371 authorizes award of transactions other than contracts, grants or cooperative agreements. There are two types of commonly used OTs.

C1.1.2. "Other Transactions" for Prototype Projects. Section 2371b authorizes DoD to carry out prototype projects using a legal instrument *other than* a procurement contract, grant, or cooperative agreement under the authority of section 2371. Because awards for prototype

projects are intended to provide DoD a direct benefit, these OTs are acquisition instruments. The text of Section §2371b appears in Appendix 1 of this guide.

C1.1.3. "Other Transactions" Not Covered by this Guide. This guide does not apply to OTs used to carry out basic, applied or advanced research projects in accordance with section 2371. For example, the authority of 10 U.S.C. §2371 is used to award Technology Investment Agreements (TIAs) in instances where the principal purpose is stimulation or support of research.

C1.1.4. Focus of this Guide. This guide focuses on OTs for prototype projects.

C1.2. STATUTORY DIRECTION ON THE USE OF AUTHORITY

C1.2.1. Directly Relevant. Prototype projects must be "directly relevant to enhancing the mission effectiveness of military personnel and the supporting platforms, systems, components, or materials proposed to be acquired or developed by the Department of Defense, or to improvement of platforms, systems, components, or materials in use by the armed forces."

C1.2.2. Appropriate Use. This authority may be used only when at least one of the following conditions is met:

(A) There is at least one nontraditional defense contractor participating to a significant extent in the prototype project;

(B) All significant participants in the transaction other than the Federal Government are small businesses or nontraditional defense contractors;

(C) At least one third of the total cost of the prototype project is to be paid out of funds provided by parties to the transaction other than the Federal Government; or

(D) The senior procurement executive for the agency determines in writing that 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 contract, or would provide an opportunity to expand the defense supply base in a manner that would not be practical or feasible under a contract.

C1.2.3. Competition. To the maximum extent practicable, competitive procedures shall be used when entering into agreements to carry out prototype projects under this authority (see section C2.1.3.1.6.). However, the Competition in Contracting Act (10 U.S.C. § 2304 *et. seq*.), is not applicable to the award of OTs.

C1.2.4. Comptroller General Access. Each agreement that provides for payments in a total amount in excess of $5,000,000 shall include a clause that provides for the Comptroller General, in the discretion of the Comptroller General, to examine the records of any party to the agreement or any entity that participates in the performance of the agreement (see section C2.15.).

C1.3 INDIVIDUAL AUTHORITY

C1.3.1. Agency Authority. Subject to the dollar threshold approval requirements in

paragraph (a) (2) of section 2371b, discussed in section C2.1.1.7 of this guide, the Director of the Defense Advanced Research Projects Agency (DARPA), the Director of the Missile Defense Agency (MDA), the Secretaries of the Military Departments, and any other official designated by the Secretary of Defense are authorized 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 acquired or developed by DoD, or to improvement of platforms, systems, components, or materials in use by the armed forces. On June 29, 2016, the Secretary of Defense delegated authority to the Under Secretary of Defense (Acquisition, Technology & Logistics) to designate officials within DoD who are not under the authority, direction, and control of the USD(AT&L) to carry out prototype projects under section 2371b. To inquire as to whether a DoD organization has OT authority or to request it, contact the Office of the Deputy Director, Defense Procurement and Acquisition Policy (DPAP) at osd.pentagon.ousd-atl.mbx.cpic@mail.mil.

C1.3.2. Agreements Officer Authority. Agreements Officers for prototype projects must be warranted DoD Contracting Officers with a level of responsibility, business acumen, and judgment that enables them to operate in this relatively unstructured environment. Agreements Officers may bind the Government only to the extent of the authority delegated to them as Contracting Officers.

C1.3.3. Points of Contact. Questions and requests for additional information regarding OTs should be referred to Office of the Deputy Director, Defense Procurement and Acquisition Policy (DPAP), osd.pentagon.ousd-atl.mbx.cpic@mail.mil. In addition, Appendix 2 of this guide identifies several Centers of Excellence in the use of OTs, as well as other resources, to enable entities to leverage their experience and expertise.

C1.4. LEGISLATIVE AUTHORITY

"Other Transactions" for Prototype Projects are instruments that are generally not subject to the Federal laws and regulations governing procurement contracts. As such, they are not required to comply with the FAR, its supplements, or laws that are limited in applicability to procurement contracts, such as the Truth in Negotiations Act and Cost Accounting Standards (CAS). Similarly, OTs for prototype projects are generally not subject to those laws and regulations that are limited in applicability to grants and cooperative agreements. To the extent that a particular requirement is a funding or program requirement or is not tied to the type of instrument used, it would generally apply to an OT (*e.g.*, fiscal and property laws). Each statute must be examined to ensure it does or does not apply to a particular funding arrangement using an OT. Use of OT authority does not eliminate the applicability of all laws and regulations. Thus, it is essential to consult legal counsel whenever an OT is used.

C1.5. REASONS TO USE AUTHORITY

C1.5.1. Nontraditional Defense Contractor. It is in the DoD's interest to tap into the research and development being accomplished by nontraditional defense contractors, and to pursue commercial solutions to defense requirements. One use of this authority is to attract nontraditional defense contractors that participate to a significant extent in the prototype project.

These nontraditional defense contractors can be at the prime level, team members, subawardees, lower tier vendors, or "intra-company" business units (provided the business unit makes a significant contribution to the prototype project). Examples of what might be considered a significant contribution include, but are not limited to, supplying new key technology or products, accomplishing a significant amount of the effort, or in some other way causing a material reduction in the cost or schedule or increase in the performance. The significant contribution expected of the nontraditional defense contractor(s) must be documented in the agreement file, typically in the agreement analysis (see C2.1.4.1.).

C1.5.2. Other Benefit to the Government. If neither a nontraditional defense contractor nor a small business concern is participating to a significant extent in the prototype project, then in order to make an OT award either, (1) at least one third of the total cost of the prototype project is to be paid out of funds provided by the parties to the transaction other than the Federal Government, or (2) the SPE for the agency must have determined in writing that exceptional circumstances justify the use of a transaction (see C1.2.2(D)). Generally, the Government should not mandate cost-sharing requirements for defense unique items, so use of OT authority that invokes cost-sharing requirements should be limited to those situations where there are commercial or other benefits to the awardee.

C1.6. SCOPE OF PROTOTYPE PROJECTS

OT prototype authority may only be 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 acquired or developed by the Department of Defense, or to improvement of platforms, systems, components, or materials in use by the armed forces." As such, any resulting OT awards are acquisition instruments since the Government is acquiring something for its direct benefit. Terms such as "support or stimulate" are assistance terms and are not appropriate in OT agreements for prototype projects.

A prototype project can generally be described as a preliminary pilot, test, evaluation, demonstration, or agile development activity used to evaluate the technical or manufacturing feasibility or military utility of a particular technology, process, concept, end item, effect, or other discrete feature. Prototype projects may include systems, subsystems, components, materials, methodology, technology, or processes. By way of illustration, a prototype project may involve: a proof of concept; a pilot; a novel application of commercial technologies for defense purposes; a creation, design, development, demonstration of technical or operational utility; or combinations of the foregoing, related to a prototype. The quantity should generally be limited to that needed to prove technical or manufacturing feasibility or evaluate military utility.

C1.7. GOVERNMENT TEAM

C1.7.1. Composition. A small, dedicated team of experienced individuals works best when awarding an OT. In addition to the Project Manager, end user and warranted Agreements Officer, the agency needs to secure the early participation of subject matter experts such as legal counsel, payment, and administrative offices to advise on agreement terms and conditions.

C1.7.2. Defense Contract Management Agency (DCMA). If administration of the OT is to be delegated to DCMA, refer to Section 10 of the DoD CAS Component directory to determine the appropriate administration location. DCMA can also provide assistance in determining the appropriate Defense Finance Accounting Service (DFAS) payment office.

C1.7.3. Defense Contract Audit Agency (DCAA). As discussed in various sections of this guide, DCAA is able to provide financial advisory services to support the Agreements Officer in awarding and administering OT agreements. DCAA can provide assistance in the pre-award phase, during agreement performance, and at the completion of the agreement during the closeout phase.

C2. CHAPTER 2

ACQUISITION PLANNING AND AGREEMENT EXECUTION

C2.1. ACQUISITION PLANNING

C2.1.1. General.

C2.1.1.1. Setting the Framework. Adequate advance planning for both the award of an OT for a prototype project and any expected follow-on activity is an essential ingredient of a successful program. Prototype projects to be awarded using an OT should include a team approach as previously discussed. Early and continued communication among all disciplines, including legal counsel, will enhance the likelihood of a successful project.

C2.1.1.2. Appropriate Safeguards. Section 2371b OT authority for prototype projects provides flexibility to negotiate terms and conditions appropriate for the acquisition, without regard to the statutes or regulations typically governing a procurement contract. It is essential that OT agreements incorporate good business sense and appropriate safeguards to protect the Government's interest. This includes assurances that the cost to the Government is reasonable, the schedule and other requirements are enforceable, and the payment arrangements promote on-time performance. It is the Agreements Officer's responsibility to ensure that the terms and conditions negotiated are appropriate for the particular prototype project and should consider expected follow-on needs.

C2.1.1.3. Skill and Expertise. Agreements Officers responsible for OTs for prototype projects should have a level of responsibility, business acumen, and judgment that enables them to operate in this relatively unstructured environment. Agreements Officers should not merely copy a previously issued OT agreement, template, or model. A standard, "one size fits all" model does not exist, given the need to exercise business judgment appropriate for the situation and the flexibility inherent in the authority. An Agreements Officer should consider the intent and protections provided to each party in typical FAR procedures and clauses, standard commercial business practices typical of that market segment, as well as other OT agreements; but ultimately is responsible for negotiating clauses that appropriately reflect the risk to be undertaken by all parties on their particular prototype project. If a policy or procedure, or a particular strategy or practice, is in the best interest of the Government and is not specifically addressed in this guide, nor prohibited by law or Executive Order, the Government team should not assume it is prohibited. The Agreements Officer should take the lead in encouraging business process innovations and ensuring sound business decisions.

C2.1.1.4. Flexibility. OTs for prototype projects are only one of several business arrangements that DoD can use to meet warfighter needs in the research and development arena. Agreements Officers well-versed in the FAR can help articulate which legal instrument best fits the needs of the situation during the acquisition strategy development, allowing the team to weigh the use of a FAR contract versus an OT, including the statutory conditions associated with use of OT for prototype projects.

C2.1.1.5. Agreement. The nature of the OT agreement for a prototype project and applicable terms and conditions should be negotiated based on the technical, cost, and schedule risk of the prototype project, as well as the contributions, if any, to be made by the awardee or non-Federal participants to the agreement. Some commercial entities have indicated reluctance to do business with the Government, citing concerns in areas such as cost accounting standards, intellectual property rights, and auditing. Agreements Officers should consider whether the prototype project's performance requirements can be adequately defined and a definitive, fixed amount can be reasonably established for the agreement or if an expenditure-based OT arrangement is more appropriate and feasible.

C2.1.1.5.1. When prototype projects are competitively awarded and the risks of the project permit adequate definition of the effort to accommodate establishing a definitive, fixed amount agreement, then there typically would be no need to invoke cost accounting standards or audit requirements. (Note, however, that if cost sharing is used, the Agreements Officer should include language to permit the Government appropriate insights into the awardee's accounting system.) This is not true if an agreement, though identifying the Government funding as fixed, only provides for best efforts or potential adjustment of payable milestones based on amounts generated from financial or cost records.

C2.1.1.5.2. If the prototype effort is too risky to enter into a definitive, fixed-amount agreement or the agreement requires at least one third of the total costs to be provided by non-Federal parties pursuant to statute, then accounting systems become more important.

C2.1.1.5.3. The Government should permit an entity to use its existing accounting system, provided it adequately maintains records to account for Federal funds received and cost sharing, if any. In addition, when audits may be necessary, the Agreements Officer has the flexibility to use outside independent auditors in certain situations and determine the scope of the audits. Additional guidance on accounting systems, audit access and intellectual property are provided in later sections. It is critical that the Agreements Officer carefully consider these areas when negotiating the agreement terms and conditions. The Agreements Officer should also consider incorporation of commercial practices and oversight structures in the terms and conditions.

C2.1.1.6. Competition. Section 2371b requires that competitive procedures be used "to the maximum extent practicable," but the Competition in Contracting Act is not applicable to OTs. Competitions for OTs should be structured in a common sense manner that treats offerors fairly and, when applicable, be consistent with industry practice for that market segment. The multi-functional acquisition team is responsible for maximizing competition.

C2.1.1.6.1. Publication. Agreements Officers should publish opportunities where they are most likely to reach solution providers. This includes publishing opportunities outside traditional Government venues—beyond the Government-wide entry point (i.e., FedBizOpps).

C2.1.1.6.2. Solicitation Methods. Innovation is encouraged for identifying and competitively selecting sources. Agencies who intend to award only OTs off a solicitation

are free to create their own process to solicit and assess potential solutions provided it is a fair process and the rationale for making the Government investment decision is documented. Just keep in mind that terms of art that are already well-known or understood in traditional contracting should be avoided (e.g., do not call it an RFP, even though "request for proposal" is a generic phrase). One example of a solicitation method is the Commercial Solutions Opening (CSO) technique. In general, a CSO uses a broad solicitation method, much the same as a Broad Agency Announcement (BAA), to identify particular Government problem areas and solicit solution ideas from industry. Problem areas can be broad or specific. Upon receiving solution ideas, the Government can select an offeror to demonstrate (or "pitch") its solution or submit a proposal based on the merit of the idea. Upon receiving a proposal that the team determines is a good investment for the Government to pursue, the acquisition team can negotiate and award an OT to the company for the prototype project. Other flexible solicitation methods include Research Announcements, Program Announcements, and Program Solicitations.

C2.1.1.7 Approvals. Section 2371b provides that certain determinations be made in writing before the authority to enter into other transactions can be carried out:

Prototype Project Cost (Including Options)	**Non-delegable Approval Authority for Military Departments/ Defense Agencies with OT Authority**	**Approval Authority Source**
Over $50 Million and Up to $250 Million	Senior Procurement Executives (SPE) of the Military Departments - the Service Acquisition Executives (SAEs) for Army, Navy and Air Force Senior Procurement Executive for the Fourth Estate - USD(AT&L) Director of DARPA Director of the Missile Defense Agency (MDA)	10 U.S.C. §2371b(a)(2)(A)
Over $250 Million	USD(AT&L)	10 U.S.C. §2371b(a)(2)(B)(1)

The OT agreement must be approved consistent with these authorities. Approvals under the authority of Section 2371b that are at or below $50 Million, including all options, may be delegated. The approving official must be a Government employee whose level of responsibility, business acumen, and judgment enables operating in this relatively unstructured environment. The approving official and approval format will be specified by agency procedures. However, approval to use OT authority must be obtained from the SPE when use is justified by exceptional circumstances (see C1.2.2.)

C2.1.1.8. Reporting Award Data. Agreements Officers must record OTs entered into under section 2371b authority in the Federal Procurement Data System-Next Generation located at https://www.fpds.gov. Other Transactions for prototype projects must identify the 9th position of the award number as a "9". The other positions of the award number and modifications will be assigned the same as procurement contracts.

C2.1.2. Market Research. Market research is an integral part of the development of the acquisition strategy. The research needs to be accomplished early in the acquisition planning process. A key reason to use the OT for prototype projects authority is to attract nontraditional defense contractors to participate to a significant extent in the prototype project. In order to attract these companies, the Government team should research the commercial marketplace and publicize the project in venues and employ techniques typically used by that marketplace. Some potential means of finding commercial sources could include specific catalogs, product directories, trade journals, seminars, professional organizations, contractor briefings, meetings and conversations with companies, in-house experts, on-line resources, social media, and vendor surveys. End Users, Researchers and Project Managers who are knowledgeable of the technology and relevant industry sectors play a vital role in market research, including an understanding of commercial market processes that might be leveraged.

C2.1.3 OT Acquisition Approach.

C2.1.3.1. General. A formal, written acquisition strategy is not required for OTs under section 2371b. The complexity and dollar value of the prototype project will determine the amount of documentation necessary to describe the project's acquisition approach and the need for updates as significant changes occur. At a minimum, an acquisition approach for a prototype project to be awarded under an OT should generally address the areas in this section. Prototype projects that meet the dollar criteria or risk management considerations in DoDI 5000.02 are required to follow DoD policy for defense acquisition programs, unless a waiver is obtained from the appropriate designated official.

C2.1.3.1.1. Consistency with Authority. A programmatic discussion of the effort that substantiates it is a prototype project "directly relevant to enhancing the mission effectiveness of military personnel and the supporting platforms, systems, components, or materials proposed to be acquired or developed by the Department of Defense, or to improvement of platforms, systems, components, or materials in use by the armed forces" should be included in the documentation.

C2.1.3.1.2. Rationale for Selecting Other Transaction Authority (OTA). OTA for prototype projects may only be used in those circumstances addressed in section C1.2.2. The acquisition approach must identify and discuss the reason an OT agreement is being proposed, but is not required to document why a procurement contract, grant, or cooperative agreement is not feasible or appropriate. If use of an OT agreement is expected to attract nontraditional defense contractors that will participate to a significant extent, the strategy should address how this will be accomplished. If cost-sharing is the reason, the documentation should explain the commercial or other perceived benefits to the non-Federal participants. If exceptional circumstances exist, those must be documented and approved as addressed in section C1.5.2.

C2.1.3.1.3. Technical Description of the Program. This section should discuss the prototype project's major objectives, technical events, planned testing schedule, and milestones for decision making on multi-phase agreements.

C2.1.3.1.4. Management Description of the Program. This section should discuss

the project's management plan, including the program structure, composition of the Government team, and the program schedule.

C2.1.3.1.5. Risk Assessment. The section should include a cost, technical and schedule risk assessment of the prototype project and plans for mitigating the risks. The risks inherent in the prototype project and the capability of the sources expected to compete should be a factor in deciding the nature and terms and conditions of the OT agreement for a prototype project.

C2.1.3.1.6. Selection Process. The acquisition approach should address the expected sources or results of market research and the planned method of publicizing the opportunity and award process. Address the OT source selection process, the nature and extent of the competition for the prototype project, and any planned follow-on activities. It is important to consider, during prototype project planning, the extent and ability for competition on follow-on activities. For the prototype project OT, consider whether to use standard source selection procedures or devise a more streamlined approach that ensures a fair and unbiased selection process (see C2.1.1.6.). A decision maker should be identified. The documentation should address the process the team intends to use to meet the section 2371b requirement for competition to the maximum extent practicable. If competitive procedures are not used for awarding the OT for the prototype project, or only a limited competition is conducted, the strategy should explain why. While there is tremendous flexibility in how a competition is conducted, opportunities for OT awards must be handled in a manner that is fair, transparent, and ethical.

C2.1.3.1.7. Nature of the Agreement. There is no one type of OT agreement for prototype projects. This section should discuss the nature of the agreement (i.e. expenditure-based, fixed amount or a hybrid), the way that the price or estimated cost will be determined to be fair and reasonable, and the method for verifying compliance with the OT's terms and conditions. Agreements Officers are encouraged to consider whether the prototype project can be adequately defined to establish a fixed-amount agreement. The insight into the effort required and the associated risk of achieving the goals, performance objectives, and desired outcomes for the specific project should influence whether a fixed-price can be established for the agreement. A fixed-amount agreement should not be awarded unless the project risk permits realistic pricing and the use of a fixed-amount agreement permits an equitable and sensible allocation of project risk between the Government and the awardee for the effort contemplated.

C2.1.3.1.8. Terms and Conditions. This section should explain the key terms and conditions planned for the solicitation. The discussion should explain why the proposed terms and conditions provide adequate safeguards to the Government and are appropriate for an OT and for the prototype project.

C2.1.3.1.9. Follow-On Activities. The acquisition approach for a prototype project should address the strategy for any anticipated follow-on activities. The follow-on strategy could include addressing issues such as life cycle costs, sustainability, test and evaluation, intellectual property requirements, the ability to procure the follow-on activity under a traditional procurement contract, and future competition (see C2.3.1.3.). Section 2371b

authorizes DoD to structure OTs for prototype projects that may provide for the award of a follow-on production contract or transaction (to the participants in the transaction for the prototype project) without the use of competitive procedures. However, this follow-on production authority requires two criteria to be satisfied: 1) competitive procedures were used to select the parties to participate in the prototype project; and 2) the participants in the transaction successfully completed the prototype project provided for in the transaction.

C2.1.4. Negotiated Agreement and Award

C2.1.4.1. Documentation. Each agreement file must include documentation that affirms the circumstances permitting use of section 2371b authority (see C1.2.2.) and explains either that all significant participants other than the Federal Government will be small businesses or nontraditional defense contracts or: the significant contributions expected of the nontraditional defense contractors; the cost-share that will be required; or the exceptional circumstances approved by the SPE.

C2.1.4.2. Award to Legal Entity. Agreements Officers should ensure that an OT for a prototype project is entered into with an entity or entities that can be legally bound to execute the agreement (see C2.6.).

C2.2. METRICS

An Agreements Officer or Project Manager may establish project metrics. Ideally these metrics should measure the expected benefits from a cost, schedule, performance and supportability perspective.

C2.3 INTELLECTUAL PROPERTY

C2.3.1. General.

C2.3.1.1. Because certain intellectual property requirements normally imposed by the Bayh-Dole Act (35 U.S.C. §202-204) relating to patent rights and 10 U.S.C. §2320-21 relating to technical data do not apply to OTs, Agreements Officers can negotiate terms and conditions different from those typically used in procurement contracts. However, in negotiating these clauses, the Agreements Officer must consider other laws that affect the Government's use and handling of intellectual property, such as the Trade Secrets Act (18 U.S.C. §1905); the Economic Espionage Act (18 U.S.C. §1831-39); the Freedom of Information Act (FOIA) (5 U.S.C. §552); the Privacy Act, 5 U.S.C. §552a; 10 U.S.C. §130; 28 U.S.C. §1498; 35 U.S.C. §205 and §207-209; and the Lanham Act, partially codified at 15 U.S.C. §1114 and §1122.

C2.3.1.2. Intellectual property collectively refers to rights governed by a variety of different laws, such as patent, copyright, trademark, and trade secret laws. Due to the complexity of intellectual property law and the critical role of intellectual property created under prototype projects, Agreements Officers, in conjunction with the Project Manager, should obtain the assistance of Intellectual Property Counsel as early as possible in the acquisition

process.

C2.3.1.3. In cases where the prototype project is intended to, or likely to, result in follow-on production and deployment, the Agreements Officer should assess the impact of restrictions on intellectual property rights, or the failure to obtain necessary intellectual property deliverables (e.g., technical data or computer software), on the Government's total life cycle cost of the technology, both in costs attributable to royalties from required licenses, and in costs associated with the inability to obtain competition for the future production, operation, maintenance, upgrade, and modification of prototype technology. In addition, insufficient intellectual property deliverables or license rights may hinder the Government's ability to adapt the developed technology for use outside the initial scope of the prototype project. Conversely, where the Government overestimates the intellectual property rights it will need, the Government might pursue unnecessary rights and dissuade firms from doing business with the Government. Bearing this in mind, the Agreements Officer should carefully assess the intellectual property needs of the Government.

C2.3.1.4. In general, as an initial position, the Agreements Officer should seek to obtain intellectual property rights consistent with the Bayh-Dole Act (35 U.S.C. §201-204) for patents and 10 U.S.C. §2320-21 for technical data and computer software. Negotiation of rights of a different scope is permitted when necessary to accomplish program objectives and foster Government interests, and to balance the interests of the awardee. The negotiated intellectual property clauses should facilitate the acquisition strategy, including any likely production and follow-on operations and support of the prototyped item, and balance the relative investments and risks borne by the parties both in past development of the technology and in future development and maintenance of the technology. Due to the complex nature of intellectual property clauses, the clauses should be incorporated in full text. Also, the Agreements Officer should consider the effect of other forms of intellectual property (*e.g.*, trademarks, registered vessel hulls), that may affect the acquisition strategy for the technology.

C2.3.1.5. The Agreements Officer should ensure that the disputes clause included in the agreement can accommodate specialized disputes arising under the intellectual property clauses, such as the exercise of intellectual property march-in rights or the validation of restrictions on technical data or computer software.

C2.3.1.6. The Agreements Officer should consider how the intellectual property clauses applicable to the awardee flow down to others (e.g., nontraditional contractor subawardees, commercial suppliers to an awardee or subawardee), including whether to allow others to submit any applicable intellectual property licenses directly to the Government.

C2.3.1.7. Where the acquisition strategy relies on a competitive commercial marketplace to produce, maintain, modify, or upgrade the technology, there may be a reduced need for rights in intellectual property for those purposes due to the availability of multiple sources. However, since the Government tends to use technology well past the norm in the commercial marketplace, the Agreements Officer should plan for maintenance and support of fielded prototype technology when the technology is no longer supported by the commercial market and negotiate for appropriate deliverables and license rights to the technology as part

of the agreement. This should be considered in the context of potential follow-on production contracts or transactions.

C2.3.1.8. The Agreements Officer should consider restricting awardees from licensing technology developed under the Agreement to domestic or foreign firms under circumstances that would hinder potential domestic manufacture or use of the technology. The Agreements Officer must also be aware that export restrictions prohibit awardees from disclosing or licensing certain technology to foreigners.

C2.3.1.9. The Agreements Officer should consider including any additional rights available to the Government in the case of inability or refusal of the private party or consortium to continue to perform the Agreement. It may also be appropriate to consider negotiating time periods after which the Government will automatically obtain greater rights (for example, if the original negotiated rights limited Government's rights for a specified period of time to permit commercialization of the technology).

C2.3.2. Rights in Inventions and Patents.

C2.3.2.1. The Agreements Officer should negotiate a patents rights clause necessary to accomplish program objectives and foster the Government's interest. To the maximum extent practicable, the patent rights clause should address the allocation of rights in inventions made under the agreement, the Government's rights in the awardee's preexisting patents that may cover technologies developed or delivered, and the parties' respective liability for the infringement of a third party's patent resulting from performance of the agreement, or use of the delivered technologies. In determining what represents a reasonable arrangement under the circumstances, the Agreements Officer should consider the Government's needs for patents and patent rights to use the developed technology, or what other intellectual property rights will be needed should the agreement provide for trade secret or other forms of intellectual property protection instead of patent protection.

C2.3.2.2. Subject Inventions. Regarding inventions made during performance of the agreement, the agreement should address the following issues:

C2.3.2.2.1. Definitions. It is important to define all essential terms in the patent rights clauses, and the Agreements Officer should consider defining a subject invention to include those inventions conceived or first actually reduced to practice under the Agreement.

C2.3.2.2.2. Allocation of Rights. The Agreements Officer should consider allowing the participant to retain ownership of the subject invention while reserving, for the Government, a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world. In addition, the agreement should address the Government's rights in background inventions (*e.g.*, inventions created prior to or outside the agreement) that are incorporated into the prototype design and may therefore affect the Government's life cycle cost for the technology.

C2.3.2.2.3. March-in Rights. The Agreements Officer should consider whether to

negotiate Government march- in rights in order to encourage further commercialization of the technology. The march-in rights outlined in the Bayh-Dole Act may be modified to best meet the needs of the program.

C2.3.2.2.4. Disclosure/Tracking Procedures. The Agreements Officer may negotiate changes in the timing and manner of submission of the disclosures, elections of title, and patent applications.

C2.3.2.2.5. Option for Trade Secret Protection. The Agreements Officer may consider allowing subject inventions to remain trade secrets as long as the Government's interest in the continued use of the technology is protected. In making this evaluation, the Agreements Officer should consider whether allowing the technology to remain a trade secret creates an unacceptable risk of a third party patenting the same technology, the Government's right to utilize this technology with third parties, and whether there are available means to mitigate these risks outside of requiring patent protection.

C2.3.2.2.6. Third Party Inventions. Regarding the potential liability for infringement of a patent owned by a third party that is not a participant in the project, the Agreement Officer should include clauses that address Authorization and Consent, Indemnity, and Notice and Assistance:

C2.3.2.2.6.1. Authorization and Consent. Authorization and consent policies provide that work by an awardee under an agreement may not be enjoined by reason of patent infringement and shifts liability for such infringement to the Government (see 28 U.S.C. §1498(a)). The Government's liability for damages in any such suit may, however, ultimately be borne by the awardee in accordance with the terms of a patent indemnity clause (see 2.3.2.2.6.3). The agreement should not include an authorization and consent clause when both complete performance and delivery are outside the United States, its possessions, and Puerto Rico.

C2.3.2.2.6.2. Notice and Assistance. Notice policy requires the awardee to notify the Agreements Officer of all claims of infringement that come to the awardee's attention in connection with performing the agreement. Assistance policy requires the awardee, when requested, to assist the Government with any evidence and information in its possession in connection with any suit against the Government, or any claims against the Government made before suit has been instituted that alleges patent or copyright infringement arising out of performance under the agreement.

C2.3.2.2.6.3. Indemnity. Indemnity clauses mitigate the Government's risk of cost increases caused by infringement of a third-party owned patent. Such a clause may be appropriate if the supplies or services used in the prototype technology developed under the agreement normally are or have been sold or offered for sale to the public in the commercial open market, either with or without modifications. In addition, where trade secret protection is allowed in lieu of patent protection for patentable subject inventions, a perpetual patent indemnity clause might be considered as a mechanism for mitigating the risks described in C2.3.2.2.5 above. The agreement should not include a clause whereby the Government

expressly agrees to indemnify the awardee against liability for infringement.

C2.3.3. Rights in Technical Data and Computer Software

C2.3.3.1. As used in this section, the following terms have the same meaning as defined in the FAR and/or the Defense Federal Acquisition Regulation Supplement (DFARS): "computer program," "computer software," "computer software documentation," and "technical data."

C2.3.3.2. The agreement should address the following issues:

C2.3.3.2.1. Definitions. The Agreements Officer should ensure that all essential terms are defined, including all classes of technical data and computer software, and all categories of applicable license rights. Where the terms "technical data," "computer software," "computer software documentation," or other standard terms used in the DFARS are used in the agreement, and this prototype technology is likely to be produced, maintained, or upgraded using traditional procurement instruments, these terms should be defined the same as used in the DFARS in order to prevent confusion.

C2.3.3.2.2. Allocation of Rights. The agreement should explicitly address the extent of the Government's rights obtained as a result of the Government's investment in the OT to use, modify, reproduce, perform, display, release, and disclose the relevant technical data and computer software. Consistent with the objectives of the project and contemplated follow-on activities: the Government can negotiate to receive rights in technical data and computer software that are developed under the agreement, regardless of whether it is delivered; and could even elect to negotiate to receive rights in all delivered technical data and computer software, regardless of whether it was developed under the agreement. The final negotiated clause should be determined on a case-by-case basis and should consider the instant and future needs of both parties, the technology at issue, and any commercialization strategies.

C2.3.3.2.3. Delivery Requirements. While not necessarily required to secure the Government's rights in the technical data and computer software (e.g., the clauses may grant the Government rights to technical data or computer software that is generated or developed under the project even if not delivered), if delivery of technical data, computer software, or computer software documentation is necessary, the Agreements Officer should consider the delivery medium, and for computer software, whether that includes both executable and source code.

C2.3.3.2.3.1. Government-Funded Development. The Agreements Officer should include delivery requirements for any technical data or computer software pertaining to technology developed at Government expense under the project, when that data or software would support the Government's objectives related to that technology.

C2.3.3.2.3.2. Additional Options for Delivery. In circumstances when the Government's needs for technical data or computer software are unclear or not yet determined, the Agreements officer should consider the use of contingency-based delivery mechanisms, such as priced options for future delivery, technical data or computer software escrow arrangements, or an appropriate deferred ordering clause.

C2.3.3.2.4. Identification of Restrictions and Restrictive Legends. The Agreements Officer should consider including a requirement for the Awardee (and other participants) to list or otherwise identify what technical data and computer software is being delivered with restrictions. In addition, the Agreements Officer should ensure that the Agreement requires descriptive restrictive markings to be placed on delivered technical data and computer software for which the Government is granted less than unlimited rights. The agreement should address the content and placement of the legends, with special care to avoid confusion between the classes of data defined by the agreement and the standard markings prescribed by the DFARS. In addition, the agreement should presume that all technical data and computer software delivered without these legends is delivered with unlimited rights.

C2.3.3.2.5. Special Circumstances. The agreement should account for certain emergency or special circumstances in which the Government may need additional rights, such as the need to disclose technical data or computer software for emergency repair or overhaul.

C2.3.3.2.6. The Agreements Officer should also account for commercial technical data and commercial computer software incorporated into the prototype. As compared to non-commercial technical data and computer software, the Government typically does not require as extensive rights in commercial technical data and software. However, depending on the objectives of the project and any contemplated follow-on activities, the Government may need to negotiate for greater rights in order to utilize the developed technology.

C2.4. RECOVERY OF FUNDS

Section 2371b(a) states that OTs for prototype agreements are made under the authority of 10 U.S.C. §2371. Section §2371(d) provides that an OT for a prototype project may include a clause that requires a person or other entity to make payments to the DoD, or any other department or agency of the Federal Government, as a condition for receiving support under the OT. Agreements Officers should consult their Comptroller representative and legal counsel on the application of this provision, and the disposition of the amount collected.

C2.5 PROTECTION OF CERTAIN INFORMATION FROM DISCLOSURE AND APPROPRIATE SECURITY REQUIREMENTS

C2.5.1. Specifically Exempted Information. Certain types of information submitted to the Department in a process having the potential for award of an OT are exempt from disclosure requirements of 5 U.S.C. §552 (FOIA) for a period of five years from the date the Department receives the information. Specifically, 10 U.S.C. §2371(i) provides that disclosure of this type of information is not required, and may not be compelled, under FOIA during that period if a party submits the information in a competitive or noncompetitive process having the potential for an award of an other transaction agreement. Such information includes the following:

C2.5.1.1. A proposal, proposal abstract, and supporting documents;

C2.5.1.2. A business plan submitted on a confidential basis; or

C2.5.1.3. Technical information submitted on a confidential basis.

C2.5.2. Notice to Offerors. The Agreements Officer should include a notice in solicitations that requires potential offerors to mark business plans and technical information that are to be protected for five years from FOIA disclosure with a legend identifying the documents as being submitted on a confidential basis.

C2.5.3. Generally Exempted Information. The types of information listed above may continue to be exempted, in whole or in part, from disclosure after the expiration of the five-year period if it falls within an exemption to the FOIA such as trade secrets and commercial or financial information obtained from a person and privileged or confidential.

C2.5.4. Security Requirements. Security requirements apply regardless of the type of legal instrument employed. Therefore, DoD security management and handling requirements outlined in publications such as DoD 5200 apply to prototype OTs.

C2.6. LEGAL ENTITY

C2.6.1. Legally Responsible Party. Agreements Officers should ensure that an OT agreement for a prototype project is entered into with an entity or entities that can execute the agreement and legally bind the entity or entities. That entity may be a single company, joint venture, partnership, consortium (through its members or authorized agent), or a prime contractor with subcontract relationships, among others.

C2.6.2. Consortia. Consortia can be structured in a variety of ways. Agreements Officers should be aware of the risks associated with entering into an agreement with a member on behalf of a consortium that is not a legal entity, i.e., not incorporated. Agreements Officers should review the consortium's Articles of Collaboration with legal counsel to determine whether they are binding on all members with respect to the particular project at issue. After having done so, Agreements Officers should, in consultation with legal counsel, determine if the consortium's proposed method of executing the agreement—with one member responsible for the entire agreement, with all members, or with one member on behalf of the consortium—is legally sufficient.

C2.7. CONSIDERATION OF PROTECTIONS PROVIDED IN LAW

C2.7.1. General. Agency legal counsel should be consulted and included in the project team when an OT agreement will be used. Statutes must be reviewed to ascertain their applicability.

C2.7.2. Applicable Statutes. Section 2371b expressly provides that procurement ethics requirements contained in the Procurement Integrity Act (41 U.S.C. §2101-2107) apply as they would to a standard Federal procurement contract. Otherwise, OTs generally are not required to comply with laws that are limited in applicability solely to procurement contracts, such as the Truthful Cost or Pricing Data Act (41 U.S.C. Chapter 35). However, if a particular requirement is not tied to the type of instrument used, it generally would apply to an OT—for

example, fiscal and property laws generally would apply to OTs for prototype projects.

C2.7.3. Statutes Not Necessarily Applicable. Though not necessarily applicable, the Agreements Officer may consider applying the principles or provisions of any inapplicable statute that provides important protections to the Government or the participants.

C2.8. AGREEMENT FUNDING

C2.8.1. Funding Restrictions. Agreements Officers should consult with legal counsel to determine the applicability of funding restrictions (e.g., prohibitions on the use of funds for certain items from foreign sources) found in appropriations acts to this particular prototype project.

C2.8.2. Funding Requirements. Fiscal law requirements are applicable to prototype OTs and are contained in agency fiscal regulations. For example, no Agreements Officer or employee of the Government may create or authorize an obligation in excess of the funds available, or in advance of appropriations (Anti-Deficiency Act, 31 U.S.C. §1341), unless otherwise authorized by law.

C2.8.3. Limits on Government Liability. When agreements provide for incremental funding or include expenditure based characteristics, the Agreements Officer should include appropriate provisions and clauses that address the limits on Government obligations.

C2.9. PROTESTS

While the Government Accountability Office (GAO) does not have bid protest jurisdiction regarding OTs for prototype projects, agencies should be mindful of the possibility of agency-level protests and protests filed at the U.S. Court of Federal Claims.

C2.10. FLOW DOWN

The Agreements Officer should consider which of the OT clauses the awardee should be required to flow down. In developing this negotiation position, the Agreements Officer should consider both the needs of the Government (e.g., audits) and the protections (e.g., intellectual property) that should be afforded to all participants.

C2.11. PRICE REASONABLENESS

C2.11.1. General. The Government must be able to determine that the amount of the OT agreement is fair and reasonable.

C2.11.2. Data Needed. The Agreements Officer may need data to establish price reasonableness, including commercial pricing data, market data, parametric data, or cost information. However, the Agreements Officer should exhaust other means to establish price

reasonableness before resorting to requesting cost information. The DCMA Commercial Pricing Centers of Excellence are valuable resources that may aid in determining a price to be reasonable. If cost information is needed to establish price reasonableness, the Government should obtain the minimum cost information needed to determine that the amount of the agreement is fair and reasonable.

C2.11.3. Advisory Services. DCAA is available to provide financial advisory services to the Agreements Officer to help determine price reasonableness. DCAA can provide information on the reasonableness of the proposed cost elements and any proposed contributions, including non-cash contributions. DCAA can also assist in the pre- award phase by evaluating the awardee's proposed accounting treatment and whether the awardee's proposed accounting system is adequate to account for the costs in accordance with the terms of the agreement.

C2.12. ALLOWABLE COSTS

C2.12.1. General. This section applies only when the OT for prototype agreement uses amounts generated from the awardee's financial or cost records as the basis for payment (e.g., interim or actual expenditures including payable milestones that provide for adjustment based on amounts generated from the awardee's financial or cost records), and/or requires at least one third of the total costs to be provided by non-Federal parties pursuant to statute.

C2.12.2. Use of Funds. The agreement should stipulate that Federal funds and the OT awardee's cost sharing funds, if any, are to be used only for costs that a reasonable and prudent person would incur in carrying out the prototype project.

C2.12.3. Allowable Costs Requirements. In determining whether to include some or all of the allowable cost requirements contained in the Cost Principles (48 CFR Part 31), the Agreements Officer should consider the guidance contained in section C2.13, "Accounting Systems."

C2.13. ACCOUNTING SYSTEMS

C2.13.1. General. This section applies only when the OT agreement for a prototype project uses amounts generated from the awardee's financial or cost records as the basis for payment (e.g., interim or actual expenditures including payable milestones that provide for adjustment based on amounts generated from the awardee's financial or cost records), or requires at least one third of the total costs to be provided by non-Federal parties pursuant to statute. In these cases, the Agreements Officer should consider including a clause that requires the awardee to consider key participants' accounting system capabilities when a key participant is contributing to the statutory cost share requirement or is expected to receive payments exceeding $500,000 that will be based on amounts generated from financial or cost records.

C2.13.2. System Capability. When structuring the OT agreement for a prototype project, the Agreements Officer must consider the capability of the awardee's accounting system. Agreements should require that adequate records be maintained to account for Federal funds received and cost-sharing, if any.

C2.13.2.1. The Agreements Officer should not enter into an OT agreement that provides for payment based on amounts generated from the awardee's financial or cost records if the awardee does not have an accounting system capable of identifying the amounts/costs to individual agreements/contracts. This is normally accomplished through a job order cost accounting system, whereby the books and records segregate direct costs by agreement/contract, and includes an established allocation method for equitably allocating indirect costs among agreements/contracts. However, any system that identifies direct costs to agreements/contracts and provides for an equitable allocation of indirect costs is acceptable.

C2.13.2.2. When the awardee has a system capable of identifying the amounts/costs, the agreement should utilize the awardee's existing accounting system to the maximum extent practical. The agreement should include a clause that documents the basis for determining the interim or actual amounts/costs, i.e., what constitutes direct versus indirect costs and the basis for allocating indirect costs. Agreements that impose requirements that will cause an awardee to revise its existing accounting system are discouraged.

C2.13.2.3. When the business unit receiving the award is not performing any work subject to the Cost Principles (48 CFR Part 31) and/or the Cost Accounting Standards (CAS) (48 CFR Part 99) at the time of award, the Agreements Officer should structure the agreement to avoid incorporating the Cost Principles and/or CAS requirements, since such an incorporation may require the awardee to revise its existing accounting system.

C2.13.2.4. When the business unit receiving the award is performing other work that is subject to the Cost Principles and/or CAS requirements, then the awardee will normally have an existing cost accounting system that complies with those requirements. In those cases, the Agreements Officer should consider including those requirements in the agreement unless the awardee can demonstrate that the costs of compliance outweigh the benefits (e.g., the awardee is no longer accepting any new CAS and/or FAR covered work, the agreement does not provide for reimbursement based on amounts/costs generated from the awardee's financial or cost records, the work will be performed under a separate accounting system from that used for the CAS/FAR covered work).

C2.13.3. DCAA. DCAA is available to provide information on the status of the awardee's accounting system or to respond to any questions regarding accounting treatment to be used for the other transaction.

C2.14. AUDIT

Except as provided in section 2371b, audits and access to financial records are subject to negotiation. Fixed amount agreements should generally not require any type of audit provisions. A possible exception is for agreements that provide for reimbursement of incurred costs related to a milestone the performer was unable to complete due to early termination of the agreement or effort if milestone payments involve high-dollar amounts. Agreement Officers should consult current DoD policy in the case of expenditure-based OT agreements. Independent public auditors (typically at performer expense) or Government audit agencies may be used to perform audits.

C2.15 COMPTROLLER GENERAL ACCESS

Section 2371b(c)(1) establishes a requirement that an OT for a prototype project that provides for payments in a total amount in excess of $5,000,000 include a clause that provides Comptroller General access to records (see Appendix 1 for the statutory language).

C2.16. COST SHARING

C2.16.1. When Applicable. One condition for the use of an OT for prototype projects is if neither a nontraditional defense contractor nor a small business concern is participating to a significant extent in the prototype project and at least one third of the total cost of the prototype project is to be paid out of funds provided by the parties to the transaction other than the Federal Government (see 10 U.S.C. §2371b(d)(1)(C) in Appendix 1, and section C1.5.1 of this guide). However, the Government should not generally mandate cost-sharing requirements for defense unique items so use of OT authority that invokes cost-sharing requirements should typically be limited to those situations where there are commercial or other benefits to the awardee. The Agreements Officer also has authority to structure a cost-sharing arrangement even when not required by statute. This option should be considered and utilized by an Agreements Officer if such an arrangement would effectively incentivize and encourage the project's outcomes, but should not be used if the primary purpose is to cover a program shortfall. Cost sharing in OTs is not limited to cost sharing whereby the awardee accrues commercial or other benefits, but may include third-party financing of the project.

C2.16.2. Limitations on Cost-Sharing. If cost-sharing is used, then the non-Federal amounts counted as provided, or to be provided, by the business units of an awardee or subawardee participating in the performance of the OT agreement may not include costs that were incurred before the date on which the OT agreement becomes effective. Costs that were incurred for a prototype project by the business units of an awardee or subawardee after the beginning of negotiations, but prior to the date the OT agreement becomes effective, may be counted as non-Federal amounts if and to the extent that the Agreements Officer determines in writing that (1) the awardee or subawardee incurred the costs in anticipation of entering into the OT agreement; and (2) it was appropriate for the awardee or subawardee to incur the costs before the OT agreement became effective in order to ensure the successful implementation of the OT agreement.

C2.16.3. Nature of Cost-Share. The Agreements Officer should understand and evaluate the nature of the cost share. Cost sharing should generally consist of labor, materials, equipment, and facilities costs (including allocable indirect costs). Any part of the cost share that includes an amount for a fully depreciated asset should be limited to a reasonable usage charge. In determining the reasonable usage charge, the Agreements Officer should consider the original cost of the asset, total estimated remaining useful life at the time of negotiations, the effect of any increased maintenance charges or decreased efficiency due to age, and the amount of depreciation previously charged to procurement

contracts and subcontracts. In determining the amount of cost sharing, the agreement should not count, as part of the awardee's cost share, the cost of Government-funded research, prior IR&D, or indirect costs that are not allocable to the "other transaction."

C2.16.4. Accounting Treatment. The Agreements Officer should have a clear understanding of the awardee's accounting treatment for cost share. While the Agreements Officer should not include any provisions that would require the awardee to use a specific method of cost charging, the awardee may have procurement contracts subject to the CAS that could be affected by an awardee's inconsistent accounting treatment. Not every OT awardee with procurement contracts awards is covered by CAS. For example, small businesses are not required to comply with CAS (see 48 CFR 30.000). Other exceptions to CAS coverage are found at 48 CFR 9903.201-1.

C2.16.5. Equity When Sharing Costs. Generally, the Government's payments or financing should be representative of its cost share as the work progresses, rather than front loading Government contributions. Other transactions that require cost sharing should generally provide for adjustment of Government or private sector investment or some other remedy if the other party is not able to make its required investment. Such other transactions should address the procedures for verifying cost share contributions, the conditions that will trigger an adjustment and the procedures for making the adjustment.

C2.16.6. Financial Reporting. Other transactions that use amounts generated from the awardee's financial or cost records as the basis for payment, or require at least one third of the total costs to be provided by non- Federal parties pursuant to statute, should require financial reporting that provides appropriate visibility into expenditures of Government funds and expenditures of private sector funds and provide for appropriate audit access (see C2.14).

C2.17. PAYMENTS

C2.17.1. General.

C2.17.1.1. Profit or fee is permitted for awardees of OTs for prototype projects, and should be negotiated based on the particulars of each individual situation.

C2.17.1.2. There is no one means of providing payments for OTs. The agreement must identify clearly the basis and procedures for payment. Consider the following in drafting the agreement payment clauses:

C2.17.1.2.1. Are payments based on amounts generated from the awardee's financial or cost records? In determining whether the agreement should provide for reimbursement based on the awardee's financial or cost records, the Agreement Officer should consider the guidance contained in section C2.13, "Accounting Systems."

C2.17.1.2.2. Are the payment amounts subject to adjustment during the period of performance?

C2.17.1.2.3. If the payments can be adjusted, what is the basis and process for the adjustment?

C2.17.1.2.4. What are the conditions and procedures for final payment and agreement close-out?

C2.17.1.2.5. Is an interim or final audit of costs needed?

C2.17.2. Payable Milestones. Well-structured, payable milestones can serve the dual purpose of meeting cash flow needs of the performer and as a management tool to verify observable achievements on the critical path to project success. Failure to achieve milestone/ technical goals forces a management analysis and decision. There is not one uniform clause or set of procedures for payable milestones. Payable milestone procedures vary, depending on the inherent nature of the agreement.

C2.17.2.1. Fixed payable milestones. Agreements with fixed amount characteristics may contain payable milestone clauses that do not provide for adjustment based on amounts generated from the awardee's financial or cost records. In these cases, this fact should be clear in the agreement and the negotiated payable milestone values should be commensurate with the estimated value of the milestone events.

C2.17.2.2. Adjustable payable milestones. Alternatively, agreements may provide for payable milestones to be adjusted based on amounts generated from the awardee's financial or cost records. When this is the case, the agreement must address the procedures for adjusting the payable milestones, including consideration of the guidance contained in section C2.13, "Accounting Systems." Payable milestones should be adjusted as soon as it is reasonably evident that adjustment is required under the terms of the agreement.

C2.17.3. Advance Payments. Agreements Officers should exercise business judgment when determining when to allow advance payments. Some instances in which advance payments may be beneficial include reducing financing costs for large, up-front expenditures and ensuring sufficient cash flow for small companies. If advanced payments are used, Agreements Officers should address interest earned, including whether to establish an interest-bearing account.

C2.17.4. Provisional Indirect Rates on Interim Payments. When the agreement provides for interim reimbursement based on amounts generated from the awardee's financial or cost records, any indirect rates used for the purpose of that interim reimbursement should be no higher than the awardee's provisionally approved indirect rates, when such rates are available.

C2.18. PROPERTY

C2.18.1. General. The Government is not required to, and generally should not, take title to property acquired or produced by a private party signatory to an OT except property the agreement identifies as deliverable property. In deciding whether to take title to property under an OT agreement, the Government should consider whether known or future efforts may be

fostered by Government ownership of the property. Under section 2371b(g), a delivered prototype may be provided to another contractor as Government-furnished equipment. (See Appendix 1 for statutory language.)

C2.18.2. Requirements and Guidance - Government Title. If the Government takes title to property or furnishes Government property, then the property is subject to statutes pertaining to the treatment and disposition of Government property and a property clause must be included in the agreement. The property clause must be consistent with the Federal Property and Administrative Services Act and, as a minimum, should address the following:

C2.18.2.1. A list of property to which the Government will obtain title;

C2.18.2.2. Whether the awardee or the Government is responsible for maintenance, repair, or replacement;

C2.18.2.3. Whether the awardee or the Government is liable for loss, theft, destruction of, or damage to the property;

C2.18.2.4. Whether the awardee or the Government is liable for loss or damage resulting from use of the property; and

C2.18.2.5. The procedures for accounting for, controlling, and disposing of the property. (When the awardee is a company that does not traditionally do business with the Government, the company's commercial property control system should generally be used to account for Government property.)

C2.18.3. Additional Government-Furnished Property Requirements. The OT for prototype agreement should specify:

C2.18.3.1. What guarantees (if any) the Government makes regarding the property's suitability for its intended use, the condition in which the property should be returned, and any limitations on how or the time the property may be used; and

C2.18.3.2. A list of property the Government will furnish for the performance of the agreement.

C2.18.4. Cost-Sharing Considerations. When the private party signatory has title to property that will be factored into the signatory's cost share amount, the private party signatory and the Government must agree on the method for determining the value of the property.

C2.19. CHANGES

C2.19.1. Method of Change. The OT for prototype agreement should address how changes will be handled. The Agreements Officer should consider whether the Government should have the right to make a unilateral change to the agreement, or whether all changes should be bilateral. If contemplating unilateral changes, consider the fact that unilateral changes may lead to disputes and claims, particularly in agreements with fixed-amount characteristics.

C2.19.2. Need for Unilateral Change. The Government may need the right to make a

unilateral change to the agreement to ensure that critical requirements are met, or there are changes to the availability of Government funding for the project. If a significant cost contribution is not expected from the OT awardee, then the Government should normally retain its right to make a unilateral change. The awardee should be entitled to an equitable adjustment for any unilateral change that caused an increase or decrease in the cost of, or the time required for, performance.

C2.19.3. Accounting Systems. In determining the method to be used to compute the amount of the equitable adjustment (monies due as a result of a change), the Agreement Officer should consider the guidance contained in section C2.13, "Accounting Systems."

C2.20. DISPUTES

C2.20.1. Process. Although OTs for prototype projects are not subject to the Contract Disputes Act, an OT dispute potentially can be the subject of a claim in the Court of Federal Claims. Agreement Officers should ensure each OT addresses the basis and procedures for resolving disputes.

C2.20.2. Alternate Disputes Resolution (ADR). Agreements Officers should seek to reduce the risk of costly litigation by negotiating disputes clauses which maximize the use of ADR when possible and appropriate. Agreements Officers should consult with the ADR Specialist in their organization for assistance in crafting ADR clauses.

C2.21. TERMINATION

C2.21.1. Basis for Termination. Agreements Officers should consider termination clauses (both for convenience or for cause) in light of the circumstances of the particular OT prototype project. A unilateral Government termination right may be appropriate. In cases in which there is an apportionment of risk allocation and cost sharing, it could be appropriate to allow an awardee termination right as well. Such a termination could occur in instances in which an awardee discovers that the expected commercial value of the prototype technology does not justify continued investment or the Government fails to provide funding in accordance with the agreement. Termination clauses should identify the conditions that would permit terminations and include the procedures for deciding termination settlements. Two examples of procedures for deciding termination amounts include: (1) providing for no payment beyond the last completed payable milestone; or (2) recognizing that the termination settlement costs are subject to negotiation. The latter procedure must be used when the agreement requires that at least one third of the total costs to be provided by non- Federal parties pursuant to statute.

C2.21.2. Remedies. Agreements Officers should consider whether the Government should be provided the opportunity to terminate for cause, tailoring clauses to discourage defaults in line with the agreement's overall allocations of risk. When agreements provide the Government the right to terminate for cause or provide the awardee the right to terminate, the agreement should address what remedies are due to the Government. For example, it may be appropriate to require recoupment of the Government's investment or to obtain unlimited or Government purpose license rights to intellectual property created during performance that are

necessary to continue a prototype project.

C2.21.3. Accounting Systems. If termination settlement costs are expected to be the subject of negotiation based on amounts generated from the awardee's financial or cost records, then the Agreements Officer should consider the guidance contained in sections C2.12 to C2.14, entitled Allowable Costs, Accounting Systems, and Audit.

C2.21.4. Caution. If the Agreements Officer is attempting to establish a fixed-amount agreement, the awardee should not typically have the right to terminate. If the Agreements Officer decides there are reasons to provide the awardee the right to terminate, then termination settlements should be limited to the payable milestone amount of the last completed milestone.

C2.22. AWARDEE REPORTING

C2.22.1. Performance Reporting. The awardee is responsible for managing and monitoring each prototype project and all participants. The solicitation and resulting agreement should identify the frequency and type of performance reports necessary to support effective management. Effective performance reporting addresses cost, schedule and technical progress. It compares the work accomplished and actual cost to the work planned and the estimated cost and explains any variances. There is not a "one-size- fits-all" approach. There could be little, if any, performance reporting required if the agreement price is fixed and financing is provided by fixed payable milestones. However, if this is not the case, performance reporting will be necessary.

C2.22.1.1. Teaming Arrangements. If an awardee is teaming with other companies (e.g., consortium, joint venture) for the prototype project, the Agreements Officer should consider if performance reporting on all team members would be appropriate.

C2.22.1.2. DoDI 5000 Series. OT agreements for prototype projects that meet the dollar criteria or risk management considerations in DoDI 5000.02 must follow DoD policy for defense acquisition programs unless a waiver is obtained from the appropriate designated official. When cost performance reporting is required, the Project Manager is encouraged to seek appropriate experts to advise on the elements of performance management visibility and tailor the report to obtain only the information needed for effective management control.

C2.22.2. Link to Payment. Agreements Officers, in consultation with the Project Manager, should consider whether reports required of the OT awardee are important enough to warrant establishment of line items or separate payable milestones or if reporting requirements should be incorporated as a part of a larger line item or payable milestone. In either case, an appropriate amount should be withheld if a report is not delivered.

C2.23. ADMINISTRATION

C2.23.1. Documentation. It is vital that Administrative Agreements Officers receive all pertinent documentation to ensure the effective administration of the agreement.

C2.23.2. Corrective Action. It is the Administrative Agreements Officer's responsibility to ensure that all terms and conditions of the agreement are being satisfied. If the OT awardee has failed to comply with any term of the agreement, the Administrative Agreements Officer must take timely, appropriate action to remedy the situation.

C2.24. AGREEMENT CLOSE-OUT

Agreement close-out should occur in accordance with agency procedures, considering special areas such as audit requirements, cost sharing, payments, property, patents, and OT awardee reports.

APPENDIX 1: Sec. 815 of NDAA 2016 Enacting 10 U.S.C. §2371b

(a) Authority of the Department of Defense To Carry Out Certain Prototype Projects.--

(1) In general.--Chapter 139 of title 10, United States Code, is amended by inserting after section 2371a the following new section:

"Sec. 2371b Authority of the Department of Defense to carry out certain prototype projects

"(a) Authority.--(1) Subject to paragraph (2), the Director of the Defense Advanced Research Projects Agency, the Secretary of a military department, or any other official designated by the Secretary of Defense may, under the authority of section 2371 of this title, 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 acquired or developed by the Department of Defense, or to improvement of platforms, systems, components, or materials in use by the armed forces.

"(2) The authority of this section--

"(A) may be exercised for a prototype project that is expected to cost the Department of Defense in excess of $50,000,000 but not in excess of $250,000,000 (including all options) only upon a written determination by the senior procurement executive for the agency as designated for the purpose of section 1702(c) of title 41, or, for the Defense Advanced Research Projects Agency or the Missile Defense Agency, the director of the agency that--

"(i) the requirements of subsection (d) will be met; and

"(ii) the use of the authority of this section is essential to promoting the success of the prototype project; and

"(B) may be exercised for a prototype project that is expected to cost the Department of Defense in excess of $250,000,000 (including all options) only if--

"(i) the Under Secretary of Defense for Acquisition, Technology, and Logistics determines in writing that--

"(I) the requirements of subsection (d) will be met; and

"(II) the use of the authority of this section is essential to meet critical national security objectives; and

"(ii) the congressional defense committees are notified in writing at least 30 days before such authority is exercised.

"(3) The authority of a senior procurement executive or director of the Defense Advanced Research Projects Agency or Missile Defense Agency under paragraph (2)(A), and the authority of the Under Secretary of Defense for Acquisition, Technology, and Logistics under paragraph (2)(B), may not be delegated.

"(b) Exercise of Authority.--

"(1) Subsections (e)(1)(B) and (e)(2) of such section 2371 shall not apply to projects carried out under subsection (a).

"(2) To the maximum extent practicable, competitive procedures shall be used when entering into agreements to carry out projects under subsection (a).

"(c) Comptroller General Access to Information.--(1) Each agreement entered into by an official referred to in subsection (a) to carry out a project under that subsection that provides for payments in a total amount in excess of $5,000,000 shall include a clause that provides for the Comptroller General, in the discretion of the Comptroller General, to examine the records of any

party to the agreement or any entity that participates in the performance of the agreement.

``(2) The requirement in paragraph (1) shall not apply with respect to a party or entity, or a subordinate element of a party or entity, that has not entered into any other agreement that provides for audit access by a Government entity in the year prior to the date of the agreement.

"(3)(A) The right provided to the Comptroller General in a clause of an agreement under paragraph (1) is limited as provided in subparagraph (B) in the case of a party to the agreement, an entity that participates in the performance of the agreement, or a subordinate element of that party or entity if the only agreements or other transactions that the party, entity, or subordinate element entered into with Government entities in the year prior to the date of that agreement are cooperative agreements or transactions that were entered into under this section or section 2371 of this title.

"(B) The only records of a party, other entity, or subordinate element referred to in subparagraph (A) that the Comptroller General may examine in the exercise of the right referred to in that subparagraph are records of the same type as the records that the Government has had the right to examine under the audit access clauses of the previous agreements or transactions referred to in such subparagraph that were entered into by that particular party, entity, or subordinate element.

"(4) The head of the contracting activity that is carrying out the agreement may waive the applicability of the requirement in paragraph (1) to the agreement if the head of the contracting activity determines that it would not be in the public interest to apply the requirement to the agreement. The waiver shall be effective with respect to the agreement only if the head of the contracting activity transmits a notification of the waiver to Congress and the Comptroller General before entering into the agreement. The notification shall include the rationale for the determination.

"(5) The Comptroller General may not examine records pursuant to a clause included in an agreement under paragraph (1) more than three years after the final payment is made by the United States under the agreement.

"(d) Appropriate Use of Authority.--(1) The Secretary of Defense shall ensure that no official of an agency enters into a transaction (other than a contract, grant, or cooperative agreement) for a prototype project under the authority of this section unless one of the following conditions is met:

"(A) There is at least one nontraditional defense contractor participating to a significant extent in the prototype project.

"(B) All significant participants in the transaction other than the Federal Government are small businesses or nontraditional defense contractors.

"(C) At least one third of the total cost of the prototype project is to be paid out of funds provided by parties to the transaction other than the Federal Government.

"(D) The senior procurement executive for the agency determines in writing that 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 contract, or would provide an opportunity to expand the defense supply base in a manner that would not be practical or feasible under a contract.

"(2)(A) Except as provided in subparagraph (B), the amounts counted for the purposes of this subsection as being provided, or to be provided, by a party to a transaction with respect to a prototype project that is entered into under this section other than the Federal Government do not include costs that were incurred before the date on which the transaction becomes effective.

"(B) Costs that were incurred for a prototype project by a party after the beginning of negotiations resulting in a transaction (other than a contract, grant, or cooperative agreement) with

respect to the project before the date on which the transaction becomes effective may be counted for purposes of this subsection as being provided, or to be provided, by the party to the transaction if and to the extent that the official responsible for entering into the transaction determines in writing that--

"(i) the party incurred the costs in anticipation of entering into the transaction; and

"(ii) it was appropriate for the party to incur the costs before the transaction became effective in order to ensure the successful implementation of the transaction.

"(e) Definitions.--In this section:

"(1) The term 'nontraditional defense contractor' has the meaning given the term under section 2302(9) of this title.

"(2) The term 'small business' means a small business concern as defined under section 3 of the Small Business Act (15 U.S.C. 632).

"(f) Follow-on Production Contracts or Transactions.--(1) A transaction entered into under this section for a prototype project may provide for the award of a follow-on production contract or transaction to the participants in the transaction.

"(2) A follow-on production contract or transaction provided for in a transaction under paragraph (1) may be awarded to the participants in the transaction without the use of competitive procedures, notwithstanding the requirements of section 2304 of this title, if--

``(A) competitive procedures were used for the selection of parties for participation in the transaction; and

"(B) the participants in the transaction successfully completed the prototype project provided for in the transaction.

"(3) Contracts and transactions entered into pursuant to this subsection may be awarded using the authority in subsection (a), under the authority of chapter 137 of this title, or under such procedures, terms, and conditions as the Secretary of Defense may establish by regulation.

"(g) Authority To Provide Prototypes and Follow-on Production Items as Government-furnished Equipment.--An agreement entered into pursuant to the authority of subsection (a) or a follow-on contract or transaction entered into pursuant to the authority of subsection (f) may provide for prototypes or follow-on production items to be provided to another contractor as Government-furnished equipment.

"(h) Applicability of Procurement Ethics Requirements.--An agreement entered into under the authority of this section shall be treated as a Federal agency procurement for the purposes of chapter 21 of title 41.".

(2) Clerical amendment.--The table of sections at the beginning of chapter 139 of such title is amended by inserting after the item relating to section 2371a the following new item:
"2371b. Authority of the Department of Defense to carry out certain prototype projects.".

(b) Modification to Definition of Nontraditional Defense Contractor.--Section 2302(9) of such title is amended to read as follows:

"(9) The term 'nontraditional defense contractor', with respect to a procurement or with respect to a transaction authorized under section 2371(a) or 2371b of this title, means 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 Department of Defense for the procurement or transaction, any contract or subcontract for the Department of Defense that is subject to full coverage under the cost accounting standards prescribed pursuant to section 1502 of title 41 and the regulations implementing such section.''

(c) Repeal of Obsolete Authority.--Section 845 of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103-160; 10 U.S.C. 2371 note) is hereby repealed. Transactions entered into under the authority of such section 845 shall remain in force and effect and shall be modified as appropriate to reflect the amendments made by this section.

(d) Technical and Conforming Amendment.--Subparagraph (B) of section 1601(c)(1) of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108-136; 10 U.S.C. 2358 note) is amended to read as follows:

"(B) sections 2371 and 2371b of title 10, United States Code.".

(e) Updated Guidance.--Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall issue updated guidance to implement the amendments made by this section.

(f) Assessment Required.--Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the congressional defense committees an assessment of--

(1) the benefits and risks of permitting not-for-profit defense contractors to be awarded transaction agreements under section 2371b of title 10, United States Code, for the purposes of cost-sharing requirements of subsection (d)(1)(C) of such section; and

(2) the benefits and risks of removing the cost-sharing requirements of subsection (d)(1)(C) of such section in their entirety.

APPENDIX 2: OT Resources

See the DPAP "Innovation in Contracting" web page for a current list of resources at: http://www.acq.osd.mil/dpap/cpic/cp/innovation_in_contracting.html

DoD Centers of Excellence for OTs for Prototype Projects

Over the years, several Centers of Excellence in the use of OTs have emerged. Leveraging their experience and expertise is strongly encouraged and will allow other entities to benefit from and build on their successes. They include:

- Defense Advanced Research Projects Agency (DARPA): http://www.darpa.mil/
- USAF: Transformational Innovation web page at http://www.transform.af.mil/
- USA: http://acc.army.mil/contractingcenters/acc-nj/index.html
- USN: https://www.nrl.navy.mil/

DoD Organizations with OT for Prototype Authority

- Check http://www.acq.osd.mil/dpap/cpic/cp/innovation_in_contracting.html for current information, or inquire via email at: osd.pentagon.ousd-atl.mbx.cpic@mail.mil.