OTHER TRANSACTION GUIDE

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I. INTRODUCTION

The Federal Aviation Administration (FAA) AMS defines “Other Transactions” (OT) as a transaction that is a legally binding instrument that is not a standard procurement contract, grant, or cooperative agreement. OTs are typically an agreement between the FAA and a non-Federal entity (either foreign or domestic) where the FAA's purpose is to obtain a direct benefit that advances the agency’s mission while also assisting the general public. [1] Other transaction agreements (OTAs) are distinct from procurement contracts, grants, and cooperative agreements as they are not generally subject to AMS policy and regulations.[2] OTAs are subject to AMS requirements only when explicitly stated as so by this Guide. While OTAs come with fewer restrictions than other award types, OTAs must be awarded in a manner that ensures effective stewardship of taxpayer dollars and complies with all applicable federal funding requirements.

For this reason, the FAA Acquisition Policy Group has developed this OTA Guide document to assist the acquisition team in planning, negotiation, award, and administration of OTAs.

II. LEGAL AUTHORITY FOR THE USE OF OTHER TRANSACTIONS

Pursuant to the FAA Reauthorization Act of 1996, 49 U.S.C. 106(l) (6), the Administrator has broad authority "to enter into and perform such contracts, leases, cooperative agreements, or other transactions as may be necessary to carry out the functions of the Administrator and the Administration . . .with any Federal agency, or any instrumentality of the United States, any territory, or possession, or political subdivision thereof, any other governmental entity, or any person, firm, association, corporation, or educational institution, on such terms and conditions as the Administrator may consider appropriate." The Administrator’s OT authority has been further expanded to include the use of collaborative research and development agreements, to direct research related to unmanned aircraft systems, including at any test range, in coordination with the Center of Excellence for Unmanned Aircraft Systems.[3]

III. ROLES AND RESPONSIBILITIES

A warranted Contracting Officer (CO) and only those qualified individuals with delegated OTA procurement authority by the FAA Acquisition Executive may enter into and legally bind the FAA with respect to OTAs. The CO and those qualified individual are responsible for legally committing the government to an OTA, and for the administrative and financial aspects of the award. Hereafter, the term “CO” will include qualified individuals with the requisite procurement authority as defined in AMS T3.1.4A.5 Procurement Authority Delegated to Other Qualified Individuals.

IV. TYPES OF OTHER TRANSACTION AGREEMENTS

OTAs can be structured in a variety of ways. The FAA OT authority is broad and allows flexibility to develop programs that meet the rapidly advancing needs of aviation research. In

[1] AMS Procurement Guidance T.3.8.1A.4

[2] Federal Aviation Administration Reauthorization Act of 1996, Public Law 104-264

[3] See Reauthorization Act of 2018, for further details on Unmanned Aircraft Systems.

some cases, including multi-party transactions, an OTA provides the flexibility to develop partnering relationships with industry in meeting agency objectives. For example, the FAA may enter into an OTA with another party to jointly develop a system that may eventually be subsequently purchased through a procurement contract by the FAA and/or purchased by airport authorities and foreign air traffic organizations. The FAA can also utilize OTAs for construction of a fence or the laying of cable that would benefit the airport authority (or the general public) and the FAA facility at the airport. Like the examples cited above, OTAs allow acquisition teams to think creatively to obtain a direct benefit that advances the agency's mission.

The following is a representative list of when the FAA may use OTAs to advance the agency's mission:

A. Prototype Projects

The FAA has the flexibility under its OT authority to acquire prototype capabilities and allow for those prototypes to transition into a non-competitive follow on production OTA. If the FAA elects to pursue a prototype project with follow on production capabilities, the original prototype OTA must use competitive procedures as outlined by the AMS to the maximum extent possible and include notice that a follow on production OTA is possible. Prototype OTAs offer a streamlined method for transitioning into follow-on production without competition. By using this OT structure, the FAA is able to leverage production efforts without re-competing the effort.

B. Research and Development

The FAA AMS and certain federal procurement statutes do not apply to OTAs, which allows the FAA the flexibility needed to enter into research and development (R&D) OTAs. For example, R&D OTAs permit the FAA to obtain cutting edge aviation research without burdening commercial partners with FAA regulatory overhead. Relieving industry partners from regulatory overhead allows industry to remain competitive in the commercial sector while partnering with the FAA.

C. Unmanned Aircraft Systems

OTA's can also be utilized for the purpose of directing research related to unmanned aircraft systems, including at any test range, and in coordination with the Center of Excellence for Unmanned Aircraft Systems (UAS). The FAA established the Center of Excellence for UAS to collaborate with the nation's academic community and its affiliates for the purpose of fostering cooperative research and developing intellectual capabilities of primary interest to the FAA and UAS community.

D. Reimbursable Agreements

OTA's can be used as reimbursable agreements with a non-federal entity where the FAA is essentially a Contractor and subject to the terms and conditions of the non-federal entity. If using an OTA reimbursable agreement for the transaction, the CO must follow AMS Guidance T3.8.1A.5, FAA Financial Manual, Vol. 6 Chapter 6, [4] and Reimbursable Agreement Standard Operating Procedure (SOP) "Creating, Executing, and Implementing Reimbursable Agreements" [5] for reimbursable agreements and approved templates.

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[4] https://my.faa.gov/content/dam/myfaa/org/staffoffices/afn/finance/policy/fm/FAA_Financial_Manual_Vol_6_Accounting.pdf

[5] https://my.faa.gov/content/dam/myfaa/org/staffoffices/afn/finance/sop/reimbursable_sop_final.pdf

E. Other Transaction Types

The FAA also has the flexibility beyond those cited above to create OTAs for the following purposes:

- To enter into agreements with state and local governments and nonprofit organizations in support of the FAA's mission, e.g., construction of air traffic towers.
- To create diverse and highly variable business structures such as consortiums that harness disparate types of organizations to maximize the advantages of each and minimize/mitigate the disadvantages of each in facilitating innovation.[66]
- To enter into arrangements with foreign entities in support of the FAA's mission, e.g., an OTA to provide training for air traffic controllers in Afghanistan
- To structure business arrangements to address specific aviation needs and circumstances, e.g., where a private airport retains title to a MALSR and the FAA is responsible for maintenance of the MALSR equipment, construction of a fence, or the laying of cable that would benefit the airport authority (or the general public) and the FAA facility at the airport.
- To leverage commercial industry investment in technology developments.
- To partner with industry to ensure FAA current and future requirements are incorporated into future technology or products that carry out the mission of the agency.

V. AGREEMENT PLANNING AND ADMINISTRATION

A. Selection and Negotiation of Terms

OT authority provides the FAA with the flexibility to negotiate terms and conditions as the AMS, and other federal procurement laws do not apply to these types of agreements. With such flexibility, COs have to ensure appropriate safeguards are included in OTAs to protect the government's interest. For example, CO's have to avoid violating the Anti-Deficiency Act and be cognizant not to create an inadvertent joint venture.

To assist the COs in drafting and negotiating terms, the following is a list of terms to consider:

Price Reasonableness

The CO will determine the price reasonableness for all efforts exercised under an OTA. Transactions over $micro-purchase threshold must be supported by a written determination by the CO that the price is fair and reasonable. When possible, this determination can be based on competition. When awards are made without competition or when only a single offer is received, the CO must use other price analysis techniques to determine if the price is reasonable.

One of several techniques in determining price reasonableness is the comparison of the proposed prices with an independent government cost estimate (IGCE). At the CO's discretion, the CO may require that the program office prepare an IGCE to provide the CO with an unbiased, realistic cost estimate for the proposed project. The IGCE complexity will vary based on the nature of the requirement and anticipated dollar value. If an IGCE is not suitable for the transaction, the CO may also use commercial pricing data, historical data, market data,

[6] NCMA, Ten Things You Need to Know About Other Transaction Agreements (OTAs), May 9, 2019

parametric, or cost information to determine price reasonableness.

NDAA Section 889

The FAA uses its discretion in applying Section 889 of the John S. McCain National Defense Authorization Act (NDAA) for Fiscal Year 2019 (Pub. L. 115-232) to OTAs. In developing an OTA the CO should use business judgment to determine if, based upon the scope of the agreement, it is in the best interest of the FAA that Section 889 related clauses and provision are included as part of the OTA's terms and conditions. If the CO determines Section 889's inclusion is appropriate, the CO should incorporate AMS Provision 3.6.4-22 (INTERIM), AMS Clause 3.6.4-23 (INTERIM) and AMS Provision 3.6.4-24 (INTERIM).

Intellectual Property

In developing an OTA, the CO should work with the program office and legal to assess the impacts of any associated intellectual property (IP) rights concerning the transaction. In analyzing IP rights, the FAA should consider the project goals, including the likely commercialization of the intended research or prototype that results from the transaction. It also should formulate IP clauses relative to the investments and risks borne by the parties in the development and maintenance of the technology. Any negotiated intellectual property clause should strike a balance between the relative investments and risks borne by the parties.

Title to Property

The FAA is not required to take title to the property (not including IP) acquired or produced by a private party signatory to an OTA, except property the agreement identifies as a deliverable. In deciding whether or not to take title to the property under an OT, the FAA should evaluate whether known or future efforts may be fostered by FAA ownership of the property. If the FAA takes title to the property or furnishes Government property, then the property should incorporate AMS Clause 3.10.3-2 Government Property (April 2019) in the agreement.

Organizational Conflict of Interest

In negotiating the agreement, the CO should consider any potential organizational conflict of interest (OCI) situations that may arise concerning the transaction. The CO should incorporate AMS Clause 3.1.7-2 Organizational Conflicts of Interest (July 2018) and 3.1.7-4 Organizational Conflict of Interest – Mitigation Plan Required (October 2019) to ensure that the Contractor discloses any actual or potential OCI that is discovered after the agreement has been executed. By including the OCI clauses, the FAA can properly monitor and check OTAs for actual or potential OCIs.

Payment

The payment structures under OTAs are negotiable. The agreement must clearly identify the basis and procedures for payment. The CO should consider the following payment structures:

A. Payable Milestones

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. There are three primary payable milestone options available for OTAs: fixed, adjustable (cost reimbursable), and a hybrid approach that combines these two options. The agreement must

identify clearly the basis and procedures for payment. It is important to note that optional milestones do not become part of the project agreement terms unless exercised and funded by the Government.

B. Advance Payments

Advance payments are advances of money by the government to a prime Contractor before, in anticipation of, and for the purpose of complete performance under an OTA. They are expected to be liquidated from payments due to the Contractor incident to performance of the agreement.[7] The government acquisition team should exercise business judgment when determining when to allow advance payments as advance payment is the least preferred method of contract financing.

Some instances in which advance payments may be beneficial include reducing financing costs for large, up-front construction expenditures and ensuring sufficient cash flow for small companies.

When utilizing advance payments, the CO should adhere to the following procedures:

What does the Contractor need to provide the CO to initiate Advance Payments under an OTA?

If advanced payments are being considered for the transaction, the Contractor must submit a written request for advanced payments to the CO with the following information:

a. A reference to the proposed transaction.
b. A cash flow forecast showing estimated disbursements and receipts for the period of the agreement.
c. Proposed total amount of advance payments and method and schedule of advance payment liquidation
d. The name and address of the financial institution at which the Contractor expects to establish a special account as depository for the advance payments.
e. Other information appropriate to an understanding of (i) the Contractor's financial condition and need, (ii) the Contractor's ability to perform the contract without loss to the FAA, and (iii) financial safeguards needed to protect the FAA's interest.

How will advanced payments be processed under an OTA?

After analysis of the Contractor's request, the CO shall recommend approval or disapproval. If approved, advance payments will be processed as follows:

(a) 30-Day Advance: The Contractor is authorized to request, in writing, FAA funds in amounts needed to cover its own disbursements of cash in the next 30 calendar days for contract performance. The Contractor's request typically requires 30 calendar days for processing. The 30-day advance is the preferred method of providing advance funds to a Contractor; or

[7] 2014 Contract Attorneys Deskbook, https://www.loc.gov/rr/frd/Military_Law/pdf/CAD_2014_Ch20.pdf

(b) 3-Day Advance: The Contractor is authorized to request FAA funds in amounts needed to cover its own disbursements of cash in the next 3 working days for contract performance. When this payment method is selected, FAA will deposit funds in the Contractor's designated account within 3 working days after receipt of the request by the FAA accounting office. This method of providing advance funds to a Contractor is the least preferred method and will be used sparingly.

Is interest allowable for unliquidated advance payments?

For any unliquidated advance payments, the Contractor shall pay the FAA interest, except for awards made to state FAAs, or instrumentalities thereof. The interest will be charged at the Department of Treasury current value of funds rate. The COCO may authorize advance payments without interest if in FAA's interest.[8]

How will the FAA recoup unliquidated advance payments under an OTA?

At any time, the Contractor may repay all or any part of the funds advanced by the FAA. The Contractor shall repay to the FAA any part of unliquidated advance payments considered by the CO to exceed the Contractor's current requirements. If the Contractor fails to repay the amount requested by the CO, all or any part of the unliquidated advance payments may be withdrawn from the special account by check signed by only the countersigning agent and applied to reduction of the unliquidated advance payments under this contract. On completion or termination of the OTA, the FAA shall deduct from the amount due to the Contractor all unliquidated advance payments and all interest charges payable. If previous payments to the Contractor exceed the amount due, the excess amount shall be paid to the FAA on demand.

B. 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.

Cost Sharing

Cost sharing may be an option for the parties entering into an OTA. When the parties to the FAA enter into a cost sharing arrangement, it must be documented in the agreement. The two types of cost sharing arrangements are "cash" or "in-kind" contributions. If cash, the agreement must include how each party plans to provide funding to support the project. For in-kind contributions, the agreement must include the value of equipment, materials, or other property used in the performance of the work. In-kind contributions are calculated at reasonable fair market value and the burden of proof is with industry.

Modifications

The OTA should address how changes will be handled. The parties to the agreement will need to

[8] See AMS Guidance T3.3.1.A.10(d)

determine if both unilateral and bilateral changes will be permitted in the agreement. There may be situations that arise where the FAA needs to make unilateral changes to the agreement to ensure that critical requirements of the agreement are being met. Unilateral changes are also beneficial to include in the agreement when there are changes to the availability of funding slated for the project. In determining whether to grant a modification, the CO should apply their business acumen and make modifications that enable successful project outcomes.

Disputes

COs should ensure each OTA addresses the procedures for resolving disputes. Where possible, the parties should try to resolve disputes informally through discussions. To the extent that disputes cannot be resolved informally, the CO should try to negotiate a disputes clause whereby the parties engage the services of the Office of Dispute Resolution for Acquisitions (ODRA) to provide mediation and other ADR services before initiating costly litigation.

Termination

The CO should consider termination clauses (both convenience and for default) in light of the circumstances of the particular transaction. In cases where risk is allocated between the parties, and the transaction involves cost-sharing, it may be appropriate for the awardee to have termination rights as well. Termination by the awardee may arise in situations where the awardee discovers that the expected commercial value of the technology does not justify the continued investment, or the FAA fails to provide funding in accordance with the agreement. Termination clauses should identify the conditions that would warrant termination and include procedures for notification requirements and termination settlements.

Remedies

If the OTA provides a clause whereby the FAA has the right to terminate for default or provide the awardee with the right to terminate, the OTA must also address what remedies are available to the FAA. For example, it may be appropriate to require recoupment of the FAA's investment or to obtain unlimited, or FAA purpose license rights to IP created during the performance that are necessary to continue a prototype of the project.

Audits

Audits and access to financial records are subject to negotiation between the parties. Where appropriate, COs should include audit access clauses in the agreement. In most instances, fixed price OTAs should not require an audit clause. However, if the agreement is a cost-reimbursable transaction, the FAA may determine that an audit is necessary. If an audit is necessary, the CO should negotiate an audit clause that explicitly states the frequency of the audit and allows the FAA flexibility to use independent auditors.

When negotiating an audit clause for an OTA awardee that is a state or local FAA, or nonprofit organization, the CO should incorporate provisions of the Single Audit Amendment Act of 1996 (31 U.S.C. 7501 et seq.) into the agreement. The Single Audit Act is intended to minimize duplication of audit activity and provides for the use of independent public accountants to conduct annual audits of state or local FAAs and educational or other nonprofit institutions.

Warranties

The OTA should also include a warranties clause where the FAA makes no express or implied warranties as to any matter arising under the OTA, or as to the ownership, merchantability, or fitness for a particular purpose of any property, including any equipment, device, or software that

may be provided under an OTA.

Insurance

The CO should negotiate an insurance clause where the OTA awardee must provide insurance or otherwise offer full protection of FAA from and against all liability to third parties arising out of, or related to, its performance of this Agreement. The FAA must assumes no liability under OTA for any losses arising out of any action or inaction by the OTA awardee, its employees, or Contractors, or any third party acting on its behalf. The OTA awardee must agree to hold the United States harmless against any claim by third persons for injury, death or property damage arising out of or in connection with its performance under the OTA.

Reporting Requirements

The CO should consider including performance reporting in the agreement. Effective performance reporting includes cost, schedule, and technical progress reporting. The agreement should also identify the frequency and type of reports necessary to support the effective management of the agreement.

Export Control

The FAA team must determine if the item, services or information to be provided under the OTA is export controlled. Examples of export controlled items include FAA equipment, parts and maintenance services delivered outside the United States even for FAA purposes. It also includes giving or sending items such as documents, CDs, key fobs, thump drives, etc., to foreign entity or foreign national. If the items under the OTA are determined to be export controlled, then a formal Export Control Review is required and the CO must include the appropriate export clauses in the OTA. Please see AMS Guidance T3.6.4.A.14 Export Control for more details on the Export Control Review Process.

B. Negotiated Agreement and Award

Prior to issuing an OTA, the CO must document its rationale for using an OTA, as opposed to other award types (e.g. procurement contracts, grants, cooperative agreements, etc.). Appendix 1 provides a sample template that CO's can use in documenting their rationale. Appendix 1 Article IV cites examples that CO's can use as support to document their rational basis for the use of OTAs.

C. OTA Administration Documentation Requirements

The files containing records of all OT actions should be maintained by the person administering the contract. Documentation in the files should provide a complete history of the transaction to include but not limited to, the following:

1) Complete background as a basis for informed decisions at each stages in the acquisition process;
2) Support actions taken
3) Information for reviews and investigations; and
4) Essential facts in the event of litigation or Congressional inquiries.

The OTA File Contract Checklist attached in Appendix 2 to this document will assist CO's in organizing the OTA file and ensure all required documents are properly filed.

D. FAA Procurement Reporting

The Federal Funding Accountability Transparency Act requires FAA to make procurement award data publicly available. Financial Assistance Other Transaction Agreements (OTAs) over micro-purchase threshold are required to be entered into the Financial Assistance Broker system. All Department of Defense (DoD) and Department of Homeland Security (DHS) funded OTAs must be reported to USASpending.gov via FPDS.

APPENDIX 1: SAMPLE RATIONALE FOR USE OF OTHER TRANSACTION AGREEMENTS

I. Contracting Organization:

II. Description of Supplies/Services within the scope of the agreement;

Authority: (Cite the applicable Other Transaction Agreement (OTA) authority as referenced in the Agreement Type Guidelines Document)

III. Applicability of Authority:

The CO alongside with the Program Office must determine that an OTA is more beneficial than other types of agreements. In conjunction with the Program Office, the CO must justify this decision and may consider the benefits noted below:

- *What is a specific technology or research methodology that would be available with an OTA, but unavailable via another agreement type?*
- *Would prospective vendor(s) not participate if an agreement other than an OTA was used? Identify the ways the OTA minimizes these barriers to nontraditional participation, including but not limited to;*
    - *Consortia comprised of the entities above who collaborate as peers with the FAA to manage the project and share its costs;*
    - *Non-profit entities that have an interest in the goals of the OTA program; and*
    - *Individuals.*
- *Do the program requirements require direct research related to unmanned aircraft systems, including at any test range in coordination with the Center of Excellence for Unmanned Aircraft Systems?*
- *What program needs require fluid implementation of a program - awards need to begin quickly on a small scale, with additional funds added later if milestones are met, or awards may need to be downsized or discontinued?*
- *What nontraditional review and award management practices are needed because the science is expected to be highly evolving, with requirements for additional aims or expertise added to, or removed from, the project throughout the award period?*
- *What program requirements cause a need for collaborative involvement by the FAA in the technical direction and oversight of the research, which can be akin to partnering? Examples of involvement can include participation in progress reviews and decisions on future efforts or direction. The FAA may also be a voting or non- voting member of the consortium.*

IV. Approval

Based on the review and analysis herein, the CO has determined that awarding the OTA is in the best of interest to carry out the functions the FAA.

_____ _____

Contracting Officer Date

APPENDIX 2: OTA Checklist

Contract Number		**Contract Point of Contact**	
Award Date		**Contracting Officer:**	
Base Period of Performance		**Contracting Officer Representative:**	
Contract Name			

Procurement Planning					
TAB	**Plan Procurement**	**AMS Reference**	**Y**	**N**	**N/A**
	Procurement Team Members/Organizations				
	Procurement Request Package	3.2.1 & T3.2.1			
	Procurement System Generated Requisition, if applicable	T3.2.1			
	Market Analysis	AMS 3.2.1.2 & T3.2.1.2			
	Document: Justification for Other Transaction Agreement	OTA Guide			
	Management Review & Legal Coordination and Review of Market Surveys and Analyses	T1.15			
	Statement of Work, Specifications, Purchase Description, Drawings, or Other Appropriate Technical Description of the Requirement	T3.2.1			
	Document: Independent Government Cost Estimate (IGCE)	T3.2.1 & T3.2.3			
	Government Furnished Property	T3.2.1, 3.10.3, & T3.10.3			
	Market Survey/Research/Analysis	3.2.1.2.1 & T3.2.1.2			
	Management Review & Legal Coordination and Review of Market Surveys and Analyses	T1.15			
	Document: Procurement Plan required for procurements over $25K (Template A Simplified and Commercial & Template B Other Than Simplified and Commercial)	3.2.1.1 & 3.2.1.2.2/Procurement Templates			
TAB	**Procurement Reviews**	**AMS Reference**	**Y**	**N**	**N/A**
	Export Control Review	T3.6.4.A.14 & FAA Order 1240.13			
	Coordination with Quality Assurance Division				
	CIO Review if Procurement if equal or greater than AMS risk threshold and is for Information Resources	T3.2.1.A.3			
	Document: CIO IT Procurement Review and Approval Form	Procurement Templates			
	CFO Review if Procurement if equal or greater than $15 MIL (including all options)	T3.2.1.4			
	Document: SCRB Phase I Template	Procurement Templates			
	Document: SCRB Phase II Template	Procurement Templates			
	Administrator Review if procurement if equal to or greater than $10 MIL (including all options)	T3.1.4.1.b			

TAB	OTA Development and Review	AMS Reference	Y	N	N/A
	Screening Information Request (SIR)	T3.2.2.3.A.6			
	Evaluation Plan/Scoring Criteria	T3.2.2.3.A.4			
	OTA Review				
	Service Organization Review				
	Management & Legal Review & Coordination if Procurement > AMS risk threshold (including all options)	T1.15			
	Security Review	3.14 & T3.14.1			
	Classified Security Requirements	3.14 & T3.14.1			
	Information, Personnel, and Physical Security as it related to suitability requirements and coordination	3.14 & T3.14.1			
	Document: OPM Position Designation Automated Tool	T3.14.1A.3 e (2)(b) (ii)			
	Source Selection				
TAB	**Manage Solicitation**	**AMS Reference**	**Y**	**N**	**N/A**
	Signed Non-Disclosure Agreement/Conflict of Interest Certification for Procurements equal to or greater than the AMS risk threshold	3.1.5, 3.1.6, T3.1.5, T3.1.6/Procurement Templates			
	Document: Procurement Integrity Act (Team Briefing)	3.1.8 & T3.1.8			
	Public Announcement (over AMS risk threshold)	3.2.1.3.1.1 & T3.2.2.3.B.1			
	SIR Amendments	T3.2.2.3.A.2c			
	Pre-Submittal Conference	3.2.2.3.1.2.2 & T3.2.2.3.A.7			
	SIR Responses & Verification of Offers	T3.1.8			
	Communication with Offerors (Late Offers, Mistake in Offer, etc.)	3.2.2.3.1.2.2 & T3.2.2.3.A.7			
	Cancellation of SIR	T3.2.2.3.B.3			
TAB	**Evaluate Responses**	**AMS Reference**	**Y**	**N**	**N/A**
	Procurement Team Evaluation Reports & Plans	3.2.2.3.1.2.3 & T3.2.2.3			
	Evaluation Documentation	3.2.2.3.1.2.3 & T3.2.2.3.A.9(d)			
	Evaluation Team Members	3.2.2.3.1.2.3 & T3.2.2.3			
	Evaluation Written Report	3.2.2.3.1.2.3 & T3.2.2.3			
	Cost/Price Report	T3.2.2.3.A.9e			
	Management Review & Legal Coordination and Review of Evaluation Reports & Plans	T1.15			
	Responsibility Determination Documentation (to include checking Sam.gov)	T3.2.2.7			
	Award Decision Document/Negotiation	3.2.2.3.1.2.5 & T3.2.2.3.A.10			
	Management Review & Legal Coordination and Review of Evaluation Reports & Plans	T1.15			
	CFO Review if Procurement if equal or greater than $15 MIL (including all options)	T3.2.1.4			
	Document: Congressional Affairs Notification > $3.5 MIL and FAA Form 4400.35	T3.14.1.A.3 Procurement Forms and Template			

TAB	Make Award	AMS Reference	Y	N	N/A
	Contract Documents/PRISM Award				
	Award Letter	T3.2.2.3			
	FPDS/FAB/US Spending, if applicable	OTA Guide			
	Contract w/ Attachments Award Notification - Contractor, Payment Office, Requiring Service Organization, COR, Budget/Finance Office, Security Office, Small Business Program Office, Property Office, AFA-100, AFI-100, QRO	T3.2.2.3.A.10			
	Contractor Debriefings	3.2.2.3.1.4 & T3.2.2.3.A.11			
	Management Review & Legal Coordination and Review of Evaluation Reports & Plans	T1.15			
	Document: Authorization to Proceed	Procurement Samples			
	Post Award/Preconstruction Conference/Kick Off Meeting	T3.8.7			
	Contract Administration				
TAB	**Manage Award**	**AMS Reference**	**Y**	**N**	**N/A**
	Document: Letters of Delegation of Contracting Officer Representative	T3.10.1.A.3, Procurement Templates			
	Training/Certification of COR Complete	T3.10.1.A.3			
	Notification of COR Appointment to Acquisition Career Manager	T3.10.1.A.3			
	Notification of COR Revocation Letter	T3.10.1.A.3			
	Payrolls and Labor Correspondence	T.3.6.2			
	General Correspondence	T3.10.1			
	Government Property (List of Property, Review/Approval of Contractor's Property Control System, Reports, & Periodic Inventories)	3.10.3 & T3.10.3			
	Record of Payment (Invoices, Progress Payment Documentation, Periodical Estimates, Payment Approvals/Certifications, Delphi Report)	3.3.1.2 & T3.3.1			
	FOIA Requests	T3.1.6.A.4			
	Equitable Adjustments Documentation	T3.10.A.5			
	Modifications	T3.10.1.A.5			
	Management Review & Legal Coordination/Review of Modifications affecting Govt. Obligations and Exercise of Options	T1.15			
	Justification for Modification	T3.10.1.A.5			
	Procurement Team Review of Final Modification Documents	T1.15			
	Modification Documents (PRISM Award, Proposal Documents, etc.)				

TAB	Close-out & Terminate award	AMS Reference	Y	N	N/A
	Claims and Disputes				
	Termination	T3.10.6			
	Finding and Decisions of CO	T3.10.1.B.4			
	Management Review & Legal Coordination/Review of Termination/Disputes/Claims, etc.	T1.15			
	Appeals from Decisions				
	Closeout	3.10.10 & T3.10.1			
	OTA File Closeout & Completion Statement				
	Property Clearance/Distribution				
	Final Release Documentation				
	Final Delivery	T3.10.1.B.4			
	Document: Contractor Release (DOT-4220.4)	T3.10.1.B.4, Procurement Forms			

APPENDIX 3: FAA OTA Tower Construction Guide

FAA OTA TOWER CONSTRUCTION GUIDE

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I. INTRODUCTION

This Guide is issued to document requirements and best practices for the development and use of Other Transaction Agreements for Tower Construction projects. Tower construction for purposes of this guide is defined as the construction, alteration, or repair of an air traffic control tower and associated structures, buildings, or other real property.

Under the FAA's Acquisition Management System (AMS) the term "Other Transactions" (OT) includes the Administrators statutory authority to enter into transactions other than contracts, grants, cooperative agreements, and leases. When FAA enters into OT agreements (OTAs) it will determine why an OTA is used versus another type of acquisition instrument.

While OTs come with fewer restrictions than other types of awards, they still must be awarded in a manner that ensures proper stewardship of Federal funds and comply with requirements applicable to all Federal funding (regardless of funding mechanism). For this reason, Contracting Officers must be sure that their OT requirements are fully documented and consistently applied. They also must comply with the requirements in the AMS for OTAs.

II. WHY ARE OTHER TRANSACTIONS USED?

Before pursuing use of an OT funding instrument, it is important to determine whether another acquisition instrument like a contract is appropriate. If a contract, grant, cooperative agreement or lease is appropriate, generally FAA will use one of those instruments. The AMS provides direction in Procurement Guidance T3.8.1 regarding which type of instrument is appropriate for a particular type of transaction.

Other Transactions are not required to comply with all of the procurement contract requirements in the AMS. The Contracting Officer should consult with the Chief Counsel's office prior to making the determination that an Other Transaction Agreement is appropriate.

The following section contains suggested content for a tower construction OTA, however the Contracting Officer has the discretion to choose the format, content and structure consistent with the AMS and in the best interest of the FAA.

III. AGREEMENT STRUCTURE, PLANNING AND EXECUTION

A. SCOPE OF AGREEMENT

The Scope of the Agreement describes the scope of the tower construction project and will at a minimum describe the scope of the construction, the expectations of the parties for a successful outcome and the respective obligations of the parties to each other and to any other parties who are intended to receive benefits from this transaction.

B. TERM AND OPTIONS

This article sets forth the period of performance of the agreement. It is important that the period of performance be consistent with the due dates of any established deliverables. For example if a deliverable could have up to 60 days of review by the FAA, the period of performance of the agreement should extend to at least 60 days after the due date for the deliverable.

A separate article may be needed if the parties wish to design more specific language as to when, how and why of any option may be exercised.

C. MODIFICATIONS

The agreement should be clear that only the FAA Contracting Officer may bind the FAA to any changes to the agreement terms and conditions, including changes to the statement of work, or description of services.

D. AGREEMENT PLANNING

1. Appropriate Safeguards. Other Transaction authority provides flexibility to negotiate terms and conditions appropriate for the transaction. This includes terms that assure that (a) the cost to the FAA is allocable, necessary, reasonable and realistically reflects the work that will be accomplished, (b) the schedule and other requirements are enforceable, and (c) the payment arrangements promote on-time performance.

   It is the responsibility of both the Contracting Officer and Program Manager to ensure the terms and conditions negotiated are appropriate for the particular project, and they should consider expected follow-on program needs.

   There is a public expectation that federal funding opportunities are made widely available to all interested, capable and responsible parties and that open competition ensures only the most qualified applicants receive funding. Therefore, FAA will generally make tower construction other transaction agreement funding opportunities known to a wide audience and to allow potential applicants to compete for funds to the maximum extent practicable, while meeting agency needs.

2. Chief Counsel's Office Review. The Contracting Officer must submit the agreement to the Chief Counsel's office in accordance with AMS Legal Coordination requirements in Procurement Guidance Tl .15.

3. Negotiated Agreement and Award. Prior to issuing an agreement the Contracting Officer must document the basis for using another transaction agreement opposed to a conventional contracting instrument and project-specific matters, such as the fairness and reasonableness of other transaction price. The Contracting Officer should also determine, whether payments are aligned to actual needs so that the FAA isn't providing funding prior to the need for the funding and how to dispose of leftover funds and interest earned on advanced funds.

E. INTELLECTUAL PROPERTY

Contracting Officers can negotiate terms and conditions different from those typically used in procurement contracts. However, in negotiating these clauses, the Contracting Officer must consider whether the reasons for using another transaction agreement justify modifying the standard intellectual property clauses. The Contracting Officer should assess the impact of intellectual property rights on the FAA's total life cycle cost of the program.

F. ACCOUNTING, PURCHASING, AND MANAGEMENT SYSTEMS

An important component of the use of other transaction agreements is the ability for awardees to use appropriate accounting, purchasing and management systems that may differ from those used for other award types. While not all agreements may require this option, the flexibility is available and the Contracting Officer should ensure it is addressed in the agreement.

When structuring the agreement, the Contracting Officer may consider the capability of the awardee's accounting, purchasing and management systems. Agreements should require that adequate records be maintained to account for federal funds received and cost-sharing, if any.

The Contracting Officer should not enter into an 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 and management system capable of identifying and accumulating the costs to individual agreements. Any system that appropriately segregates direct costs from indirect costs, identifies and accumulates direct costs by project and provides for an equitable and consistent allocation of indirect costs to intermediate and final cost objectives is acceptable.

When the awardee has a system capable of identifying the costs, the agreement should utilize the awardee's existing accounting, purchasing and management system to the maximum extent practical.

G. AUDIT

1. General. Where appropriate, Contracting Officers should include audit access clauses in the agreement. Agreements should provide for the Contracting Officer's authorized representative to have direct access to sufficient records to ensure full accountability for all FAA funding or cost share data under the agreement for a specified period of time after final payment.
2. Frequency of Audits. Audits of agreements will normally be performed only when the Contracting Officer determines it is necessary to verify awardee compliance with the terms of the agreement.
3. Audit Flowdown. In addition, Contracting Officers should require the awardee to insert an appropriate audit access clause in awards to key subcontractors and participants.

H. COST SHARING

Cost sharing is an option as an administrative requirement available to the FAA. The

Contracting Officer should use the principles identified in Procurement Guidance T3.2.4 regarding Cost Sharing contracts, unless the Contracting Officer determines that the FAA would benefit from deviating from those principles.

I. PAYMENTS

The agreement must identify the basis and procedures for payment. The Contracting Officer may consider, among other factors the following in drafting the agreement payment clauses:

a. Are payments based on amounts generated from the awardee's financial or cost records?

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

        - If the payments can be adjusted, what is the basis and process for the adjustment?

    ii. Does the agreement provide for interim reimbursement based on amounts generated from the awardee's financial or cost records? If so, 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.

b. Is an interim or final audit of costs needed?

c. Are payments based on milestones achieved by the awardee?

    i. Fixed payable milestones. If the Contracting Officer determines that the awardee will be paid based on fixed payable milestones, 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.

    ii. 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. Payable milestones should be adjusted as soon as it is reasonably evident that adjustment is required under the terms of the agreement.

d. Are advanced payments appropriate for the transaction? If so, please refer to the FAA Other Transaction Guide for policies and procedures for advance payments.

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

J. PROPERTY

In deciding whether, when or how to take title to property under another transaction

agreement, the FAA should consider whether known or future efforts may be fostered by FAA ownership of the property.

K. PROTESTS AND DISPUTES

All protests and disputes must be subject to resolution by the FAA's Office of Dispute Resolution for Acquisitions.

L. REPORTING AND ADMINISTRATION

1. Performance Reporting. The other transaction agreement must identify the frequency and type of performance, cost and management reports necessary to support effective management as determined by the Contracting Officer. Effective performance reporting addresses cost and schedule progress of the awardee as well as any major subcontracts. It should address the progress achieved compared to the anticipated progress, as well as the budgeted and actual costs.

   The Contracting Officer should consider whether the reports required of the awardee are important enough to warrant establishment of line items or separate payable milestones, or if report requirements should be incorporated as a part of a larger line item or payable milestone.

2. Corrective action. It is the Contracting Officer's responsibility to ensure that all terms and conditions of the agreement are being satisfied. If the awardee has failed to comply with any term of the agreement, the Contracting Officer should take timely and appropriate action to remedy the situation.

APPENDIX 4: ACCESS TO FEDERAL ASSISTANCE BROKER SUBMISSION SYSTEM (FABS)

To access the FABS system, the CO must create a user account with OMB MAX on the following website:

https://max.gov/maxportal/register/group/AGY-TREAS-BFS.DATA.ACT.BROKER.WRKGRP-CGAC_069-PERM_F.

Once the CO creates a user account, the system will automatically send Department of Transportation (DOT) a request for the user to join the DOT FABS User list. A DOT administrator will approve all FABS user accounts. The user account request must be approved by a DOT administrator you will have access to the FABS portal, which is part of the Treasury Broker site is located at https://broker.usaspending.gov.

When reporting these OTA awards into FABS, the awarding official should select the applicable Assistance Type (as displayed below) for the OTA and include "OTA" in the award description to allow for ease of identifying these types of awards in future data searches.

Assistance Type	11	Other reimbursable, contingent, intangible, or indirect financial assistance	Financial assistance from the Federal Government that is not described by any of the previously-defined assistance types.