Other Transactions (OTs)

Overview

Advanced Research Projects Agency for Health (ARPA-H)

May 2026

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Federal Contracting History and Events

1948: Armed Services Procurement Act/Armed Services Procurement Regulation (ASPR)

1958: Grants Act & National Aeronautics and Space Administration (NASA) Space Act signed (created NASA & “Space Act Agreements”)

1959: General Services Administration issues civilian procurement regulation

1972: Other Transaction Authority (OTA) granted to the NIH

1974: Procurement regulations total about 3,000 pages

1977: ASPR becomes the Defense Acquisition Regulation (DAR)

1978: Federal Grant and Cooperative Agreement Act

1984: The Federal Acquisition Regulation (FAR) codified in Title 48 Code of Federal Regulations

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Federal Contracting History and Events (cont.)

1989: OTA granted to the Defense Advanced Research Projects Agency (DARPA)…later the broader Department of Defense (DoD)

1993: Era of "procurement reform" – Federal Acquisition Streamlining Act

1994: DARPA's OTA expanded to include prototype projects…later to the broader DoD

2001: OTA for follow-on production introduced to the DoD

2006: OTA granted to BARDA –- within ASPR (Health & Human Services)

2011: OTA granted to the Advanced Research Projects Agency for Energy

2022: Creation of ARPA-H (with OTA granted)

2025: Executive Orders to simplify and streamline the FAR and prefer use of Commercial Solutions Openings and OTAs to spur innovation

Science & Technology (S&T) Community

PAST

Innovation fueled by the government

Commercial sector wanted to work with the government

The government was the primary driver of technology innovation by making substantial research and development (R&D) investments

PRESENT

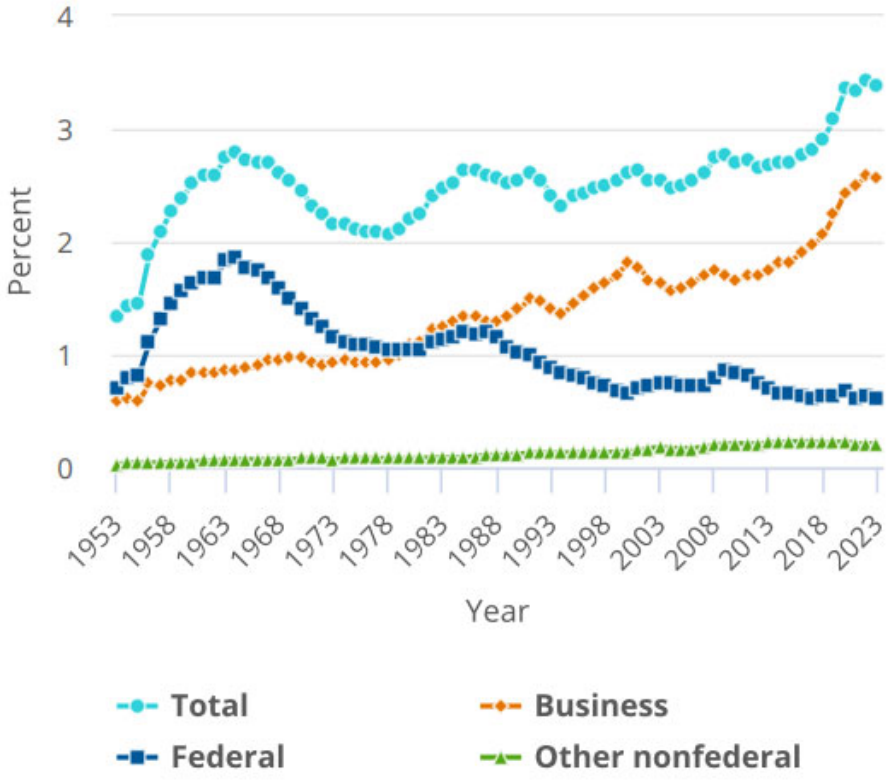
Innovation fueled by the commercial sector

Cutting edge commercial firms with large R&D investments are reluctant to work with the government

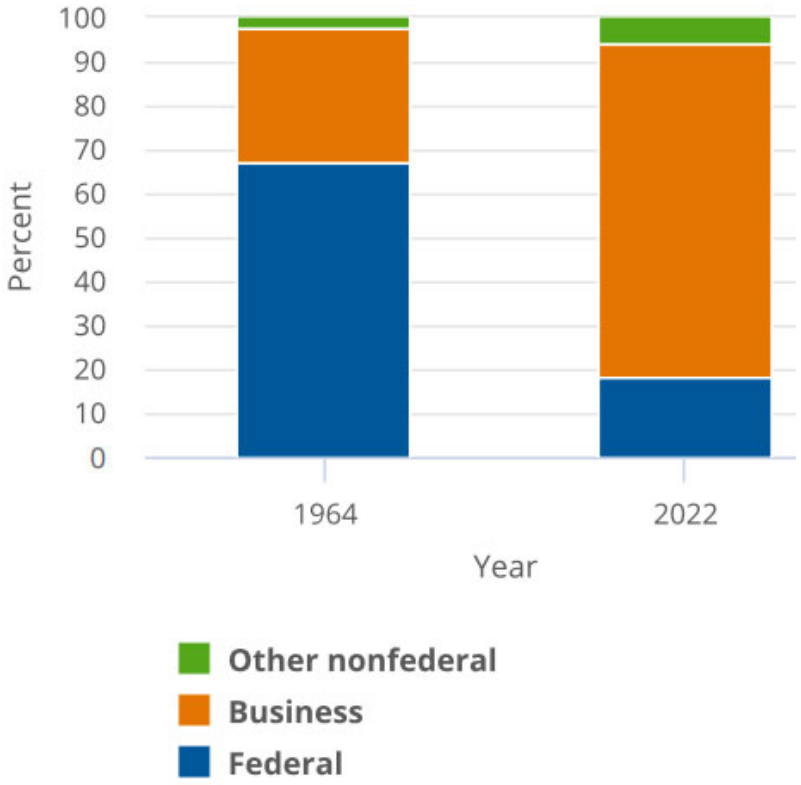
Focus and pace of S&T innovation in leading technology areas have shifted from government to the commercial sector (industry spends nearly 10 times more on R&D than the government)

U.S. R&D Expenditures

Ratio of U.S. R&D to GDP by Source



U.S. R&D Share by Source



SOURCE: National Science Foundation (NCSES)

Impediments to Commercial Sector Participation

- Traditional procurement process is too slow, bureaucratic, and doesn't effectively incorporate commercial best practices
- Traditional procurement contracts (FAR-based contracts) are based on "regulation" rather than "negotiation"
- Government's cost-based pricing system is cumbersome
  - Specialized accounting and audit systems
  - Actual and perceived oversight excesses
- Small businesses and start-ups may be able to secure funding much more quickly and more easily from venture capitalists
- Government's approach to intellectual property (IP) and technical data rights can be overreaching

Tool Box

Acquisition

Non-Acquisition

Procurement Contracts		Non-FAR Contracts	Grants	Cooperative Agreements	OTs
31 U.S.C. § 6303 ↓ Federal Acquisition Regulation (FAR)		Non-Appropriated funds (NAF) contracts NASA Space Act Unique authority at 9 civilian agencies ARPA-H OT authority HHS Policies Exceptions to Bayh-Dole Act	31 U.S.C. § 6304 2 CFR Part 200 Bayh-Dole Act	31 U.S.C. § 6305 2 CFR Part 200 HHS/NIH policies Bayh-Dole Act Lore	ARPA-H OT authority Single/Multi-Party New/Unique Arrangements Bailments Lease Arrangements Loan-to-Own Exception to Bayh-Dole
PART 15 Contracting by Negotiation Cost/ Price Based	PART 12 Commercial Items Price Based				

Cooperative Research & Development Agreement (CRADA)	A legal agreement between a federal laboratory and industry used for the transfer of commercially useful technologies from federal laboratories to the private sector and to make accessible unique technical capabilities and facilities
Partnership Intermediary Agreement (PIA)	A contract, agreement, or memorandum of understanding with a nonprofit partnership intermediary to bring together academia and industry on behalf of the Gov't to speed up tech transfer and licensing

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OTs – What They Are and What They Are Not

What They Are:

- Flexible/innovative/streamlined contract vehicles with characteristics similar to those within the commercial industry
- Require personnel with business acumen and negotiation skills (and OT training or experience)
- Require performance measurement and management (cost, schedule, and technical progress)
- Vehicles with limited protestability or challengability (i.e., Government Accountability Office (GAO))

What They Are Not:

- Appropriate for all offices, divisions, and projects
- Procurement contracts (FAR-based), grants, or cooperative agreements
- Subject to all acquisition laws and regulations
- New vehicles available to the Government
- One-size-fits-all vehicles with standard checklists
- Vehicles used strictly to avoid following the FAR
- Guarantee teams to complete awards faster than traditional contracts

OTs – Purposes and Potential Benefits

- Provide the flexibility to adopt and incorporate business practices similar to those within commercial industry
- Provide the government access to state-of-the-art technology solutions
- Foster new relationships and practices with solutions providers, especially those that may not be interested in entering FAR-based contracts with the government
- Broaden the Public Health Industrial Base (PHIB), Defense Industrial Base (DIB), or other
- Encourage flexible, quicker, agile, and cost-effective project design and execution when compared to other vehicles
- Leverage commercial industry investments in science/technology and research/development
- Collaborate in innovative and flexible arrangements

OT Advantages / Disadvantages

Advantages

- The most flexible authority when compared to contracts, cooperative agreements, and grants
- Instrument characteristics are similar to contracts within the commercial sector
- Processes based on negotiations rather than regulations/policies
- Bayh-Dole Act (Intellectual Property) does not apply → more flexibility
- Does not require excessive oversight or specialized accounting/audit requirements and systems

Disadvantages

- Some industry partners, primarily academic institutions, may not have experience with (or training on) OTs
- Does not guarantee the Government will complete awards faster than procurement contracts, grants, or cooperative agreements
- Government entities may add policy or processes, including extra layers of approvals, that may prevent the flexibility intended by the authority

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OTs – Potential Performers

The government can enter OTs with various types of entities and organizations*:

- Large business, including traditional government performers
- Nontraditional performers, including:
  - Those that have not previously worked with the Federal government
  - Small businesses, including those participating in Small Business Innovation Research (SBIR) or Small Business Technology Transfer (STTR) programs
- Nonprofit organizations
- Academic institutions, including Minority Serving Institutions (i.e., Historically Black Colleges and Universities, Hispanic Serving Institutions, and Native American-Serving Non-Tribal Institutions)
- Other: Foreign entities, Consortium Management Firms (CMFs), etc.

* Use competitive procedures to the maximum extent practicable

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OTs – Risks and Challenges*

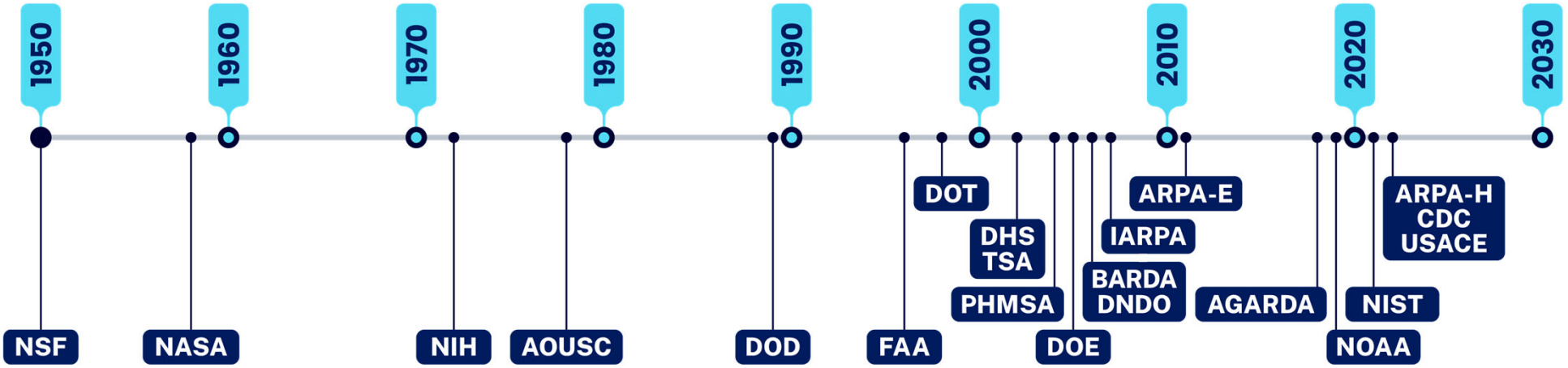
- Nontraditional form of Federal government doing business
- OT usage not meeting Congress' intent
  - Insufficient transparency, reporting, and controls
- Not obtaining or maintaining adequately trained personnel with appropriate skill sets
- Limited training available on subject matter
- Lack of structured procedures or "guardrails"
- Compliance with federal funding requirements (Bona Fide Needs rule)
- Avoiding sufficient competition
- Not maintaining or expanding the performer base
- Inadequate means to measure/manage performance
- Inconsistent processes/practices and lack of transparency with consortia use

* Sources: Various GAO and Office of Inspector General reports

Key Elements to Effective OT Use

- Top level (leadership) interest and support
- Cohesive team from project initiation (e.g., PM, Acquisition, Legal, Comptroller)
  - Buy-in from entire team and key stakeholders is crucial
  - Culture: collaboration, communication, inclusion, mutual trust, empowerment, and measured risk
- Program Managers (PMs) or Project Managers and OT Agreements Officers (AOs) who understand the OTA and identify opportunities to use OTs
- Participation by and cooperation among various functional areas (“right people on the bus”)
- Not following/mimicking the FAR/HHSAR/DFARS/etc. and inhibiting the flexibility provided by the OTA
- Choosing OTs as the appropriate award vehicle after fully determining program or project goals and objectives

Government Entities With OT Authority



AGARDA	Agriculture Advanced Research and Development Authority
AOUSC	Administrative Office of the U.S. Courts
ARPA-E	Advanced Research Projects Agency for Energy
ARPA-H	Advanced Research Projects Agency for Health
BARDA	Biomedical Advanced Research and Development Authority
CDC	Centers for Disease Control and Prevention
DHS	Department of Homeland Security
DNDO	Domestic Nuclear Detection Office
DOD	Department of Defense
DOE	Department of Energy
DOT	Department of Transportation
FAA	Federal Aviation Administration
IARPA	Intelligence Advanced Research Projects Activity
NASA	National Aeronautics and Space Administration
NIH	National Institutes of Health
NIST	National Institute of Standards and Technology
NOAA	National Oceanic and Atmospheric Administration
NSF	National Science Foundation
PHMSA	Pipeline and Hazardous Materials Safety Administration
TSA	Transportation Security Administration
USACE	US Army Corps of Engineers

OTs – What Laws and Regulations Apply?

Laws & Regulations that Apply to OTs	
False Claims Act – 31 U.S.C. § 3729	Antideficiency Act (ADA) – 31 U.S.C. § 1341/1342/1517
False Statements – 18 U.S.C. § 1001	Procurement Integrity Act – 41 U.S.C. § 2101, et seq.
Civil Rights Act – 42 U.S.C. § 1981	Federal Property and Administrative Services Act – 40 U.S.C. Subtitle I
Clean Air Act – 42 U.S.C. § 7401	Debarment and Suspension – 2 CFR 376
Clean Water Act – 33 U.S.C. § 1251	Research Misconduct – 42 CFR 93
Endangered Species Act – 16 U.S.C. § 1531	Human Subjects Protections – 45 CFR 46
National Environmental Policy Act – 42 U.S.C. § 4321, et seq.	Humane Care and Use of Laboratory Animals – Public Health Service Policy

OTs – What Laws and Regulations Do Not Apply?

Laws & Regulations that Do Not Apply to OTs	
Competition in Contracting Act – 41 U.S.C. § 3301	Buy American Act (in part) – 41 U.S.C. § 83
Truthful Cost and Pricing Data Act (formerly "Truth in Negotiations Act") – 41 U.S.C. § 3501, et seq.	Antikickback Act of 1986 – 41 U.S.C. § 51-58
Cost Accounting Standards – 41 U.S.C. § 1502	Service Contract Act – 41 U.S.C. § 351 et seq.
Contract Disputes Act – 41 U.S.C. § 7102	Procurement Protest Process – 48 CFR 33.1
Procurement Protest System – 31 U.S.C. § 3551, et seq.	Federal Acquisition Regulation (FAR)
Bayh-Dole Act – 35 U.S.C. § 202-204	HHS Acquisition Regulation (HHSAR)

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Financial Assistance* vs Acquisition

Assistance	Acquisition
Support or stimulation	Acquire/Buy
Public purpose	Goods/services for the direct benefit of the Government
Level of support	Price
Partnership/collaboration	Buyer/seller
Profit /fee unallowable	Profit/fee allowable
Unilateral right to terminate by recipient	Unilateral right to terminate by Government

*** Cooperative agreements and grants (OTs are not financial assistance instruments)**

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OTs – Intellectual Property (IP)

- IP rights will likely be the most complicated part of negotiations and take the most time
- Commercial companies are very protective of their IP rights and are very good at negotiating rights
- Educating the Government team on IP options and determining the Government's long-term needs/desires will help the team reach a reasonable position for negotiations
- Factors to consider in planning for negotiations:
  - There are no standard approaches or required positions (complete flexibility and freedom in negotiating rights)
  - Appropriate allocation of rights will depend on the technology and where it is in development
  - Standard rights in the particular industry
  - Take into account performer investment(s) through both resource sharing and previous investments
  - Always keep in mind the goal of both the proposing team and the Government set out in the agreement vision statement and their commercialization plan

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OT Community (OTC)

Objective: provide a one-stop-shop to assist individuals and organizations with OT planning, execution, and administration

Resources: training, on-the-job support, policies/guidance, reports, publications, and more

Location: ARPA-H's public website → https://arpa-h.gov/engage-and-transition/other-transaction-community

Cost: Free

How to Connect?

Email OTCommunity@arpa-h.gov

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